

# LETTER FROM THE SUPERVISOR LAND USE: 2023 EDITION



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One major responsibility of the Board of Supervisors is to decide land use cases. I have always said that it is our most difficult responsibility as well. The Board's land use decisions must be made within certain legal parameters and we often don't have as much discretion as many people assume.

The County's land use "bible" is called the Comprehensive Plan. The plan was last updated in 2019 and took almost 4 years, though state law only gave the Board itself 90 days to work on it.

The Comprehensive Plan assigns place types and policy areas for every part of the County, ranging from the urban policy area that allows high density to the rural policy area that does not. A rough dividing line is Route 15 – everything to the east generally allows higher densities, and to the west, much less so. While we may have the perception that the County is highly developed, over 2/3 of our land area is west of Route 15 and rural. This is a key differentiator between Loudoun and our neighbors to the east.

From the Comprehensive Plan comes the Zoning Ordinance: the most recent version is from 1993. An update by staff, stakeholders, and the Planning Commission to match the new Comprehensive Plan has been underway for the past three years and is coming to the Board later this year. The Zoning Ordinance contains specific information on what is permitted within each zoning designation that is assigned to every parcel in the County. Some properties have secured vested rights to uses under prior versions of the Zoning Ordinance in place at the time and the County cannot go back and take those vested rights away.

When a property is developed in accordance with its existing zoning, it is called "by-right development." In this case, a developer files a site plan with County staff, who review it for compliance and approve it administratively, without it coming to the Planning Commission or Board, and the County receives no proffers. Many data centers in Loudoun were developed by-right because previous legal interpretations of the Zoning Ordinance held that most commercial and industrial zonings allow data centers. In addition, communities such as Willowsford and Lenah Mill are by-right; the developers took the existing zoning allowance of one home per acre and built to that standard. The County cannot block by-right development.

Property owners may request special exceptions, modifications, or an entirely different zoning designation. All these requests are handled through applications that are reviewed by staff, then by the Planning Commission who make a recommendation to the Board. These require public hearings at both the Planning Commission and Board of Supervisors, and often include voluntary proffer contributions. In the case of a special exception, the Board can impose certain conditions. For residential development, the County has

developed standards by which we require developers to mitigate their impact, typically with a capital contribution of somewhere between \$30,000-\$50,000 per unit, and often include building roads or dedicating school sites. South Riding and Stone Ridge are both examples of this.

The Board's decisions on these cases are guided by the Comprehensive Plan, precedent, and common sense. Sometimes a desired land use may be permissible in the Comprehensive Plan but not the Zoning Ordinance. An example would be the Hogan Kent Green development under construction next to Pinebrook Elementary. In that case, the developer's application was entirely consistent with the plan, but not the Zoning Ordinance because it hadn't been updated for the type of units called for in the plan. The developer is finishing the Braddock Road widening project for the County as a proffer, and I was able to impose other restrictions on the development to improve buffers and design.

There are other cases in which the Board previously approved changes to land use types on adjacent parcels, and therefore legally should follow the previous precedent, because all land use denials by the Board are subject to judicial review. We see this often with "infill" parcels, in which an undeveloped property is sitting next to other properties that have already been developed. There was recently a case like this on Mountain View Drive off Poland Road.

There are pros and cons to both types of development. In the case of data centers, they generally seek more square footage than what is allowed, which requires a special exception. Sometimes it can make sense to work with that developer to improve the project. That's how I was able to get the Arcola Boulevard project built. In that case, data centers were already permitted in Arcola Center, but the developer wanted to build 25% more than what was allowed. In exchange for that, we negotiated a proffer which required the developer to build Arcola Boulevard. With by-right development, those opportunities don't exist. However, I do not favor data centers adjacent to residential development, so I'm likely to oppose applications where that is the case. There have been several recent cases in the Stone Springs Boulevard area that passed the Board 5-4 which I opposed because of this.

On the other hand, by-right development is less intense, and therefore has less impact. I have consistently opposed denser development south of Braddock Road, where developers proposed rezonings that would generate thousands of homes. Even with the proffers that come with those, I don't think we can mitigate the traffic impacts since it is so close to Fairfax County. That means that some or all of that property could develop by-right – still with housing, but a lot less than there would be under a rezoning.

The bottom line is that land use decisions are tough and have a lot of layers to them. I try to make the best decisions I can for both current and future residents, but there are often circumstances out of our control that dictate what develops. As always, I'm happy to answer questions on this or any topic. You can email me at [matt.letourneau@loudoun.gov](mailto:matt.letourneau@loudoun.gov).