IN THE

Supreme Court of Virginia

RECORD NO. 181043

LOCH LEVAN LAND LIMITED PARTNERSHIP;
WELLESLEY LAND LIMITED PARTNERSHIP;
HHH LAND, LLC; and HHHUNT CORPORATION,

Appellants,

v.

BOARD OF SUPERVISORS OF HENRICO COUNTY,
VIRGINIA and THE COUNTY OF HENRICO,

Appellees.

OPENING BRIEF OF APPELLANTS

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NATURE OF THE CASE

HHHunt[1] is a land developer and home builder that has for decades designed and developed communities throughout Virginia. In the 1980s, HHHunt began making plans to build an upscale housing development called Wyndham. HHHunt always intended to build sections of Wyndham in Henrico and Hanover Counties. In its final form, the Wyndham development was to be built astride the Chickahominy River (which establishes the border between Henrico and Hanover Counties) with a spine road crossing the Chickahominy and connecting the Henrico and Hanover sections.

The connecting road was depicted as "Road D-D" on the preliminary plat submissions and later named "Dominion Club Drive." When discussing its plans with Henrico County, HHHunt made it clear that it intended to extend Dominion Club Drive across the Chickahominy into Hanover County. Subdivision plats submitted to and approved by the County showed Dominion Club Drive extending into Hanover County. And correspondence confirmed that Henrico County understood that Dominion Club Drive would cross into Hanover County in the future. In fact, because

[1] The Plaintiffs/Petitioners in this case are HHHunt Corporation, Loch Levan Land Limited Partnership, Wellesley Land Limited Partnership, and HHH Land, LLC. For clarity and brevity, the Plaintiffs/Petitioners will be referred to collectively as HHHunt.

the County knew that Dominion Club Drive was intended to extend across the Chickahominy River, the County depicted the road reaching the Chickahominy on the County's Major Thoroughfare Plan. The County also required HHHunt to file a performance bond to cover future construction of the road.

HHHunt began moving forward with its plans to build Wyndham by purchasing approximately 1,100 acres in Northwest Henrico County. Around this same time, and consistent with its vision to build part of Wyndham in Hanover County, HHHunt obtained parcels in Hanover. For several reasons, including zoning issues and difficulties negotiating with landowners, HHHunt was at that time unable to purchase all the land in Hanover it needed to build a suitable integrated section of the development to connect with Wyndham in Henrico County. For decades, HHHunt continued to pursue its plan to build the Hanover section of Wyndham by acquiring the necessary parcels.

Once it was certain it could obtain the final parcel of property needed to link the Hanover section into a unified whole to connect to Henrico County, HHHunt moved forward with its plans to develop the Hanover section of Wyndham. Because of an arising need for retirement housing, HHHunt decided to build on the Hanover section of Wyndham an age-

restricted community. The thinking was that the new Hanover development would be attractive not only to the aging population in general, but also to aging residents living in the Henrico section of Wyndham who wished to downsize their homes, but wanted to remain within the Wyndham community.[2]

To execute its plan to build the Hanover section of Wyndahm, HHHunt sought from Henrico County approvals to begin final construction of Dominion Club Drive to extend it across the Chickahominy and into Hanover County. This was consistent with HHHunt's original plan to connect both sections of the Wyndham development and provide direct access to all Wyndham residents.

When HHHunt's plans became public, a firestorm of opposition erupted. A group of Wyndham residents began to aggressively lobby the Henrico Board of Supervisors ("the Board") to stop the project. And with the assistance of the Henrico County Attorney's Office, the residents devised a legal strategy to put an end to HHHunt's decades-long plan. Shocked by the pushback from the Wyndham residents and the County, HHHunt's CEO met with the County Manager. Rather than being told that the County had a

[2] In 2010, HHHunt annexed into Wyndham the Hanover land it had acquired as part of the initial Wyndham land purchase, as well as the later purchased land.

reason-based objection to HHHunt's plans, the County Manager said simply that "we need to keep the Wyndham residents happy."

Once the Wyndham residents began their campaign in earnest, Henrico County officials suddenly seemed unaware of HHHunt's long stated intentions to connect Dominion Club Drive to Hanover County. The County minimized the fact that it had approved the plans for the road extension years earlier and reapproved subsequent plats that clearly showed the planned extension of Dominion Club Drive.[3] And the County treated as insignificant the fact that it had forced HHHunt to post a bond to complete Dominion Club Drive as a condition of building several subdivisions within Wyndham.

Ignoring HHHunt's vested rights, and for no other reason than to appease a group of vocal and politically active Wyndham residents, the Board voted to bar HHHunt from building Dominion Club Drive. To reach its decision, the Board of Supervisors relied on a tortured reading of various statutes, and the pretense of public necessity, to first eliminate Dominion Club Drive from the County's Major Thoroughfare Plan, and then abandon a small sliver of the road from the County's road system—essentially

[3] Notably, HHHunt had obtained at least eight discrete approvals from Henrico County for the construction of Dominion Club Drive to the Chickahominy River.

creating a “spite strip” to prevent further development of Dominion Club Drive. Predictably, the County’s act of trammeling the rights and expectations of HHHunt garnered cheers from the residents who opposed the construction.

The impact of the County’s action on HHHunt was unmistakable and devastating. It deprived HHHunt of the ability to construct a spine road to connect the two sections of Wyndham, and destroyed HHHunt’s plan to unify the entire Wyndham development. This placed the very future of the Hanover development in serious doubt. To protect its vested rights, HHHunt had no choice but to file this lawsuit.[4]

During a four-day trial, HHHunt introduced evidence showing that for nearly three decades Henrico County had approved numerous subdivision plats and site plans for the Wyndham development. And in good faith reliance on those approvals, HHHunt had spent enormous resources and diligently pursued its plans to complete Wyndham, including the completion of Dominion Club Drive to connect the Henrico and Hanover sections. The

[4] HHHunt filed two complaints. The first sought a declaratory judgment that the Board’s action to remove a portion of Dominion Club Drive from the County’s Thoroughfare Plan was invalid. This was denominated as Case No. CL16-336. (J.A. 1.) The second lawsuit was a challenge to the Board’s vote to abandon the disputed portion of Dominion Club Drive. It was denominated Case No. CL17-0942. (J.A. 213.) Over the County’s objection, the circuit court consolidated the two cases.

evidence showed that pursuant to the County's direction, HHHunt bonded the future extension of Dominion Club Drive throughout these years and began moving forward with the approvals needed for construction as soon as it was apparent that HHHunt could purchase the final piece of property necessary to build the Hanover section of Wyndham.

The evidence further showed that the grounds on which the Henrico Board of Supervisors based its decision were little more than hollow pretexts. The staff report prepared by the County's Planning Commission was rife with errors and unsupported conjecture. This included the bogus claim that the County had approved the extension of Dominion Club Drive shown on the various plats with the understanding that the road would be used solely to serve a misidentified landlocked 49-acre parcel in Hanover County. But not to be undone by the vacuousness of its staff report, the County introduced "evidence" of inspection reports that purportedly showed the pavement design for Dominion Club Drive was defective due to the resiliency of the soil. This evidence was quickly refuted as patently unreliable. Try as it might, the County was simply unable to introduce any reasonable evidence or identify any legitimate grounds to support its decision to deprive HHHunt of its right to extend Dominion Club Drive into Hanover County and unify the Wyndham community.

Despite the overwhelming weight of evidence in HHHunt's favor, the

trial court held that HHHunt did not possess constitutionally vested rights to complete Dominion Club Drive. This was despite the evidence showing that HHHunt had submitted plans for the road to the County and obtained numerous approvals, had spent large sums in reliance on the County's approvals, and diligently pursued construction of the road by providing a bond to the County and moving forward with construction as soon as it was feasible to do so. The trial court also concluded that the subdivision plats clearly depicting Dominion Club Drive did not provide statutory protection for the road's construction because the housing subdivision plat showed the road only as a "right of way." The trial court ignored the reality that a subdivision cannot be properly designed or constructed without the identified roads also being built. The trial court further found that Henrico County's abandonment of a small "sliver" of the road was a legislative act, and the County's decision was consistent with public necessity and welfare because of evidence of public opposition and nonspecific safety concerns. Because the trial court's ruling was contrary to the law and the evidence, this appeal followed.

STATEMENT OF FACTS

HHHunt Corp. HHHunt got its start in Blacksburg, Virginia in 1966 as a small company dedicated to building student apartments for Virginia Tech

Students. (J.A. 1173.) Since that time, the Company has branched out into many sectors of the construction business and grown into a diversified real estate development company. (*Id*.) HHHunt has built single family homes, senior living complexes, apartment homes, condominiums, town homes, and master planned communities. Today, HHHunt has a presence in South Carolina, North Carolina, Virginia, and Maryland. (J.A. 1173–74.)

HHHunt has developed several large master planned communities in Henrico County, including Wyndham.[5] (*Id*.) Over the course of three decades, HHHunt has invested millions of dollars in public improvements for Henrico County. Just in conjunction with its development of Wyndham, HHHunt has dedicated over $27 million in public infrastructure improvements to the County. (J.A. 214.)

Wyndham. Located in Northwest Henrico along the Hanover County border, Wyndham is one of the largest master planned communities in Henrico County, spanning approximately 1,100 acres. The community sits adjacent to Hanover County and is separated only by a narrow span of the Chickahominy River. (J.A. 215.) The conceptual plans for Wyndham, which date back to 1989, showed a mixed-use development, having numerous

[5] HHHunt developed Wyndham through its affiliated business entity, Loch Levan. (J.A. 214.)

sections dedicated for residential, as well as office and commercial uses. (J.A. 1177–78; 1682.) Also included was a depiction of the Dominion Club, a private club and golf course that was intended to be the centerpiece of the community. (J.A. 1177; 1682.)

The conceptual plans also depicted a network of roads necessary to serve traffic flowing in and through the community. (J.A. 216; 1682.) Among these roads was Dominion Club Drive, which was designed as a collector road to accommodate traffic flow through Wyndham.[6] (J.A. 794–95; 799; 1682.) Collector roads like Dominion Club Drive were indispensable elements of the Wyndham project and the subdivisions within the community, as they formed the "spine" of the development and facilitated access for residents. (J.A. 800.) The plans submitted to Henrico County in 1989 showed Dominion Club Drive beginning off Nuckols Road, winding through Wyndham, and continuing all the way to the Chickahominy River. (J.A. 216–19; 794–95; 1682.)

The Hanover Property. In the late 1980s, when HHHunt was assembling the acreage for Wyndham, HHHunt acquired two parcels of land in Hanover County that totaled approximately 150 acres. (J.A. 216; 1182–83.) HHHunt's vision was to one day develop these Hanover parcels

[6] Collector roads like Dominion Club Drive serve the entire Wyndham development and run adjacent to the various subdivisions. (J.A. 800.)

and incorporate them into the Wyndham development. (J.A. 1183–85.) From the beginning, HHHunt informed Henrico County of its plans to develop the Hanover parcels as an extension of Wyndham, and to use Dominion Club Drive as the road to connect the Henrico and Hanover sections of Wyndham. (J.A. 1191–92.) HHHunt also informed Hanover County of it plans, and in 1990 it provided Hanover County preliminary subdivision plats that showed Dominion Club Drive crossing into Hanover County, forming the spine of the Hanover section of Wyndham. (J.A. 502–03.)

The first parcel ("Parcel A") was a 107.29 acre parcel that abutted the Chickahominy River. (J.A. 1183–84; 2083.) The second ("Parcel B") was a 43.9 acre parcel located to the west of Parcel A. (*Id.*) Both parcels had previously been owned by the Liesfield family. (J.A. 795; 2083.) Parcels A and B did not connect. (*See* J.A. 2083.)

Cutting across Parcel A was a gravel road that ran from the Chickahominy River all the way to Cauthorne Road. (J.A. 1184.) During the development of Wyndham there was a culvert present that allowed traffic from Parcel A to cross the Chickahominy River into Wyndham. (J.A. 1185.) HHHunt intended for Dominion Club Drive to generally follow the same path as this gravel road. (J.A. 1187.) Understanding that Dominion Club

Drive would eventually cross the Chickahominy and cross into Hanover County, Henrico County informed HHHunt that the final phase of road construction would "entail the design and construction of a bridge." (J.A. 1713.)

To the west of Parcel B was a 209-acre parcel known as the "Vaughan Tract," after its owner, Robert Vaughan. (J.A. 1188.) HHHunt was able to purchase the Vaughan Tract in 1997. (*Id*.) In 2010, the Vaughan Tract, and Parcels A and B were annexed into Wyndham. (J.A. 1204.)

Separating Parcels A and B was a parcel owned by Mr. Zig Tiller[7] and his family (the "Tiller Property"). (J.A. 1189–90.) It was necessary for HHHunt to purchase approximately 22 acres of the Tiller Property (the "Tiller Parcel") to connect Parcels A and B to create a comprehensive development with a proper internal road network. (J.A. 1190–91.) Due to several problems in negotiating terms to purchase the Tiller Parcel and unexpected zoning issues, HHHunt was unable to purchase the property until 2017. (J.A. 1190.) Because of the strategic importance of this parcel, HHHunt paid approximately $3.3 million for the land. (J.A. 1191.)

Having access to the new property assemblage through Dominion Club Drive was a vital part of HHHunt's plans to develop the Hanover

[7] Mr. Tiller's first name is "Zeke." "Zig" was a scrivener's error in the transcript.

Property as part of Wyndham. (*Id*.) These plans were manifested in the first conceptual plans that showed Dominion Club Drive crossing the Chickahominy River. And linking the two sections of Wyndham via Dominion Club Drive was necessary to allow all Wyndham residents convenient access to the entire community. It was also consistent with best practices in community building. (J.A. 1191–92.) For decades, Henrico County understood and supported HHHunt's vision. The County even offered assistance to the new Hanover section of Wyndham by building infrastructure to provide water to the Hanover residents of Wyndham. (J.A. 1192–93.)

Henrico County's Initial Approval of the Development. In the summer of 1989, HHHunt began the process for zoning approval for Wyndham in Henrico County. At that time, HHHunt submitted to Henrico County the preliminary overall subdivision plan that included the overall infrastructure road layout. These plans showed the various roads that would service the Wyndham community. (J.A. 799–800; 1683–87.) The road layout clearly showed Dominion Club Drive extending all the way to the Chickahominy River, crossing the River, extending over Parcel A, and connecting to Cauthorne Road in Hanover County. (J.A. 801; 1686.) A zoning map submitted to the County also showed Dominion Club Drive

crossing into Hanover County. (J.A. 809–10; 1696.) Henrico County on June 20, 1989, approved HHHunt's rezoning request, including approval for the road layout. (J.A. 803; 1696.)

Henrico County's approval came with twenty-eight proffered conditions. Among these was a condition that HHHunt provide a twenty-five-foot greenbelt buffer on both sides of Dominion Club Drive for natural open areas and scenic vistas. (J.A. 804; 1688–96.) Within these greenbelts, HHHunt built pedestrian sidewalks that could also be used by cyclists. (J.A. 805–06.) Henrico County also required that none of the planned home sites could have driveways that directly accessed Dominion Club Drive. (J.A. 805; 1691.)

Henrico County placed an overall density limitation on Wyndham that limited the number of residential units HHHunt could build to 3,268. (J.A. 807; 1692.) Wyndham quickly became a prestigious community in the Richmond area and the demand for higher end homes on larger lots increased as a result. Consequently, HHHunt built only around 2,400 units in Wyndham. (J.A. 807–08; 1028; 1179–80.)

The Major Thoroughfare Plan. The Virginia Code requires each locality to create a comprehensive plan for property development within its jurisdiction. Each locality must also create a transportation plan that details

the locality's transportation infrastructure. *See* Va. Code § 15.2-2223. Henrico County calls its transportation plan the "Major Thoroughfare Plan." Since 1991, Henrico County has depicted Dominion Club Drive on its Major Thoroughfare Plan as running through Wyndham and ending at the Hanover County line. (J.A. 813; 1702.) And since 2012, Dominion Club Drive has also been a part of Hanover County's Major Thoroughfare Plan. (J.A. 2047.)

The County's Approval of Subdivision Plats. The development of Wyndham was a massive undertaking and, like any massive property development, it was completed in phases. In October 1990, the County granted HHHunt conditional approval to develop a subdivision called "Wexford at Wyndham." (J.A. 1709–11.) The County's approval was contingent on HHHunt constructing a number of roads within Wyndham, including Dominion Club Drive. (J.A. 823–24, 1710.) In initially approving Wexford at Wyndham, the County required HHHunt to complete Dominion Club Drive and extend it to the Chickahominy. (J.A. 824.) Because of HHHunt's limited resources, HHHunt and the County reached an agreement under which HHHunt would complete the collector roads, like Dominion Club Drive, in phases. (J.A. 825–26; 1712–13.)

In reaching this agreement, the County acknowledged the "unique

circumstances surrounding the final phase of Dominion Club Drive," as it would require HHHunt to construct the road to cross into Hanover County. (J.A. 1712–13.) The County also noted that "[t]he final phase of Dominion Club Drive will entail the design and construction of a bridge to cross the Chickahominy River." (J.A. 1713.) Henrico County understood that HHHunt's proposal to complete the road in phases made sense because the final construction of the road and the bridge would "not serve any purpose until the remaining portion [of Dominion Club Drive] in Hanover County is completed." (*Id.*)

Having resolved these issues with the County, HHHunt on August 6, 1991 recorded a plat called "Wyndham Collector Road Phase 1-C-1" that established the right of way for Dominion Club Drive. (J.A. 829; 1066; 1716.) The plat also depicted Dominion Club Drive extending into Hanover County, and the portion extending across the Chickahominy was labeled "Future Dominion Club Dr." (J.A. 1716.) That same day, HHHunt recorded the Wexford subdivision plat. (J.A. 821–22; 1707.) The Wexford subdivision plat clearly showed Dominion Club Drive abutting Wexford and providing access for the proposed units in the subdivision. (*Id.*) The Wexford subdivision and Phase 1-C-1 plats were inextricably linked because approval of the Wexford subdivision plat was contingent on first obtaining

approval for the Phase 1-C-1 plat. (J.A. 1066.)

HHHunt sought approval for another subdivision that abutted Dominion Club Drive called "Manor Park at Wyndham." On April 7, 1992, HHHunt recorded plat 1-C-2 that dedicated Dominion Club Drive as the main access point for Manor Park. (J.A. 831; 1725.) Plat 1-C-2 included a condition that the final phase of Dominion Club Drive, including the extension to the Chickahominy River, had to be dedicated and bonded before the subsequent subdivision plat for Manor Park would be accepted. (J.A. 1068–70; 1717.) After recording plat 1-C-2, HHHunt submitted a subdivision plat for Manor Park at Wyndham. (J.A. 1069; 1718.) The subdivision plat for Manor Park showed Dominion Club Drive abutting Manor Park and extending into Hanover County. (J.A. 1718.)

Bonding for Public Improvements and Dominion Club Drive. During the development of Wyndham, HHHunt posted numerous performance bonds. (J.A. 1216.) Specifically regarding Dominion Club Drive, HHHunt on March 12, 1992 submitted to the County a separate performance bond of $148,700 based on the County's estimate of what it would cost to complete Dominion Club Drive and extend it to the Hanover County line as shown in all recorded plats. (J.A. 1217–18.) On March 31, 2004, the County sent a letter to HHHunt increasing the amount of the

bond for the road to $204,430. (J.A. 2143.) On October 7, 2015, the County informed HHHunt that its bond was about to expire and needed to be renewed because Dominion Club Drive had not been completed. (*Id*.) Relying on the County's prior approvals for completion of Dominion Club Drive and consistent with its plans for completing the road, HHHunt renewed its bond within a few days of receiving this letter. (J.A. 1220–21.)

Marketing Homes to Wyndham Residents. HHHunt began marketing and selling homes in Wyndham in the early 1990s. HHHunt's sales staff were always aware of the Hanover Property adjacent to Wyndham and HHHunt's intentions to develop that land as an extension of Wyndham. (J.A. 1054.)

When HHHunt representatives spoke to prospective Wyndham residents, they provided maps that clearly showed the Hanover Property. These maps made plain HHHunt's plans to develop the Hanover Property sometime in the future. (J.A. 239; 1057–58.) The maps also showed Dominion Club Drive crossing the Chickahominy and passing into Hanover County to connect Wyndham to the Hanover County property. (J.A. 239.)

Traffic Capacity for Dominion Club Drive. Henrico County placed a density limitation on Wyndham that limited the number of units in the community to 3,268. (J.A. 807; 1692.) The roads within Wyndham were

therefore required to be built and designed to accommodate traffic generated by this number of units. Indeed, Henrico County required HHHunt to construct the roads "to a level whereas they provide safe all weather access" to all residents. (J.A. 828.)

Before constructing the roads, HHHunt commissioned a traffic impact study. (J.A. 1802.) From the data gathered, HHHunt determined the placement of the roads, the pavement design, and the necessary thickness of the stone and asphalt layers. (J.A. 840–41.) The traffic impact study estimated that 4,535 vehicles would use Dominion Club Drive each day. (J.A. 841.) Based on this estimated traffic volume, Dominion Club Drive was deemed a Class VI road under Henrico County road classifications. (J.A. 843.) This class of road was associated with a vehicle-per-day range of 3,001 to 8,000 vehicles. Dominion Club Drive was accordingly built to County specifications for this class of road. (J.A. 102–04.) Notably, the study's estimate for vehicle usage of the road anticipated future traffic from Hanover County. (J.A. 921–22.) Building the road to anticipate this future construction and its extension into Hanover County was just "good engineering." (J.A. 879–80.)

Before the zoning application was submitted to Hanover County for development of the Wyndham extension, HHHunt commissioned another

traffic study. (*See* J.A. 1926.) The study noted the roads in Wyndham had been developed to accommodate traffic generated from 3,268 units, but only 2,400 units had been built. This shortage of units meant that there were 7,700 fewer average daily trips than anticipated. (J.A. 934.) In connecting Dominion Club Drive to Hanover County, the study concluded that there would only be an additional 829 average daily trips. (J.A. 934; 1959–60.) This data led to the unmistakable (and unremarkable) conclusion that Dominion Club Drive was "overdesigned and under capacity." (J.A. 934–35.)

Henrico County Prevents HHHunt From Completing Dominion Club Drive. In 2016, and in anticipation of acquiring the "Tiller Parcel" in Hanover County, HHHunt began to move forward with its plans to develop the Hanover property and connect Dominion Club Drive to the new development. HHHunt first mentioned it was able to move forward with its plans regarding the Hanover property during a meeting with top County officials, including the County Manager and Director of Planning. (J.A. 1226–27.) During the meeting, HHHunt executives showed the county officials plans for the new development and extending Dominion Club Drive. The officials mentioned some minor traffic concerns, but otherwise thought HHHunt's plan "was great." (J.A. 1227.)

HHHunt then filed a rezoning application with Hanover County, and HHHunt engineers prepared and filed with Henrico County's Department of Public Works updated construction plans for the project. (J.A. 224–25.) Even though it had been known for decades that HHHunt planned to extend Dominion Club Drive into Hanover, news of the construction caused panic within Wyndham.

Residents soon began contacting county officials to express their opposition. During one meeting, a member of the County's Board of Supervisors advised a member of the Wyndham Foundation (the community's home owner's association) to contact the County Attorney's Office. (J.A. 1423–24.) The County Attorney's Office then began to assist the residents by mapping out a legal strategy to stop HHHunt from completing road. This included instructing Wyndham residents to petition the Henrico Board of Supervisors to remove a section of Dominion Club Drive from the County's Major Thoroughfare Plan and have a section of Dominion Club Drive abandoned. (J.A. 1423–26.) To further advance their objectives and their joint legal strategy with the County Attorney's Office, Wyndham residents began a petition drive and obtained over 2,000

signatures. (J.A. 1455–56.)[8]

HHHunt and its executives were surprised and confused by the level of opposition to the plans to extend Dominion Club Drive. In particular, HHHunt was shocked by the County's sudden lack of support for a project it had known about for decades and approved numerous times. This led to the CEO of HHHunt having a face-to-face meeting with the County Supervisor. (J.A. 1228–29.) During the meeting, the County Supervisor stated that HHHunt was "going to need to make the Wyndham residents happy." (J.A. 1229.) He added, "if you make the Wyndham residents happy, we don't have a problem with your road." (J.A. 1229–30.)

On September 15, 2016, the Board of Supervisors initiated a revision of the Major Thoroughfare Plan to delete the incomplete portion of Dominion Club Drive by referring the matter to the County Planning Commission for "study." Only twenty-eight days later, the Planning Commission convened and voted to recommend that Dominion Club Drive

[8] Ill-informed opposition to further development and expansion of Wyndham was not something new. In 2007, HHHunt purchased a parcel of land called the "Cosby Tract" and planned to develop the land, build out an additional 200 lots, and annex these lots into Wyndham. (J.A. 1201–02.) This too caused an uproar and at a meeting to discuss the addition there was a lot of "yelling [and] screaming" by residents based on unsupported claims that the construction would increase traffic. Despite this firestorm of opposition, Henrico approved HHHunt's zoning application for the property. The resident's fears never materialized and today the neighborhoods built on the Cosby Tract have been fully integrated into Wyndham. (J.A. 1203–04.)

be deleted from the Major Thoroughfare Plan. The Board voted on November 9, 2016, and approved the recommendation. On February 28, 2017, the Board again convened and voted to abandon a sliver of Dominion Club Drive. (J.A. 2.)

ASSIGNMENTS OF ERROR

1. The trial court erred in holding that HHHunt did not have a vested right to the continuation of Dominion Club Drive under Va. Code § 15.2-2261. (J.A. 24–26; 784–85; 1662–64.)

A. The trial court erred in holding that Va. Code § 15.2-2261(F) did not apply even though HHHunt recorded plats of subdivided property that had been conveyed to third parties. (J.A. 24–26; 784–85; 1662–64)

2. The trial court erred in holding that HHHunt did not possess constitutionally guaranteed vested rights in the continuation of Dominion Club Drive. (J.A. 27–28; 784–85; 1661–62.)

3. The trial court erred in holding that the County properly employed the abandonment provisions of Title 33.2 to eliminate the extension of Dominion Club Drive, rather than the appropriate provisions of Title 15.2 relating to subdivisions. (J.A. 28–32; 784–85.)

4. Even assuming that the County correctly employed Title 33.2 for the abandonment of the right of way, the trial court erred in finding that the abandonment was a legislative act subject to the fairly-debatable standard. (J.A. 32–36; 784–85; 1666.)

5. Even assuming that Title 33.2 applied and actions thereunder are subject to the fairly debatable standard, the trial court erred in holding that the abandonment of the right of way was for a proper public purpose, as the abandonment was arbitrary, capricious, and unreasonable, and not fairly debatable. (J.A. 32–37; 784–85; 1666.)

6. The trial court erred in finding that public opposition *per se* is a

legitimate basis for sustaining the abandonment of a right of way that has been a critical part of HHHunt's long term development plan, and of which the County and the residents of Wyndham have known for decades. (J.A. 784–85; 1666.)

STANDARD OF REVIEW

Assignments of error 1 and 2 concern the trial court's erroneous application of the vested rights doctrine enshrined in the Virginia Code and the Virginia Constitution to protect land developers from the unreasonable application of government power. Assignment of error 3 is a challenge to the trial court's incorrect application of the abandonment procedures under Va. Code § 33.2-914. These issues are reviewed *de novo*. *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007) ("Under well-established principles, an issue of statutory interpretation is a pure question of law which we review de novo."); *Montgomery County v. Virginia Dept. of Rail and Public Transp.*, 282 Va. 422, 435 (2011) ("[C]onstitutional arguments are questions of law that we review *de novo*.").

Assignment of errors 4 and 5 relate to the Board's improper application of the abandonment procedures of Virginia Code § 33.2-914. Actions taken by a local government under this provision are reviewed *de novo*. Va. Code § 33.2-920.

Assignment of error 6 concerns the trial court's conclusion that evidence of public opposition itself is a legitimate basis on which to ground

legislative action. While a trial court's decision to admit evidence is a matter of discretion, *see John Crane*, *Inc*. *v*. *Jones*, 274 Va. 581, 590 (2007), a legal conclusion based on a misapplication of facts to law is reviewed *de novo*, *see Westgate at Williamsburg Condo*. *Ass'n v*. *Philip Richardson Co*., 270 Va. 566, 574 (2005).

ARGUMENT

I. The trial court erred in holding that HHHunt did not have a vested right to the continuation of Dominion Club Drive under Va. Code § 15.2-2261. (Assignment of Error 1).

In recognition of the rights and interests of land developers, and to protect them from the overreach of local governments, the General Assembly enshrined the doctrine of vested rights variously in Title 15.2 of the Virginia Code. The circuit court misinterpreted and misapplied these statutes and thereby deprived HHHunt of its important vested rights to develop Dominion Club Drive. Critically, the trial court's decision eliminates important protections for developers the General Assembly incorporated in these statutes.

Section 15.2-2261(A) provides that a final subdivision plat that has been recorded or an approved site plan "shall be valid for a period of not less than five years from the date of approval . . . ." Section 15.2-2261(C) goes on to provide that:

> For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

Thus, § 15.2-2261 applies to any change in a subdivision map or plan.

While subsection (A) provides that an approved plat is valid for 5 years, the statute contains an important provision that maintains the validity of a subdivision plat indefinitely. Under Virginia Code § 15.2-2261(F),

> An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in §§ 15.2-2270 through 15.2-2278.

While implicitly finding that § 15.2-2261 applied to the case, the trial court held that subsection (F) did not because Dominion Club Drive "was subdivided and dedicated on a separate plat that did not convey subdivided properties to third parties" and so HHHunt's rights were limited to five years. (J.A. 1663–64.) In its ruling, the trial court accepted the County's argument that even though HHHunt had submitted and obtained approval

for its subdivision plats and site plans for nearly three decades—which clearly showed Dominion Club Drive and its extension into Hanover County—the only relevant plats were those for the Wexford and Manor Park neighborhoods. And while these plats showed Dominion Club Drive, it was only depicted as a right of way that was not part of these subdivisions. According to the County, the plats dedicating Dominion Club Drive, providing necessary access to the subdivisions do not qualify for the protections of § 15.2-2261(F) because the plats did not subdivide any lots. This imaginative argument fails under the plain text of the statute, and for the practical reason that the subdivision plats and the related road dedication plats operate together and are inseparable.

First, the County's argument is at odds with the plain language of § 15.2-2261(C). The statute provides that where a developer has obtained "final" approval of a project, as long as that approval remains valid, no change in local ordinance, policy, or plan can adversely impact the right of the developer to "commence and complete *the approved development* in accordance with the lawful terms of the recorded plat or site plan . . . ." The "approved development" is Wyndham and it was first approved by Henrico County in 1989, and there is no question that the lots within Wyndham

have been subdivided and conveyed to third parties. In fact, construction of homes within Wyndham is ongoing. (J.A. 1202.)

Second, the County's argument ignores that approvals of the subdivisions within Wyndham were contingent on dedication and approval of the roads providing access to these subdivisions. Specifically, one of the conditions for construction of the Wexford and Manor Park subdivisions, a "lawful term[] of the recorded plat or site plan," § 15.2-2261(C), was that Dominion Club Drive would be completed to the Hanover County line. This is why the 1-C-1 plat dedicating Dominion Club Drive had to be recorded *before* HHHunt could record the Wexford subdivision plat, and the 1-C-2 plat (also dedicating Dominion Club Drive) had to be recorded *before* HHHunt could record the Manor Park subdivision plat. (J.A. 1066–72.) And because the County understood that HHHunt was going to complete Dominion Club Drive in phases and link the road to Hanover County at a later time, (J.A. 1712–13), the County required HHHunt to post a performance bond for the uncompleted section of Dominion Club Drive that would extend to the Chickahominy River, (J.A. 1068–70). This bond had to be posted before the Manor Park subdivision plat would be accepted and approved. (*Id.*)

Third, the trial court's reading is inconsistent with the clear intent of the statute, which is to protect a developer's vested rights in the overall development—not just constituent parts of the development. Every development must include a functioning road system to facilitate the needs of the residents to enter and exit the community. This is why the statute plainly states that it applies to an "*approved development*" and not merely parts of a development. To accept the County's interpretation would be to eviscerate the statutory intent of protecting landowners by allowing local governments to stop developments by abandoning roads necessary for the overall functioning of the development. *See Hollingsworth v. Norfolk Southern Ry. Co.*, 279 Va. 360, 366 (2010) ("When interpreting statutes, we must ascertain and give effect to the General Assembly's intention, which is to be ascertained from the plain meaning of the words used.").

Every inch of the collector road network depicted on the "tentative" collector road plat approved in August 1989 has received final approval and been dedicated to the County. All but the most northern portion of Dominion Club Drive has been constructed and accepted into the County road system. And all the approximately original 1,100 acres that comprised the Wyndham Community have received final subdivision plat approval and have been converted into approximately 2,400 lots that have been sold to

homeowners.[9] The road dedication plat for Dominion Club Drive was a part of the overall approved development of Wyndham, specifically including the adjacent subdivision sections identified as Manor Park and Wexford. The County's efforts to separate the road dedication plats from the communities associated directly and inextricably with them is incompatible with the text of § 15.2-2261. The trial court erred in approving this misreading of the statutory framework.

Fourth, to accept the County's interpretation § 15.2-2261 would lead to absurd results. *See Butler v. Fairfax Cnty. School Bd.*, 291 Va. 32, 37 (2015) (explaining that court should avoid interpreting a statute in a way that would lead to an absurd result). Accepting the County's reading of the statute would cause a subdivision plat—even ones like the Wexford and Manor Park plats that clearly show the collector roads running adjacent to the subdivision—to have unlimited validity while limiting the validity of the road plats that service the subdivision to five years. The General Assembly certainly did not intend to with one hand give land developers protections against local governments that later change their minds about a development, and take those protections away with the other hand by

[9] Three neighborhoods in Wyndham that were built on later acquired land annexed into the Wyndham community remain under construction and homes are presently being built and sold in these neighborhoods. (J.A. 1202–03.)

permitting weak-kneed localities to nevertheless stop the development by eliminating access to the development. *See Tvardek v. Powhatan Village Homeowners Ass'n, Inc.*, 291 Va. 269, 280 (2016) (explaining that court cannot accept a reading of a statute that validates a statute while also nullifying its operation).

What is more, even assuming that the trial court was correct in holding that § 15.2-2261(F) does not apply (it was not) the trial court still erred. This is because under Virginia Code § 15.2-2209.1(A),

> notwithstanding the time limits for validity set out in §§ 15.2-2260 or 15.2-2261 . . . any recorded plat or final site plan valid under § 15.2-2261 and outstanding as of January 1, 2017, shall remain valid until July 1, 2020 . . . . Any other plan or permit associated with such plat or site plan extended by this section shall likewise be extended for the same time period.

There is no dispute that the Wexford and Manor Park plats are valid and fall within the scope of § 15.2-2261(F), thus any associated "plans or permits," such as the road dedication plats 1-C-1 and 1-C-2, which clearly show Dominion Club Drive, also remain valid at least through January 1, 2020.

A reading of the relevant statutes, informed by reasoned consideration of the practicalities of recording subdivision plats, leads to the inescapable conclusion that the trial court erred. The decision below should be reversed.

II. The trial court erred in holding that HHHunt did not possess constitutionally guaranteed vested rights in the continuation of Dominion Club Drive. (Assignment of Error 2).

This Court recognized the existence of vested rights in property in *Board of Supervisors of Fairfax County v*. *Medical Structures*, 213 Va. 355 (1972). In *Medical Structures*, a property owner obtained a special use permit for a nursing facility and, in reliance on the permit, proceeded to incur expenses for developing the plans necessary to obtain site plan approval. In the meantime, Fairfax County amended its zoning ordinance to prohibit Medical Structures' intended use. The Court, however, found Fairfax's action to be unlawful, writing:

> We hold that where, as here, a special use permit has been granted under a zoning classification, a bona fide site plan has thereafter been filed and diligently pursued, and substantial expense has been incurred in good faith before a change in zoning, the permittee then has a vested right to the land use described in the use permit and he cannot be deprived of such sue by subsequent legislation.

Id. at 358. That same day, the Court decided *Board of Supervisors of Fairfax County v*. *Cities Service Oil Co*. and found that a subsequent owner who had relied on an earlier issued special use permit when purchasing land had rights to the land use described in the use permit. The Court held that the rights to the use vested when the site plan was filed. 213 Va. 359, 362 (1972).

This Court has applied the holdings of *Medical Structures* and *Cities Service Oil* in many cases, and from these decisions the following test emerged:

> [A] landowner who seeks to establish a vested property right in a land use classification must identify a significant official governmental act that is manifested by the issuance of a permit or other approval authorizing the landowner to conduct a use on his property that otherwise would not have been allowed. Additionally, and equally important, our test requires that the landowner establish that he has diligently pursued the use authorized by the government permit or approval and incurred substantial expense in good faith prior to the change in zoning.

Bd. of Zoning Appeals v. Caselin Systems, Inc., 256 Va. 206, 210–11 (1998).

Here, there was no argument that HHHunt had gained approval of plats for the development of Wyndham that clearly showed Dominion Club Drive connecting into Hanover County. Nor was there any argument that HHHunt expended considerable sums to develop Wyndham and Dominion Club Drive. Still, the trial court concluded that HHHunt had not diligently pursued the development of Dominion Club Drive.

But the court's decision ignored that the unbuilt portion of Dominion Club Drive had remained under performance bond for completion for decades. It also ignored that as a practical matter the posting of a performance bond is "as good as building" the road. (J.A. 834.) The County

had required HHHunt to post the performance bond because it understood that the final phase of construction for Dominion Club Drive would occur sometime in the future. (J.A. 833.) Accordingly, in 1992 HHHunt posted a performance bond of $148,700, which was the County's estimate of what it would costs to complete Dominion Club Drive and extend it to the Chickahominy. (J.A. 1217–18.) The bond was increased to $204,430 in 2004. (J.A. 2143.) And in October 2015, after receiving notice from the County that no performance bond had been posted that year, HHHunt renewed the bond, indicating it intended to complete Dominion Club Drive. (J.A. 1220–21.) In fact, the County did not release the bond until after it abandoned a sliver of the road to prevent HHHunt from connecting Dominion Club Drive to Hanover County. (J.A. 838; 1222–23.)

In addition, the County's claim that HHHunt did not diligently pursue the construction of Dominion Club Drive is disingenuous considering the agreement reached decades earlier by the County and HHHunt. Specifically, when HHHunt obtained approval to build Wexford, the County imposed a condition that HHHunt complete Dominion Club Drive to the Chickahominy River. (J.A. 824.) The County later recognized the "unique circumstances surrounding the final phase [of completing] Dominion Club Drive." (J.A. 1712–13.) These "unique circumstances" included the fact that

completion of the road and the bridge over the Chickahominy would "not serve any purpose until" the related portion of Dominion Club Drive "in Hanover County [was] completed." (J.A. 713.) Consequently, the County agreed that Dominion Club Drive could be completed in phases so long as HHHunt posted a performance bond.

The trial court also overlooked evidence showing that it was impractical for HHHunt to move forward with the expansion of Dominion Club Drive until after it assembled the full complement of property in Hanover County to develop the Hanover section of Wyndham. While HHHunt purchased Parcels A and B at the same time it assembled the 1,100 acres for Wyndham, it was not able to purchase the Vaughan Tract until 1997. And, most importantly, it was unable to purchase the Tiller Parcel until 2017. HHHunt could not move forward with the Hanover development until it purchased the Tiller Parcel, as it was necessary to connect Parcels A and B to form a proper internal road network. (J.A. 856–57; 1189–90.) HHHunt promptly moved forward with plans to complete Dominion Club Drive once it was clear it could purchase this critical parcel. The trial court appeared to believe that HHHunt could have purchased the Tiller Parcel at any time, but the evidence was that HHHunt had attempted for many years to purchase the parcel. (J.A. 1189–90.)

In sum, the evidence demonstrated that HHHunt was diligent in its pursuit to complete Dominion Club Drive and the trial court erred in concluding otherwise.

III. The trial court erred in holding that the County properly employed the abandonment provisions of Title 33.2 to eliminate the extension of Dominion Club Drive, rather than the provisions of Title 15.2 which relate to subdivisions. (Assignment of Error 3).

To stop the completion of Dominion Club Drive and avoid the protections afforded to subdivision developers under Title 15.2, the County erroneously used the procedures of Title 33.2. The trial court's approval of this misapplication of the Virginia Code was error.

Title 33.2 does not apply to this case because the uncompleted portion of Dominion Club Drive is platted as part of a subdivision. Virginia Code § 15.2-2261(F) provides that a recorded subdivision plat is valid indefinitely unless and until it is vacated under the provisions found in Title 15.2. Applying the abandonment procedure set out in § 33.2-915 to a road that clearly falls within the scope of § 15.2-2261(F) would negate the protections against arbitrary government action granted to landowners under § 15.2-2261(F). Statutes that appear in conflict must be read to harmonize the apparent dissonance within their text to give effect to both provisions. *Boynton v. Kilgore*, 271 Va. 220, 229 (2006). The County

cannot be allowed to nullify § 15.2-2261(F) to reach its politically motivated ends.

It is also a well-accepted rule of statutory construction that when two statutes may apply, the more specific statute governs. *Viking Enterprise, Inc. v. County of Chesterfield*, 277 Va. 104, 110 (2009) ("[W]hen two statutes do conflict, and one statute speaks to a subject generally and another deals with an element of that subject specifically, the more specific statute is controlling.") (internal quotation marks and citation omitted). Because the plats depicting the uncompleted portions of Dominion Club Drive are subdivision plats, the specific provisions of Title 15.2 apply.

The trial court's approval of the County's use of Title 33.2 to abandon a sliver of Dominion Club Drive was clear error and should be reversed.

IV. Even assuming that the County correctly employed Title 33.2 for the abandonment of the right of way for the completion of Dominion Club Drive, the trial court erred in finding that the abandonment was legislative in nature and subject to the fairly-debatable standard. (Assignment of Error 4).

Assuming the trial court properly applied Title 33.2, the trial court still erred in concluding that the County's action was a legislative act subject to the fairly-debatable standard.

An abandonment under Title 33.2 may be done only if the governing body is "satisfied that no public necessity exists for the continuance of a

section of road as a public road . . . or that the welfare of the public would be served best by abandoning the section of road as a public road . . . ." Va. Code § 33.2-909(D).

Appeals from these actions are governed by Virginia Code § 33.2-920, which mandates that "[t]he circuit court shall *hear the matter de novo* with further right of appeal as provided by law." (emphasis supplied). The statute further provides:

> Upon any such appeal, if it appears to the court that by the abandonment of such section of road . . . any party to such appeal would be deprived of access to a public road, the court may cause the . . . the governing body. . . to be made parties to the proceedings, if not already parties, and may enter such orders as seem just and proper for keeping open such section of road . . . for the benefit of such party or parties.

The statute even empowers the circuit court to appoint "viewers to make such investigation and findings as the court requires of them."

This statutory scheme is entirely inconsistent with the concept of a legislative action that is presumed correct and will be upheld if fairly debatable. Rather, the statute vests in the court the authority to take a hard look at the locality's actions and requires the locality to present a legitimate and well-reasoned basis for its actions. Indeed, under this standard, the County should have been required to, at minimum, adduce cogent and rational evidence demonstrating by a preponderance that abandonment of

the road would best serve the public's interest. From the record, the County did not adduce such evidence at trial, nor can it. The trial court's misapplication of Title 33.2 is reversible error.

V. Even assuming that Title 33.2 applied, the trial court erred in holding that the abandonment of the right of way was for a proper public purpose, as the abandonment was arbitrary, capricious, and unreasonable, and not fairly debatable. (Assignment of Error 5).

Even assuming that the trial court was correct in finding the Board's action was legislative and subject to the fairly-debatable standard (it was not), the trial court's decision warrants reversal because the County had no rational basis for abandoning the road.

Legislative actions are reviewed for reasonableness. Legislative action is reasonable where the justification for the act is fairly debatable. *Bd. of Supervisors v. Robertson*, 266 Va. 525, 532 (2003). An issue is fairly debatable "when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." *Bd. of Supervisors v. Williams*, 216 Va. 49, 58 (1975).

The conclusion that Dominion Club Drive should not be extended as depicted on numerous plats approved by the County because of traffic concerns was patently an invention by the County to comply with the demands of a vocal group of Wyndham residents. The decision was not

based on rational grounds, but rather the unfounded fears of politically active residents. The head county official said as much when he stated that the County "[did not] have a problem with [the final construction of Dominion Club Drive]." Instead, the County's concern was "to make the Wyndham residents happy." (J.A. 1229–30.) Objective and reasonable persons cannot conclude that trammeling on HHHunt's rights to extend Dominion Club Drive based on groundless fears of traffic congestion is in the public interest.

The evidence showed that the extension of Dominion Club Drive was necessary to connect the existing Wyndham community with the planned Hanover section. (J.A. 1223–26.) The evidence further showed that the Hanover age-restricted community would be a benefit to existing Wyndham residents older than 55, as they could sell their larger homes and move into the planned community and continue to enjoy the community's various amenities. (J.A. 1207–08.) The benefits of the age-restricted community would also redound to many others as there is a serious need for such housing in the area. (J.A. 1207.) In short, the extension of Dominion Club Drive is an essential element of the Hanover development, and would provide convenient access for residents living within the entire Wyndham community.

To address concerns of traffic congestion and safety, HHHunt at trial presented evidence of independent traffic studies showing that the extension of Dominion Club Drive to Hanover County would have a minimal effect on traffic. (J.A. 932–35.) The evidence also showed that this increase in traffic volume had been anticipated by HHHunt decades earlier. (J.A. 847; 921.) Thus, Dominion Club Drive was designed and built to handle far greater traffic than currently exists, and the small increase in traffic associated with the new community would remain well within the road's design and construction specifications. This was especially so given that the Hanover property was being developed as an age-restricted community. And studies presented at trial showed that trip rates from similar age-restricted communities were significantly lower than those from communities without any age restriction. (J.A. 936–39; 1897.)

To support its pretextual claims that traffic concerns weighed against allowing the extension of Dominion Club Drive, the County trotted out several witnesses whose testimony revealed they had done no real analysis of the traffic impacts. One witness, Timothy Foster, testified that in his view that the connection to Hanover-Wyndham would cause a 100% increase in traffic on Dominion Club Drive, and because of "cut-through traffic" the number would rise even higher. (J.A. 1295–96.) But Mr. Foster

was compelled to admit that in his deposition he testified that neither he nor anyone else within the County had conducted an analysis of the traffic coming from the planned Hanover community. He even confessed that he had no idea what the volume of traffic would be coming from Hanover County. (J.A. 1330.)

The County also attempted to establish that Dominion Club Drive could not support additional traffic based on conclusions reached by the County's Assistant Director of Public Works in late 2017. Notably, this "evidence" was never considered by the Board, and the County failed to timely disclose the information to HHHunt prior to trial. The new evidence purportedly showed that the "California Bearing Ratio ("CBR")" levels in the soil beneath Dominion Club Drive were lower than what was called for by the design standard. But other than being clearly manufactured for purposes of litigation rather than as an objective analysis, the evidence was useless for many reasons.

First, testing done by an independent consulting firm during the construction of the road showed that the soil was consistent with plan specifications. (J.A. 1771.) Second, the County's witness, Mr. Michael Jennings, performed no analysis of the soils and based his opinions instead on notations made on road inspection reports for certain phases of

the road by a Mr. Russell Smoot.[10] (J.A. 1583–87.) But Mr. Smoot testified that he was never present for any soil testing, had never seen any test results, and his notations were based on statements made by a now deceased coworker who had claimed knowledge of soil testing results. (J.A. 1473–80.)

The County's evidence regarding the resiliency of the soil underneath Dominion Club Drive was clearly manufactured to justify the County's unjustifiable decision. Indeed, presumably because the evidence was so dubious, the trial court expressly stated that it did not base its decision on the evidence. (J.A. 1666.) This left the court to rely only on unsubstantiated traffic concerns and public opposition itself to justify the County's action. But neither of these provided a rational basis for the County's decision.

VI. The trial court erred in finding that public opposition *per se* is a legitimate basis for sustaining the abandonment of a road that has been a critical part of HHHunt's long term development plan, and of which the County and the residents of Wyndham have known for decades. (Assignment of Error 6).

The trial court also erred in sustaining the County's abandonment of Dominion Club Drive based on "clear citizen input," (J.A. 1661), and "strong public opposition to the road," (J.A. 1666). "Public opposition" itself certainly

[10] Mr. Smoot was a Henrico County Construction Inspector who monitored the construction of Dominion Club Drive. (J.A. 1460.)

cannot satisfy the fairly-debatable standard. This Court has held that while a local government's actions are presumptively reasonable, a challenge to the reasonableness of a legislative act must still be "met by some evidence of reasonableness." *Town of Leesburg v. Giordano*, 280 Va. 597, 606 (2010).

Public opposition untethered to reason and logic is not evidence sufficient to rebut a strong showing that a local government's actions were irrational. Public opposition standing alone is no evidence at all. And a judicial decision permitting a local government to deprive a citizen of property rights out of fear of public opposition to a proposed land use is to empower the use of a yeller's veto to stop property development throughout the Commonwealth.

From the record in this case, one can easily see straight through the veneer of the County's rationalizations, and recognize that the reason the Board of Supervisors abandoned a small sliver of Dominion Club Drive was because of objections from a vocal group of Wyndham residents. The other "evidence" proffered by the County was mere subterfuge. "The simple fact that community members oppose a landowner using his land for a particular purpose is not a legally sufficient reason" to stop construction that has been planned for decades. *E.g.*, *Amoco Oil Co. v. City of Minneapolis*,

395 N.W.2d 115, 118 (Minn. App. 1986); *BML Investments Inc. v. City of Casselberry*, 476 So.2d 713, 715 (Fla. 5th DCA 1985) (finding objection of residents to proposed development is not a sound basis for denying permit to build); *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984) (holding that the "denial of a [land] use must be based on something more concrete than neighborhood opposition and expressions of concern for public safety and welfare."). The trial court's reliance on public opposition to support the County's action of abandoning a sliver of Dominion Club Drive was clear error.

CONCLUSION

The trial court clearly erred in this case by depriving HHHunt of its vested rights to develop its property and complete Dominion Club Drive. This Court should reverse the decision below.

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CERTIFICATE OF SERVICE

I hereby certify on this 25th day of February, 2019, that the foregoing Brief if Appellant complies with Rule 5:26, and a copy of the foregoing Brief of Appellant has been served on opposing counsel via email this same day.

/s/ Joseph R. Pope