Commission on Open and Transparent Government

Status Update: Possible Process or Ethical Considerations, by Timeline Event

This report revises the Commission's prior “What We Don't Know” analysis. Rather than framing each event in the Commission's compiled Amazon Data Center timeline as an open factual question, this version identifies specific provisions of the Town of Warrenton Code of Ethics, the Town Council Handbook, and the Code of Virginia that may bear on the process followed at each stage, together with a brief, non-accusatory justification for why each provision is potentially relevant to the documented facts. This report does not conclude that any law, ordinance, or ethical standard was violated. Identifying a provision as potentially relevant is not a finding that it was breached; that determination would require fact-finding beyond the scope of this document review — and, for the Code of Virginia, is ultimately a matter for courts, the Commonwealth's Attorney, or the Virginia Conflict of Interest and Ethics Advisory Council, not this Commission.

Each citation below includes a footnote with a short excerpt from the cited provision and a link to its official public source — the Town's own published Code of Ethics and Council Handbook, and the Code of Virginia as maintained by the Division of Legislative Automated Systems (law.lis.virginia.gov). Where the current documentary record does not present a clear question under either body of standards for a given event, this report says so rather than forcing a citation.

This report should be read as incomplete and preliminary. The Commission has not yet retained Independent Counsel to review these events, and has not yet obtained access to a more complete archive of Town records beyond what has so far been produced through FOIA releases, litigation exhibits, and other documents already in the Commission's source files. The entries below are accordingly based solely on the public record as currently compiled, and a significant amount of additional information is likely to come to light once a wider archive of Town records has been collected and reviewed. Entries may be added, revised, or removed as that review continues; the absence of a citation for a given event reflects the current state of the documentary record, not a conclusion that no question exists.

Analytical Framework: Which Standard Applies to Whom

Two distinct bodies of standards recur throughout this report, and they do not apply to the same people. Keeping them separate matters for accuracy.

The Town of Warrenton Code of Ethics

Adopted by Town Council on August 9, 2016, the Code of Ethics states that it “is adopted for execution by each elected or appointed member of a Town public body, including the Mayor and Town Council Members, the Planning Commission, Board of Zoning Appeals and Architectural Review Board.” By its own terms, it binds elected and appointed members of Council and Town boards — it does not, on its face, extend to the Town Manager or other staff, who are not “members” of a public body in this sense. Citations to the Code of Ethics in this report are therefore limited to the conduct of Council, Planning Commission, and Board of Zoning Appeals members.

The Virginia State and Local Government Conflict of Interests Act (COIA)

Unlike the Town's Code of Ethics, Virginia's Conflict of Interests Act (Code of Virginia Title 2.2, Chapter 31) applies to both “officers” and “employees” of local government — a broader category that includes the Town Manager, the Zoning Administrator, and other staff, in addition to Council and board members. The Town Council Handbook notes that this state statute is a criminal law and that “no local government may regulate conflict of interest more strictly than the Virginia Code.” Where this report raises a COIA question involving staff conduct (for example, Cluster 5, below), it cites the state statute rather than the Town's Code of Ethics, since the Code of Ethics does not reach staff.

The Virginia Freedom of Information Act (VFOIA)

VFOIA's open-meeting and public-records requirements apply to “public bodies” and their members generally, without the member/staff distinction described above. This report cites VFOIA provisions where the timeline raises questions about private communications among officials, closed-session practice, or the scope of records-disclosure exemptions.

The ICMA Code of Ethics

A fourth source is cited in this revision for the first time: the Code of Ethics of the International City/County Management Association (ICMA), the principal professional association for appointed local government managers. ICMA's Code states that "members who are working for a local government in any capacity are required to follow all 12 Tenets of the Code"; members who move to the private sector, as former Town Manager Brandie Schaeffer did, are required to follow only Tenets 1 and 3 going forward, though the conduct at issue below occurred while she still served as Town Manager. This report has not confirmed whether Schaeffer was personally an ICMA member during her tenure. The ICMA Code is not adopted by the Town and does not carry the force of Town or state law; it is cited here because it is the local-government-management profession's own widely recognized standard, and its provisions on private employment and use of position-acquired information speak directly and specifically to the fact pattern surrounding Schaeffer's departure, in a way the Town's own Code of Ethics — which by its terms binds elected and appointed board members, not staff — does not.

A citation to any of these sources in this report identifies a provision whose subject matter overlaps with a documented event. It is offered as a reference point for the Commission's continuing review, not as a conclusion about any individual's conduct.

Part I — Amazon Data Center: Event-by-Event Review

1. Pre-Application Contacts and the CBRE Letter of Intent *(Jan.–Feb. 2021)*

What We Know

CBRE's Jan. 7–13, 2021 Letter of Intent names "Amazon Web Services, Inc. or its designee" as buyer of the Weissberg property, under a confidentiality clause that would "exclude the identity of Buyer unless required to do so by law." Six weeks later (Feb. 24, 2021), Amazon's outside counsel John Foote and land planner Jessica Pfeiffer first contact Town Manager Brandie Schaeffer about a potential data-center user and property; Rob Walton returns the call.

Possible Process or Ethical Considerations

> *No Council, Planning Commission, or Board of Zoning Appeals member is documented as taking any action during this period, so no Code of Ethics provision is implicated yet. The relevant question for this stage — whether staff's early contact with Amazon's representatives was accurately and completely relayed to the full Council before Council took its own first action on April 13, 2021 — is addressed in the next cluster, where Council's initiating action occurs.*

2. The Anonymous-Applicant Text Amendment Process *(Apr.–Aug. 2021)*

What We Know

Council directs staff to draft a data-center zoning text amendment without a named applicant (Apr. 13); at a May 25 Planning Commission work session, staff says the applicant "prefers to remain anonymous"; Foote first discloses Amazon's involvement publicly at the June 15 PC hearing; Walton and Zoning Administrator Machen sign NDAs June 25 and 28; Council adopts the amendment 7–0 on Aug. 10, 2021.

Possible Process or Ethical Considerations

- **Va. Code § 15.2-2286(A)(7)** — the April 13, 2021 resolution was Council's own initiating action for the text amendment (rather than a landowner petition), and this subsection requires that a governing body's own resolution proposing a zoning amendment "state the … public purposes therefor." Whether the resolution met this requirement is the central question in the pending Cross litigation; this report takes no position on that litigation and cites the statute only for reference.[1]
- **Code of Ethics, Provision 6 (Communication)** — the Code requires members to "publicly share substantive information … relevant to a matter under consideration … which they may have received from sources outside of the public decision-making process." If any Council member privately knew Amazon's identity before it became public at the June 15 PC hearing, this provision is the relevant Town standard for evaluating whether that information should have been shared with the full body sooner. The record reviewed for this report does not establish that any member had such advance knowledge.[2]

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[1] "*Any such amendment may be initiated (i) by resolution of the governing body … Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.*" — Code of Virginia § 15.2-2286(A)(7)

- **Va. Code § 2.2-3705.7(2)** — the June 2021 NDAs were negotiated and signed by staff (Walton, and Zoning Administrator Machen), not by Council members. This VFOIA exemption for "working papers and correspondence" is available, by its text, only to a narrow list of officials that includes "the mayor or chief executive officer" of a locality — not to zoning administrators or other staff generally. This scope question became directly relevant three years later in the Court of Appeals' ruling on the Town's FOIA withholdings (Cluster 11, below), and is noted here because it first arises with the 2021 NDAs.[3]

3. County-Level Coordination During the "Anonymous" Period *(Jul. 2021)*

What We Know

A Fauquier County FOIA production shows Amazon's Becky Ford arranging "Town of Warrenton Individual Briefings with Town Council Members," County tax-revenue modeling by the Commissioner of the Revenue, and County staff sending Technology Zone maps to Ford — all before the Planning Commission's July 20 public hearing and while the applicant remained publicly undisclosed. A subsequent document-index review confirmed the scope of this outreach: between July 14 and 19, 2021, Ford individually briefed, or scheduled briefings with, nearly every sitting Council and Planning Commission member — Mayor Nevill and Council members Sutphin, Polster, and Semple; Planning Commission members Zarabi, Lawrence, and Ainsworth; and, jointly, Helander and Hartman — each meeting held one-on-one or in pairs, with no single session bringing together three or more members at once.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3701 (definition of "Meeting")** — VFOIA defines a "meeting" to include "an informal assemblage of … as many as three members" of a public body. The confirmed briefing schedule shows that virtually the entire Council and Planning Commission received an individual or paired briefing from the same applicant representative in the same five-day window, with each session kept to one or two members — structurally avoiding the three-member threshold at every individual session. Because VFOIA's definition looks to whether any single "assemblage" reaches three members, no one session, considered alone, meets that threshold, and this report does not conclude any single briefing violated the Act. The pattern nonetheless squarely raises the "walking quorum" question — whether a sequence of one-on-one or paired contacts, arranged by a single outside party and covering nearly the full body on the same matter in the same week, functions in substance as the kind of collective deliberation the Act's meeting definition and notice requirements are designed to reach. This is presented as an open structural question for the Commission's continued review, not as a finding that the Act was circumvented.[4]
- **Town Council Handbook, Open Meeting Law** — the Handbook advises that "FOIA applies to regular meetings as well as gatherings of three or more Councilmembers where Town business is discussed," reflecting the same statutory threshold. This is the Town's own internal guidance on the same question raised above, and is cited alongside it for completeness.[5]

4. "AWS" Named Internally Before Public Disclosure *(Aug. 2021 – Feb. 2022)*

What We Know

The day after Council adopts the text amendment, Schaeffer's Aug. 11, 2021 email to County officials discusses revenue planning "IF the Town Council approves AWS" — naming Amazon internally more than eight months before the SUP application is filed. On Jan. 18, 2022, the Town, County, Dominion Energy, and AWS hold a formal joint briefing on electrical infrastructure needed to serve the project, roughly three months before the application's filing.

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[2] *"Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[3] *"Working papers and correspondence of … the mayor or chief executive officer of any political subdivision of the Commonwealth … "Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use."* — Code of Virginia § 2.2-3705.7(2)

[4] *"'Meeting" or "meetings" means … an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership … of any public body."* — Code of Virginia § 2.2-3701

[5] *"FOIA applies to regular meetings as well as gatherings of three or more Councilmembers where Town business is discussed."* — Town Council Handbook (adopted Dec. 12, 2023)

On Feb. 25, 2022, Schaeffer emails County counterparts that she is working toward "a controlled and favorable outcome for all" on the project — language describing a management posture toward the still-undisclosed application roughly six weeks before Amazon's counsel, and about five months before Schaeffer's own departure to join Amazon.

Possible Process or Ethical Considerations

- **Town Council Handbook, Council/Staff Relationships** — the Handbook directs that information developed by staff on Town business should flow through the Town Manager to the Council as a body, rather than being shared selectively. Because Schaeffer's Aug. 11, 2021 email, the Jan. 18, 2022 joint briefing, and the Feb. 25, 2022 email were staff-level communications, the Code of Ethics (which binds members, not staff) does not directly apply to them; the Handbook's staff-communication norm is the applicable Town standard for evaluating whether Amazon's identity, and Schaeffer's stated approach to managing the application, were conveyed to the full Council on an equal basis.[6]
- **Code of Ethics, Provision 18 (Email Etiquette)** — this provision states the Town's general equal-information principle for Council members: "any request for information from staff by a Member shall result in the same information being disseminated to the entire Council … to ensure that all Council Members have equal access to issues involving the Town." Its text is framed around staff responses to individual member requests rather than proactive staff disclosures, so it applies here only by analogy; it is cited for the equal-access value it reflects, which bears on whether all seven members learned Amazon's identity, and Schaeffer's framing of the project's intended outcome, at the same time.[7]
- **ICMA Code of Ethics, Tenet 2** — as Town Manager, Schaeffer was bound by all twelve ICMA Tenets, including Tenet 2's directive to affirm public confidence in local government service. Her Feb. 25, 2022 characterization of working toward "a controlled and favorable outcome for all," made roughly five months before she left to join the applicant, is cited here as a data point relevant to the public-confidence value ICMA's Code reflects for a manager administering a still-undisclosed land-use application; this report does not conclude that the statement itself violated the Code.[8]

5. SUP Filing, Schaeffer's Departure to Amazon, and the First Conflict-of-Interest Flag *(Apr.–Aug. 2022)*

What We Know

Amazon formally files its SUP application Apr. 13, 2022; the Town accepts it as complete May 6 following friendly Nevill–Ford correspondence; Nevill and Ford meet at Town Hall June 7; Schaeffer resigns as Town Manager July 12 and, five days later, joins Amazon's Economic Development – Global Infrastructure Expansion department (Ford's department); Councilman Carlos emails Council Aug. 9 raising conflict-of-interest concerns and requesting legal review; Supervisor Granger resigns from the County Board of Supervisors Aug. 11 over the same underlying issue. Separately, FOIA-produced correspondence shows Nevill forwarding a Piedmont Environmental Council alert about the project directly to Amazon representatives in May 2022, while the application was pending.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3101 (definition of "Personal interest")** — as Town Manager, Schaeffer was an "employee" of local government within the meaning of the Conflict of Interests Act, which — unlike the Town's Code of Ethics — applies to staff. "Personal interest" under the Act includes anticipated "salary, other compensation, fringe benefits, or benefits … that exceeds, or may reasonably be anticipated to exceed, $5,000 annually." Whether Schaeffer's discussions with Amazon about future employment reached that threshold while she still held authority over the pending SUP is a factual question this session's document review could not resolve; the statute's definition is included here as the applicable legal test.[9]

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[6] *"Work assignment and policy directions should come from the elected body as a whole and not from individual members … certain guidelines for Council/staff relationships must be followed."* — Town Council Handbook (adopted Dec. 12, 2023)

[7] *"In an effort to ensure that all Council Members are receiving the same information, any request for information from staff by a Member shall result in the same information being disseminated to the entire Council."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[8] *"Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant."* — ICMA Code of Ethics with Guidelines (amended May 2025; guidelines rev. July 2025)

- **Va. Code § 2.2-3112(A)** — if Schaeffer's prospective Amazon employment did constitute a "personal interest in a transaction" under the Act, this subsection would have required her to disqualify herself from participating in the SUP application's processing and to refrain from discussing the matter with other Town officers or employees. This report does not find that disqualification was required or that it did not occur; it notes the statutory standard against which that question would be measured.[10]
- **Town Council Handbook, Role of the Town Attorney** — Carlos's Aug. 9, 2022 email requesting a conflict-of-interest review invoked the Town Attorney's defined role: to "furnish written or verbal opinions upon any legal affairs of the town" when required by the Mayor or Town Manager. Whether a written opinion was in fact produced and preserved in response to Carlos's request — as distinct from the later, separate opinion Town Attorney Crim issued on the Heroux matter in Cluster 9 — was not confirmed in this session's document review.[11]
- **Code of Ethics, Provision 1 (Act in the Public Interest)** — this provision calls for "fair and equal treatment of all persons, claims, and transactions" before the Town. Nevill's May 2022 forwarding of a citizen advocacy organization's internal alert directly to the applicant's representatives, while the SUP remained pending, is potentially relevant to this even-handedness principle. This report does not characterize the forwarding as improper — only as a fact pattern the provision's text speaks to.[12]
- **ICMA Code of Ethics, Tenet 12, "Private Employment" Guideline** — the Town's own Code of Ethics binds elected and appointed board members, not staff, so it does not directly reach Schaeffer's own conduct as Town Manager; the ICMA Code — the profession's own standard, which by its terms bound Schaeffer in "any capacity" while she served in local government — fills that gap. Its Private Employment guideline directs that members not "negotiate for, or promise to accept" private employment that "creates a conflict with or impairs the proper discharge of" official duties, and calls for "prior notification of the appointing authority … in all cases of outside employment." Schaeffer resigned July 12, 2022 and joined Amazon's Economic Development – Global Infrastructure Expansion department — the applicant's own department — five days later, while the SUP she had administered as Town Manager remained pending before the Town. This report has not confirmed when Schaeffer first discussed or negotiated the Amazon position, or whether she notified the Mayor or Council of those discussions before her resignation; the guideline is cited as the applicable professional standard against which that unresolved timing question should be assessed, not as a finding that it was violated.[13]
- **ICMA Code of Ethics, Tenet 12, "Confidential Information" Guideline** — as Town Manager, Schaeffer had access to non-public information about the SUP application's status, Council members' positions, and the Town's internal handling of the still-undisclosed project — including her own Feb. 25, 2022 email describing a "controlled and favorable outcome" (Cluster 4) and the Jan. 18, 2022 joint infrastructure briefing. The Confidential Information guideline bars using "information that is not yet public knowledge, that has been acquired … in the course of … official duties" to "advance their personal interest." This report has not identified evidence that Schaeffer disclosed or used specific non-public information to benefit her subsequent

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[9] *"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of … salary, other compensation, fringe benefits, or benefits from the use of property … that exceeds, or may reasonably be anticipated to exceed, $5,000 annually …"* — Code of Virginia § 2.2-3101

[10] *"Each officer and employee … who has a personal interest in a transaction shall disqualify himself from participating in the transaction … and shall not vote or in any manner act on behalf of his agency in the transaction."* — Code of Virginia § 2.2-3112

[11] *"The town attorney shall have the management, charge and control of all legal affairs of the town and shall be the legal adviser of the town council … When required by the mayor or town manager, [the town attorney] shall furnish written or verbal opinions upon any legal affairs of the town."* — Town Council Handbook (adopted Dec. 12, 2023)

[12] *"Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Warrenton and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before the Town of Warrenton Town Council, boards, commissions, and committees."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[13] *"Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties … Prior notification of the appointing authority is appropriate in all cases of outside employment."* — ICMA Code of Ethics with Guidelines (amended May 2025; guidelines rev. July 2025)

Amazon employment; the guideline is cited because her near-immediate move to the applicant's own department, five days after leaving a position with direct knowledge of the pending application, places the fact pattern squarely within the guideline's subject matter, warranting note in an objective accounting of possible ethical considerations.[14]

6. Planning Commission Hearings and Indefinite Postponement *(Nov. 15–22, 2022)*

What We Know

At the Nov. 15 public hearing, Foote presents for Amazon (no Amazon representative attends); 58 speakers oppose and 1 favors the project; over 400 written comments are submitted. The continued hearing on Nov. 22 ends with a unanimous vote to postpone indefinitely pending a complete noise study, an accurate tree-removal study, and elevations from Lee Highway.

Possible Process or Ethical Considerations

The Commission's unanimous vote to seek additional technical studies before proceeding is, on its face, an exercise of the Commission's ordinary review function, and this report does not identify a specific ethics or statutory question arising from the Nov. 15–22 hearings themselves. The relevant statutory question — whether this postponement triggered, or was inconsistent with, the timeline the Code of Virginia sets for Planning Commission review — is addressed in Cluster 8, once Council acted to bypass further Commission review of the postponement.

7. The November 27–30, 2022 Heroux–Hamby–Foote Meeting *(Nov. 27–30, 2022)*

What We Know

While the SUP was still before the Planning Commission, Heroux emailed Council members Hamby and Hartman a "Draft Thoughts on Conditions" memo (Nov. 27); Foote sent Heroux a Zoom invitation for a Nov. 30 "Call with Jay Heroux," copying Amazon's Reinke, Ford, and Crass; Heroux forwarded the invitation to Community Development Director Walton (Nov. 28) and Council Member Hamby (Nov. 29); the call proceeded as scheduled, with Walton telling Heroux that afternoon Interim Town Manager Martino "may join." The meeting is independently confirmed by Fauquier Times reporting (Jan. 10, 2023), which also describes a broader pattern of Council members holding private one- and two-member briefings with Amazon timed to stay under the three-member threshold that triggers Virginia's open-meetings law.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3701 (definition of "Meeting")** — as documented, the Nov. 30 call involved two Council members (Heroux and Hamby, the latter only forwarded the invitation and is not confirmed to have attended). Under the statute's three-member/quorum threshold, two members of a seven-member Council meeting with the applicant does not, by itself, meet VFOIA's definition of a "meeting" subject to the Act's open-meeting and notice requirements. This report states that conclusion plainly so as not to overstate the open-meeting question on these specific facts. The separately reported pattern of multiple such one- and two-member briefings (including one involving Councilwoman Sutphin) is not an isolated occurrence: it echoes the same structural pattern documented in Cluster 3, above, where Amazon's Becky Ford individually briefed nearly the entire Council and Planning Commission in one-on-one or paired sessions in July 2021. Occurring more than a year apart but following the same format, the two episodes together raise a distinct and still-unresolved "walking quorum" question — whether this recurring pattern of sequential small-group contacts, arranged by the applicant and covering most or all of the body on the same matter, functioned in substance as a quorum discussion — which this report flags as an open structural question rather than a conclusion.[15]
- **Code of Ethics, Provision 14 (Independence of Boards and Commissions)** — the Code directs that "members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings." The Nov. 27 conditions memo and the Nov. 30

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[14] *"Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties. Information that may be in the public domain or accessible by means of an open records request, is not confidential."* — ICMA Code of Ethics with Guidelines (amended May 2025; guidelines rev. July 2025)

[15] *"'Meeting" or "meetings" means … an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership … of any public body."* — Code of Virginia § 2.2-3701

call with Amazon's counsel occurred while the SUP remained formally before the Planning Commission, not yet before Council. This provision is the applicable Town standard for evaluating Council-member engagement with the applicant on substantive proffered conditions during that window; this report does not conclude that undue influence occurred.[16]

- **Code of Ethics, Provision 6 (Communication)** — whether Heroux or Hamby subsequently shared the substance of the Nov. 30 call, or the conditions discussed in it, with the other five Council members before the Dec. 13/15 vote to bypass the Planning Commission is not established by the documents reviewed. Provision 6's public-sharing requirement is the applicable standard for that open question.[17]

8. Council Overrides the Planning Commission *(Nov. 28 – Dec. 20, 2022)*

What We Know

The Town issues a press release claiming the Planning Commission "acted outside its authority" by failing to make a recommendation; Council votes 4–3 (Dec. 13/15) to take up the SUP directly regardless of a Commission recommendation; the Planning Commission then votes 3–1 to recommend denial (Dec. 20) — a recommendation Council would vote against two months later.

Possible Process or Ethical Considerations

- **Va. Code § 15.2-2285(B)** — the Town's stated basis for bypassing further Commission review was that the Commission's indefinite postponement exceeded its authority. This subsection sets the actual statutory framework: a Planning Commission's failure to report within 100 days of first taking up a referred amendment (or a shorter period set by the governing body) is "deemed approval," absent applicant withdrawal. The Commission's Nov. 22 action was a postponement conditioned on specific additional studies, not a non-report, and this report does not resolve whether that distinction affects the 100-day mechanism's application here; the statute's text is included as the relevant benchmark for that legal question, which the Town Attorney's underlying analysis (not located in this session's document review) would presumably have addressed.[18]
- **Code of Ethics, Provision 14 (Independence of Boards and Commissions)** — as in Cluster 7, this provision addresses the value of Commission independence from Council influence. A vote to take up an application directly, notwithstanding an incomplete Commission recommendation, is a legislative prerogative available to Council under state law and is analytically distinct from "unduly influencing" the Commission's deliberations while they were ongoing. This report cites the provision as the closest applicable ethical value at stake, while noting that its application to a bypass vote (as opposed to interference during deliberations) is not a clear textual fit.[19]

9. The Heroux Conflict-of-Interest Controversy *(Jan.–Mar. 2023)*

What We Know

Thirty-three residents sign a letter (reported Jan. 5) asking Heroux to recuse himself over his role at Definitive Logic, an AWS partner; Chuck Cross separately writes the Mayor (Jan. 6); Heroux files a signed Conflict of Interest Act declaration (Jan. 7) asserting Definitive Logic "does not contract with the U.S. intelligence community"; Town Attorney Crim opines Heroux may lawfully vote; Mayor Nevill publicly defends the decision not to require recusal (reported Feb. 9). Private citizen research compiled in March 2023 disputes the declaration's completeness, noting

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[16] *"Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[17] *"Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[18] *"Failure of the commission to report 100 days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission … shall be deemed approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period."* — Code of Virginia § 15.2-2285(B)

[19] *"Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

Heroux's own former company, Digital Mobilizations (absorbed into Definitive Logic), described its own work as "deeply rooted within the U.S. Intelligence Community." Separately, correspondence from 2025 shows Nevill telling Amazon that its own counsel "surprised" a Town Council work session by revealing AWS itself — not a government or intelligence-community tenant — would be the facility's end user, in apparent tension with the intelligence-community framing underlying the Heroux recusal debate.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3115(H)** — Heroux's Jan. 7, 2023 declaration — stating the transaction involved, his interest, that he is a member of a group affected by the transaction, and that he "is able to participate in the transaction fairly, objectively, and in the public interest" — closely tracks this subsection's required declaration content almost verbatim, indicating that he and/or the Town Attorney relied on the Act's group-of-three-or-more exception (§ 2.2-3112(B)(1)) rather than treating Definitive Logic's relationship to AWS as a disqualifying personal interest. This report notes the statutory mechanism the declaration appears to invoke; it does not independently evaluate the accuracy of the factual premises underlying it (including the March 2023 citizen research disputing the declaration's completeness).[20]
- **Code of Ethics, Provision 7 (Conflict of Interest)** — the Town's own ethics standard is, on its face, broader than the state statute's strict financial-disqualification test: it directs that members "shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship that may give the appearance of a conflict of interest" (emphasis added). Because Heroux is an elected Council member, the Code of Ethics applies to him directly. This appearance-based standard is the applicable Town-level benchmark for evaluating whether the public concern documented above — distinct from the narrower question Crim's opinion addressed — was adequately resolved by the declaration-and-opinion process.[21]

10. The Final Vote *(Feb. 14–15, 2023)*

What We Know

Council votes 4–3 (Sutphin, Hamby, Hartman, Heroux for; Mooney, McGuire, Semple against) in the pre-dawn hours to approve the SUP. The same night, Council also votes unanimously to let Council members — but not the public — review the 3,142 emails then still withheld in the Schaeffer/Nevill FOIA dispute.

Possible Process or Ethical Considerations

- **Town Council Handbook, Electronic Communications** — the Handbook states that "all E-Mail communications among Councilmembers should be considered open to Freedom of Information Act inquiries" and that marking a communication "confidential" "does not guarantee exclusion from FOIA." This guidance is relevant to evaluating the same-night structuring of the vote granting Council-only (not public) access to the disputed emails — a distinction the Handbook's own text suggests may not track the actual scope of FOIA's disclosure requirements.[22]

11. Records Withholding and the Two-Year FOIA Fight *(Dec. 2022 – 2025)*

What We Know

CFFC's mandamus suit (Dec. 28, 2022) challenges the Town's withholding of 3,150 records under the "working papers and correspondence" exemption, claimed for both the Mayor and the Town Manager. The Court of Appeals rules (Jul.

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[20] *"An officer or employee of local government who is required to declare his interest … shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest … (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest."* — Code of Virginia § 2.2-3115(H)

[21] *"To assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship that may give the appearance of a conflict of interest."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[22] *"All E-Mail communications among Councilmembers should be considered open to Freedom of Information Act inquiries … Merely marking a document "confidential," however, does not guarantee exclusion from FOIA and the document may be considered a public record subject to release under FOIA."* — Town Council Handbook (adopted Dec. 12, 2023)

2024) that this exemption is available only once per locality and remands the case to the circuit court for rehearing. Council votes 4–3 (Aug. 13, 2024) to appeal that ruling to the Supreme Court of Virginia — Vice Mayor Hartman and Council members McGuire, Hamby, and Sutphin in favor; Council members Gagnon, Semple, and Mooney opposed. Council later votes 6–1 (Jan. 14, 2025, Resolution 25-01-07) to release the records. Records subsequently made available to the Commission include a distinct 1,246-email "Blue Correspondence" production, which reconciliation memos confirm is separate from, and not a substitute for, the 3,142-email set that had been withheld.

The Town's own records use at least four different counts for what appears to be overlapping or related correspondence at different points — 8,034, 3,142, 2,633, and 1,246 — without any document in the Commission's files reconciling how these figures relate to one another. A separately reported figure of 509 pieces of correspondence still withheld under attorney-client-privilege and personnel exemptions likewise does not appear in the reconciliation memos and has not been traced to a specific release batch or privilege log.

A comparison memo prepared for the Commission (Keyword vs. AI Search Report) found that a manual keyword search of the kind the Town's process relied on would have missed an estimated 37% of relevant emails that a broader search methodology identified. A related finding shows Mayor Nevill corresponded from at least three different email addresses during the relevant period, with roughly 12% of his identified correspondence originating from non-Town accounts.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3705.7(2)** — this is the core provision underlying the entire dispute. Its text limits the "working papers and correspondence" exemption to a specific, narrow list of officials that includes "the mayor or chief executive officer" of a locality — phrased as a single exemption, not one available separately to each of the mayor and the town manager. This textual reading is what the Court of Appeals relied on in holding the exemption "available only once per locality."[23]
- **Citizens for Fauquier Cnty. v. Town of Warrenton (Va. Ct. App. 2024)** — the Court of Appeals' published opinion is the controlling judicial interpretation of § 2.2-3705.7(2) as applied to this dispute, and is the direct source of the "once per locality" holding referenced throughout this report's FOIA discussion.[24]
- **Va. Code § 2.2-3705.1(1)–(3)** — the separately reported figure of 509 still-withheld items was attributed to "attorney-client-privilege and personnel exemptions." This section is the specific statutory basis for both exemption categories (personnel information; attorney-client privileged advice; and litigation work product). It is included here for direct reference, since no privilege log tracing the 509 figure to a specific subsection was located in this session's document review.[25]
- **Town Council Handbook, Electronic Communications** — the Handbook's guidance that Council email is presumptively FOIA-subject, and that confidentiality markings do not control, is directly relevant to evaluating both the original withholding decisions and the Town's later, more cautious search methodology, given the Keyword vs. AI Search Report's finding that a manual keyword search would have missed an estimated 37% of relevant emails.[26]

12. Site-Plan Access and Homeland Security Reporting *(Aug. 2023 – Apr. 2024)*

What We Know

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[23] *"Working papers and correspondence of the Office of the Governor … the mayor or chief executive officer of any political subdivision of the Commonwealth … However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence."* — Code of Virginia § 2.2-3705.7(2)

[24] *"opinion holding that the working-papers exemption in former § 2.2-3705(B)(30) [now § 2.2-3705.7(2)] is available only once per locality, not separately to both the mayor and the chief administrative officer"* — Citizens for Fauquier Cnty. v. Town of Warrenton, 81 Va. App. 363 (Va. Ct. App. July 30, 2024)

[25] *"1. Personnel information concerning identifiable individuals … 2. Written advice of legal counsel to state, regional or local public bodies … and any other information protected by the attorney-client privilege. 3. Legal memoranda and other work product compiled specifically for use in litigation …"* — Code of Virginia § 2.2-3705.1

[26] *"All E-Mail communications among Councilmembers should be considered open to Freedom of Information Act inquiries … These communications constitute public records under FOIA and are subject to release under FOIA."* — Town Council Handbook (adopted Dec. 12, 2023)

The Town Clerk reports six named citizens who requested to view or receive exempted portions of Amazon's Site Development Plan to the Virginia Secretary of Public Safety and Homeland Security, as required by Va. Code § 2.2-3705.2(14). Follow-up correspondence (Apr. 2024) confirms this reporting requirement applies even to citizens who viewed only the redacted "Public File" version of the plan. Per Commission review, the citizens involved were not notified in advance that their requests would trigger a report.

Possible Process or Ethical Considerations

- **Va. Code § 2.2-3705.2(14)** — this is the statute the Town Clerk cited as the basis for reporting requesters to the state homeland security office. It is included here with its operative text so the reporting requirement's actual scope can be compared against the Town's practice of applying it to viewers of the redacted "Public File" version — an open question this report does not resolve, since the only correspondence located on the point is an assurance from the former Town Manager that staff were complying with the statute, which has not been independently confirmed.[27]

13. Citizen Litigation Challenging the Zoning Amendment and SUP *(Jul. 2023 – ongoing (2026))*

What We Know

Individual neighboring homeowners, together with Citizens for Fauquier County, sued the Town of Warrenton and Amazon Data Services, Inc. in Fauquier County Circuit Court. The litigation's central surviving issue is whether the April 13, 2021 Council resolution initiating the Data Center Zoning Amendment stated a public purpose as required by Va. Code § 15.2-2286(A)(7) (see Cluster 2, above) — the same statute this report cites there. A three-day bench trial concluded March 9, 2026; the court heard final arguments June 15, 2026; as of this revision, no ruling has issued.

A parallel dispute concerns Amazon's "vested rights" to build regardless of the zoning-amendment litigation's outcome. After the Town's 2025 repeal of the Data Center Zoning Amendment, Zoning Administrator Heather Jenkins denied Amazon's request for a vested-rights determination, citing the pending litigation and a Jan. 14, 2025 agreed order. On Feb. 3, 2026, the Board of Zoning Appeals voted 4–0 to defer any decision on Amazon's appeal of that denial until the Cross lawsuit is decided. Board of Zoning Appeals Vice Chair A. Van Baggett recused himself from the vote, citing a potential conflict of interest as a project manager at Arcadis, an engineering firm that sometimes designs data centers.

Possible Process or Ethical Considerations

The central statutory question in this litigation (§ 15.2-2286(A)(7)'s public-purpose requirement) is the same one cited in Cluster 2, above, and is not repeated here. This cluster instead addresses two Board of Zoning Appeals process points that arose during the litigation.

- **Code of Ethics, Provision 7 (Conflict of Interest)** — the Board of Zoning Appeals is expressly listed among the bodies whose members are bound by the Code of Ethics. Van Baggett's recusal, disclosing his employment at an engineering firm with some connection to the data-center industry, is consistent with Provision 7's appearance-of-conflict standard operating as intended. This citation is offered as an example of the Code's process working as designed, not as a criticism.[28]
- **Va. Code § 2.2-3711(A)(7)–(8)** — the Board of Zoning Appeals' Feb. 3, 2026 vote followed a fifteen-minute closed-door conference with its newly hired attorney. This subsection authorizes closed meetings for "consultation with legal counsel … pertaining to actual or probable litigation" and for "consultation with legal counsel … regarding specific legal matters requiring the provision of legal advice," which appears to be the applicable basis for that closed session, though this report did not locate the Board's specific motion or certification language to confirm the cited basis.[29]

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[27] *"Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security"* — Code of Virginia § 2.2-3705.2(14)

[28] *"Under the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist."* — Town of Warrenton Code of Ethics (adopted Aug. 9, 2016)

[29] *"Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body … Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel."* — Code of Virginia § 2.2-3711(A)

Cross-Cutting Observations

Three patterns recur across the citations above. First, several of the strongest citations trace back to the same handful of source provisions — the Code of Ethics' Communication and Independence-of-Boards provisions, and VFOIA's "meeting" definition and working-papers exemption — applied at different points in the timeline; this suggests the Commission's continuing review might usefully organize future work around these specific provisions across all three land-use matters, not just the Amazon timeline. Second, several citations identify a legal or ethical framework as relevant without being able to resolve the underlying factual question (Schaeffer's compensation discussions in Cluster 5; the number and composition of the 2021 individual briefings in Cluster 3; the 509-item privilege log in Cluster 11) — these remain the specific documents the Commission's continuing document requests should prioritize. Third, the Code of Ethics' scope limitation to elected and appointed members, as distinct from the broader Conflict of Interests Act's coverage of staff, means that staff-level conduct in this timeline (Schaeffer's departure to Amazon; the 2021 NDAs) is properly evaluated under state law and the Handbook's staff-communication norms, not the Town's own Code of Ethics — a distinction future Commission reports should preserve for accuracy.

As with the prior version of this report, this analysis does not conclude that any provision cited above was violated. Several of the underlying factual questions — particularly those bearing on Cluster 5's personal-interest analysis and Cluster 3's walking-quorum question — would benefit from the Commission's continued document review, and several remain the subject of active litigation whose outcome may bear on the Town's own legal position independent of this report's analysis.