

Wo3_COY_business

COVERSHEET

1. Planners skeptical of changes to Bealeton 'town center' development

(Feb. 23, Coy Ferrell)

2. Warrenton attorney's law license suspended (Feb. 9, Coy Ferrell)

a. BOX: **Claims about real estate license**

b. BOX: **'I completely accept Judge Black's ruling'**

c. BOX: **Previous sanctions against Morgan**

d. BOX: **Despite sanctions, Upright Law still active**

3. Fauquier County files \$10 million counterclaim against Data Stream

(Sept. 7, Coy Ferrell)

Planners skeptical of changes to Bealeton ‘town center’ development

By Coy Ferrell

FAUQUIER TIMES STAFF WRITER

A developer wants to add allowances for a car wash and additional warehouse space to a planned 10-acre “town center” commercial complex in Bealeton. County planners say that the proposal is a step in the wrong direction for the project – it’s been in the works for more than 14 years but has yet to break ground — and for the future of Bealeton as a whole.

The proposed development on a now-vacant lot is adjacent to U.S. 17, across the highway from the Village Center Drive stop light. Dubbed “Wexford Village,” it was originally pitched as a “main street style commercial area,” according to application documents from 2008, when the property was rezoned from residential to commercial use.

Then, developers anticipated the property would be used for “retail, office, financial institutions, eating establishments and other uses.” More than 40 categories of “other uses,” however, were specifically prohibited by the agreement, including warehousing, RV storage and car washes.

Now, though, the developer wants to extend concessions that have already been made to the zoning agreement — these concessions were approved by county supervisors in 2015 — which allowed up to 80,000 square feet of self-storage warehouse space on the property, along with RV storage. The current application asks for an additional 10,000 square feet of self-storage space and allowance for a 4,000-square-foot car wash facility.

On Feb. 17, the Fauquier County Planning Commission voted to delay acting on the proposal for up to 90 days, expressing nearly universal skepticism of the proposed Wexford Village changes. But this relatively minor zoning request is part of a much bigger headache facing county planners.

Piedmont Land Consulting owner Chuck Floyd, who is representing developers Richard Groux and Joe Wiltse during the application process, declined to answer questions about the reasons behind the latest proposed modifications to the zoning agreement.

‘A bedroom community of houses’

The broader issue comes down to a conflict between the county’s comprehensive plan, which envisions a Bealeton “town center” district south of Va. 28, and the demands of broader economic forces, which have driven an influx of chain fast-food restaurants and gas stations to the once-sleepy crossroads but few retailers and mid- to high-end restaurants.

The unincorporated community has no trouble adding new residents, with the area growing by more than 1,400 people — 33% — since 2010,



according to the U.S. Census Bureau. More housing units are either approved or under construction, especially in the massive Mintbrook multi-use development across the highway from Liberty High School.

But while the community sits at the crossroads of Va. 28 and U.S. 17 — both major commuting routes — attracting new businesses aside from gas stations and fast-food restaurants has proved much more difficult, meaning residents often go north to Warrenton, west to Culpeper or east to Manassas for some basic needs.

Despite high volumes of traffic on both roads, “the community is now a ‘non-event’ to most through-travelers on Routes 17 and 28,” according to the county’s 2013 update to the comprehensive plan. “Bealeton is currently a bedroom community of houses, whose residents must look elsewhere for recreational, institutional and shopping needs,” the document said.

The “town center” land use plan included in the 2013 update was intended to spur commercial development to serve local residents, focusing especially on “main street specialty” and “destination retail” businesses. “A traditional town environment requires a different orientation from strip commercial centers,” according to the document.

But little has changed, and the proposals to update the Wexford approvals over the years are not unique. For instance, the 2012 zoning agreement for Mintbrook called for a large pharmacy building on a certain section of the property. A year ago, however, the developer told supervisors that there had been no interest to build a pharmacy there. Supervisors subsequently approved an amendment to the 2012 agreement, clearing

the way for a drive-thru Starbucks at the site instead.

“There is definitely a need for us to consider economic development

in Bealeton,” John Meadows, who represents Lee District on the planning commission, said at last week’s meeting. But he said of the latest Wexford application, “I don’t feel as though we need to give the farm away to get economic development. ... And I feel that’s what we’re doing. We’re giving the farm away.”

Commissioner Bob Lee (Marshall District) in 2015 voted against the proposal to add self-storage warehouses to the allowable uses for the Wexford development in the first place. In 2015, “This commission recommended to the board of supervisors that the planned uses on the property were inconsistent with the Bealeton Service District plan,” Lee said last week, “and particularly the town center part of that plan.” Supervisors at the time disagreed and overrode the planners’ recommendation.

Optimism for the future

Supervisor Chris Butler (Lee District), whose district encompasses Bealeton, agreed in a conversation with the *Fauquier Times* that attempts to attract a more diverse array of businesses into Bealeton have often been frustrating.

See WEXFORD, page 7

INSIDENOVA PRINCE WILLIAM & RAPPAPORT CULTIVATING PLACES present

MANASSAS BALLET THEATRE

in

GAITE PARISIENNE AND MORE!

with the Manassas Ballet Theatre Orchestra

March 11-13

at the

HYLTON PERFORMING ARTS CENTER

www.hyltoncenter.org

703-993-7759

Tickets starting at \$25

Also Streaming Starting 3/26: Tickets \$25
<https://vimeo.com/ondemand/gaiteparisienne>

For more info: manassasballet.org
info@manassasballet.org • (703) 257-1811

Manassas Ballet Theatre is funded in part by the National Endowment for the Arts, the Virginia Commission for the Arts, Prince William County, and the City of Manassas

PRINCE WILLIAM Parks, Recreation & Tourism

Melephoto LLC

NEWS BRIEFS

Blue Ridge Area Food Bank promotes food finder tool amid winter weather, rising food prices

Blue Ridge Area Food Bank has an online tool for people to find food assistance in their community.

In 12 different languages, the online tool displays a broad range of partner and program sites (including mobile food pantries and more). Search results can be filtered by service type, days of operation,

distance and even the availability of evening hours.

At least one in 12 people in the Blue Ridge area experiences hunger, with children and the elderly suffering the worst consequences.

For those interested in utilizing Food Finder, go to: <https://foodfinder.brafb.org/> for more information.

Virginia State Parks accepting applications for Youth Conservation Corps

Virginia State Parks is seeking qualified candidates to fill Youth Conservation Corps summer residential service opportunities across the state. Two three-week programs will be offered this summer. More than 20 opportunities are available statewide. Ideal applicants will be young adults aged 14 to 17.

Crew members who successfully complete a three-week service program will receive 120 service learning hours and a \$500 stipend. Applicants for crew member positions are being accepted through March 14. Those interested can visit www.virginiastateparks.gov/youth-conservation-corps to learn more and apply.

Knights of Columbus raises funds for veterans

The local Knights of Columbia Assembly recently conducted its most successful fundraiser for local veteran groups at Chick Fil-A, during which the organization raised more than \$10,000. Recipients of the money raised will benefit the following: USO of Metropolitan Washington; Baltimore VA Hospital in Martinsburg, West Virginia; Boulder Crest Foundation in Bluemont, Virginia; Able Forces in Front Royal; and the Paralyzed Veterans of America, Mid-Atlantic chapter in Hopewell, Virginia.

Land Trust of Virginia receives grant from Virginia Environmental Endowment

The Land Trust of Virginia announced it has been awarded a one-year grant from the Virginia Environmental Endowment. The \$20,000 grant was awarded for the program titled "Expanding the Elements of the Land Trust of Virginia's Core Work."

According to Sally Price, executive director, LTV's core work includes three programs — conservation easement acquisition, easement

stewardship and public education. "In the past 18 months, our work in all three areas has expanded, prompting us to apply for funding from VEE to increase our capacity to continue performing high-quality land conservation."

Funding from this grant has contributed to the hiring of two additional staff members, a communications and education manager and an additional stewardship associate.

Planners skeptical of changes to Bealeton 'town center' development

WEXFORD, from page 3

But he pointed to the county's contract with Retail Strategies – a business development company that conducts detailed market research and uses that data to pitch businesses to relocate to a community – and new Director of Economic Development Doug Parsons as reasons for hope.

"I agree that fast food seems to be all that wants to come," said Butler, pointing out that most do not need any special approval from the board of supervisors, since much of Bealeton is already zoned for commercial use.

But, he said, "We have renewed our contract with Retail Strategies, and Doug is working with them to fill the parcels and buildings that are empty. ... I am hopeful [they] can attract more of what the folks in Bealeton want to see."

Parsons, who has been at the helm of Fauquier's economic development efforts for about five months, was for his part optimistic about Bealeton's prospects in a phone conversation Tuesday.

The combination of a more concentrated population, rising incomes, a lessening of the pandemic's economic effects and a concerted effort to pitch the area to companies mean that the coming years could see Bealeton attract the kind of retail and service industry businesses that are attractive to residents.

"As this area grows, I think they are going to attract some of these things that people want to see," he said Tuesday. "I think it just takes some time – and things are moving in the right direction."

Supervisors made clear to him when he was hired that pitching the Bealeton-Opal-Remington area to more "town center"-type businesses is one of the county's top priorities, he said. Also, he emphasized, "They made it clear to me that development is fine – but we want the right kind of development."

Attracting businesses like retail shops, sit-down restaurants and grocery stores has, in the past, been a challenge in Bealeton because of the

relatively close proximity of the regional commercial centers of Warrenton and Culpeper, he explained.

To some degree, Bealeton and the surrounding area just haven't had enough concentration of people and disposable incomes to support, for instance, a second grocery store or "destination" shops – the types of stores that can be found in abundance in Warrenton and Culpeper.

But as more housing is added in and around Bealeton, Parsons is confident that the scales will start to tip.

"As the population grows ... there's going to come a time when they have the numbers, they have the rooftops," said Parsons. "I think that over time you'll start to see that down there."

Reach Coy Ferrell at cferrell@fauquier.com

5K will honor Bill Woodbury of Winhall Farm

5K, from page 6

July of 2021 and hadn't had a drop of food or drink in his mouth since then. I took my mason jar of our first batch of Winfall syrup and poured some on my finger for him to taste. He could not speak, so I got big approving body sway, nod and smile. This was our last project together," said Kelly-Maartens.

Woodbury died of ALS Jan. 6 of this year.


In honor of Woodbury and the legacy he leaves behind, Kelly-Maartens has organized a Run with the Sap 5K on March 26 to benefit the ALS Association. The course will cover 3.1 miles on the Winfall Farm property, through woods and river crossings. Registrants will see the tapped trees for sap collection



Bill Woodbury, enjoying some French toast with maple syrup, at Winhall Farm.

and be able to taste the fresh sap following the run.

Register for the run/walk at www.facebook.com/winfallinva.



Gainesville

Physical Therapy

No Prescription Required

Direct Access

Dry needling now available!

Se Habla Español

We offer state-of-the-art techniques and equipment.

Visit Gainesville PT today for:

- Arthritis & Stenosis
- Back Pain
- Bulging Disk
- Gait
- Foot & Ankle Injuries or Disorders
- Headaches
- Neck Pain
- Post Surgical Rehab
- Scoliosis

- Shoulder & Knee Injuries
- Spinal Therapy
- Sports Medicine
- TMJ Disorders
- Total Knee & Hip Replacement Rehab
- Walking & Balance
- Whiplash
- Women's Health

Call Today:

703-754-4690

www.Gainesville-PT.com

6862 Piedmont Center Plaza, Gainesville, VA 20155



Dr. Cristina Trypanis
DPT MSPT



Dr. Carissa Essex
PT DPT



Dr. Kayla Roth
PT DPT



SWIMMING,
WRESTLING,
TRACK
DISTRICT TITLES
DECIDED.
Sports,
Pages 17, 18, 21



John Carter Morgan, Jr.

Warrenton attorney's law license suspended

John Carter Morgan, Jr. twice previously disciplined by state bar

By Coy Ferrell
FAUQUIER TIMES STAFF WRITER

A three-judge panel in Fauquier County Circuit Court has suspended a Warrenton attorney's Virginia law license for one year. The action stems from his participation in a multi-state legal services scheme that the U.S. Department of Justice called a "bankruptcy boiler room" and a "telemarketing referral business" that "preyed upon some of the most vulnerable in our society" — those in severe financial distress.

For his role in the scheme, John Carter Morgan, Jr. is forbidden from practicing law in Virginia until Jan. 25, 2023, a three-judge panel ruled last month.

Stemming from the same misconduct, Morgan had also been barred for 18 months from filing cases U.S. Bankruptcy Court for the Western District of Virginia following a four-day trial in 2018. That suspension began last year and expires in April 2023. He was also fined \$5,000 by the federal court. The judge who presided over the federal misconduct trial said that Morgan was "defiant, unremorseful and wholly lacking in credibility."

See MORGAN, page 6

Fauquier High graduate is 1 of 2 officers killed at Bridgewater College Feb. 1

Principal remembers J.J. Jefferson as 'a friend to all'

By Robin Earl
FAUQUIER TIMES STAFF WRITER

Fauquier High School graduate Vashon "J.J." Jefferson was one of two police officers killed at Bridgewater College on Feb. 1, according to Virginia State Police. Alexander Wyatt Campbell, 27, allegedly shot and killed John Painter, 55, a Bridgewater Police Department officer and Jefferson, 48, a Bridgewater College Safety officer.

Campbell, of Ashland, Virginia, will be arraigned Feb. 16 at 1 p.m. According to a Virginia State Police spokeswoman, Campbell is being held at the Rockingham County Jail without bond on several serious felony charges, including aggravated murder of a police officer and first-degree murder.

See JEFFERSON, page 4



PHOTO COURTESY OF SHENANDOAH UNIVERSITY
Fauquier High School graduate J.J. Jefferson was killed Feb. 1 at Bridgewater College, where he was a college safety officer.



FAUQUIER TIMES STAFF PHOTO/COY FERRELL

Irma Carino instructs Stephanie Fischer's first-grade class using Spanish-language flash cards about the months and seasons.

Thompson Elementary breaks ground with bilingual initiative

'It's been fun, and the kids enjoy it'

By Liam Bowman
PIEDMONT JOURNALISM FOUNDATION

Since the beginning of the school year, students at Claude Thompson Elementary in Rectortown have received daily Spanish-language lessons as part of a bilingual initiative created in partnership with the school system's English as a Second Language program. With songs, inventive word games and activities, program leaders hope to expand students' language skills in an engaging way.

"It's more of exposing students to something at this point," said Saralyn

See ESL, page 9

The Fauquier County Spelling Bee. See page 8.



CONNECTING YOU TO *People That Care.*

OAK VIEW NATIONAL BANK

oakviewbank.com | (540) 359-7100 | Member FDIC

Warrenton attorney's law license suspended

MORGAN, from page 1

Morgan is associated with two firms headquartered at 98 Alexandria Pike, Warrenton, according to state corporation records: John Carter Morgan, Jr., PLLC — Morgan is the only member listed — and New Day Legal, for which Morgan is listed as a co-owner with Richmond-based attorney Suad Bektic.

On Jan. 26 — the day after the panel of judges suspended Morgan's license — New Day Legal posted a video featuring Morgan to its Facebook page. The video, titled "Why It Is Important For A Bankruptcy Attorney To Be Empathetic," made no reference to the previous day's ruling.

On Monday, however, Morgan said that he is "no longer associated" with New Day Legal. Bektic did not respond to an emailed list of detailed questions — including about his professional relationship with Morgan — sent last week by the *Fauquier Times*.

Upright Law

Morgan was a "local partner" in a national scheme run by a Chicago-based law firm doing business as Upright Law. The judge fined Upright \$250,000 and barred the firm from filing cases in the Western District of Virginia bankruptcy court for five years. Morgan was one of two Upright "local partners" disciplined by the court.

Claims about real estate license

On the New Day Legal website, John Morgan, Jr. claimed as of Feb. 4 to be a "licensed Virginia real estate agent with well over 40 years of experience in real estate transactions."

Morgan, however, has not held a real estate license in Virginia since 2009, according to the Virginia Real Estate Board. After the *Fauquier Times* made an inquiry to Morgan, the page had been removed entirely from the New Day Legal website as of Monday.

Morgan addressed the issue in an email Monday to the *Fauquier Times*. "That website bio is 15 years old, and my bio was recently removed, as I am no longer with the firm. In the past 30 years I have handled real estate closings," he said.

U.S. Bankruptcy Judge Paul Black in 2018 ruled that the company had caused "unconscionable" harm to vulnerable individuals, on many occasions taking money from clients while providing subpar legal services — or none whatsoever.

The judge's ruling described a "playbook" used to train Upright salespeople in Chicago, calling it "replete with high-pressure sales tactics" that are "unsettling to the court." At times, the behavior of the Chicago-based salespeople con-

'I completely accept Judge Black's ruling'

John Morgan, Jr. agreed to answer questions from the *Fauquier Times*, sending a written response Monday.

Morgan said that he has not been a "limited partner" with Upright since 2016. He said that he "counseled hundreds of people" referred from Upright and filed 63 bankruptcy cases for Upright clients.

He declined to dispute any of the facts asserted in the 2018 ruling handed down by U.S. Bankruptcy Judge Paul Black that led to his license suspension. "After many legitimate appeals, I completely accept Judge Black's ruling," he said.

Despite the temporary loss of his law license, Morgan said that he plans to resume practicing law after he regains his license. "I enjoy helping people. That is what I have built my practice on. So, after I complete the terms of the agreed disposition, it is my intention at this time to continue in the practice of law."

stituted the practice of law by unlicensed individuals, the judge ruled.

The judge singled out some of the instructions listed in the "playbook" for particular criticism. For instance, if a potential client says, "I need to pray about it," salespeople were directed to respond: "I appreciate that. I pray about every decision I make myself. How are you most comfortable praying? Let's pray together. I trust God won't mislead either of us. I am willing to accept God's will for the both of us."

After a successful pitch to a potential client, the federal judge ruled that desperate clients paid — nearly \$2,000 in some cases — for services that were never rendered. This was especially harmful in cases where Upright arranged a "payment plan" for a client.

In 48% of the cases filed in the Western District of Virginia, for instance, Upright clients were unable to complete their payment plan and no legal services were provided to the individual, according to the ruling. This was despite the fact that Upright salespeople told clients that "payments made are direct compensation for ... work on your case and are generally non-refundable."

'Local partners'

The Chicago office acted as a "referral hub" for "local partners," the justice department alleged during the trial. The purpose of the "local partners," in turn, "was to receive additional revenue with minimum input." The "local partners" were entitled to a share of the revenue generated by the Chicago sales team, prosecutors said.

Morgan agreed to become a "local partner" for Upright in 2014, according to records presented at the trial. The case at the center of the disciplinary actions against Morgan involved a client referred to him by the Upright sales team the following year, in 2015, according to the federal ruling.

In this case, Morgan delegated initial legal services for the client to his wife, Rhonda Morgan, who is not an attorney. "[John] Morgan did not review [the client's] petition or schedules with [the client], and [John] Morgan did not witness [the client] sign them, either," said the 2018 ruling. Instead, "this was delegated entirely to Rhonda Morgan. The filings with the court were replete with errors."

In fact, according to trial transcripts, Morgan said that he often

Previous sanctions against Morgan

The disciplinary actions in 2018 and last month are not the first occasions on which John Morgan, Jr. has been disciplined for violating professional rules of conduct.

In 1992, the Virginia State Bar placed him on probation for one year. Then, a panel of judges found, Morgan had interviewed a criminal defendant without that defendant's lawyer present; Morgan was able to convince the individual to take the blame for a crime that two of Morgan's own clients were also accused of committing.

In 2000, Morgan himself pleaded guilty to two felony cocaine possession charges, for which he was sentenced to five years in prison — all suspended — and 99 years of supervised probation. His law license was suspended for three years.

Morgan again came before a disciplinary panel in 2016. While the three judges on the panel ruled that Morgan had kept cash payments from clients in a safe — instead of depositing the money into a trust bank account as required by professional conduct rules — they found that the violation was "clearly not of sufficient magnitude to warrant disciplinary action."

asks his wife for guidance on legal matters. "I would say that my wife has superior knowledge of the law and the conduct of the signing and the elements of the bankruptcy petition."

Later, Morgan delegated his services to another attorney for a client meeting, claiming without any supporting documentation that his client had given him permission to do so, the judge said. "His own time records reflect [Morgan] attended the ... meeting," the judge wrote, "when clearly he did not."

Morgan's client was eventually successful in applying for bankruptcy protection, according to the federal court ruling. But along the way, according to the judge, Morgan falsified his client's signature on a legal document — a document the client did not even know existed until later — and waited months to correct the error-ridden documents prepared by his wife.

See MORGAN, page 7

Try ANY Culligan® System

FOR ONLY \$9.95

PER MONTH FOR THE FIRST 3 MONTHS

\$9.95 per month for the first 3 months then standard rates apply. Limited time offer from your participating dealer.

FINANCING OPTIONS AVAILABLE!

GET STARTED WITH A **FREE WATER TEST!**



Culligan Water®

Culligan of Front Royal 540-917-5632
FrontRoyalCulligan.com

Warrenton attorney's law license suspended

MORGAN, from page 6

'A scam from the start'

At the heart of Upright's operation was a concerted effort to pressure customers into giving up their financed vehicle — often one of the last remaining assets a person filing for bankruptcy possessed — as a form of payment for legal services to Upright.

The firm, in turn, would have the vehicle towed out of state by another company, Indiana-based Sperro, therefore making it prohibitively expensive for the legitimate finance company to retrieve it. Then, despite the fact that the legitimate financing company had a legal right to the vehicle, Sperro would sell the vehicle at auction, using the proceeds to pay Upright.

The judge called the arrangement with Sperro "a scam from the start." While there is no indication in court

documents that Morgan had a direct role in facilitating the vehicle-payment program, the judge ruled that Morgan failed initially to disclose that his client had given up their vehicle to the Upright-Sperro scheme.

The individuals affected by the firm's and attorneys' misconduct — including Morgan's client referenced in the court ruling — were harmed "through no fault of their own," the judge ruled.

"None of the debtors appears to have done anything more than seek out help due to severe financial distress and rely on whoever was advising them what to do — be it an Upright salesperson in Chicago or their local attorney. They did not know where else to turn and it is truly unfortunate they have been drawn into this maelstrom," the judge wrote.

Reach Coy Ferrell at cferrell@fauquier.com

Despite sanctions, Upright Law still active

The sanctions imposed by the bankruptcy court for the Western District of Virginia are not the only discipline to which Upright Law and its "local partners" have been subject.

Despite that fact, Upright continues to operate in most parts of the United States — except in specific courts where it has been banned. Upright continues to advertise "over 350 attorneys in cities and towns throughout the country waiting to help you get a fresh start."

According to a March 10, 2021, statement from the U.S. Department of Justice's Trustee Program, "Upright has paid or been ordered to pay almost \$900,000 in monetary relief, including returning fees to over 500 impacted consumers and paying court-ordered sanctions, attorney's

fees and costs. Additionally, bankruptcy courts have imposed practice bans against Upright in at least four jurisdictions."

According to its own website, Upright is currently barred from representing clients in the federal bankruptcy courts for the Eastern District of Tennessee and the Western District of Kentucky — along with the Western District of Virginia.

The website also notes that Upright "is not accepting new clients for whom proper venue for a bankruptcy filing would be the United States Bankruptcy Court for the Districts of Montana, Western Louisiana, Northern Alabama, Middle Alabama, Southern Alabama, Eastern North Carolina, Middle North Carolina, Western North Carolina, Puerto Rico, Guam or the U.S. Virgin Islands."

Upright did not respond to a request for comment.

Applications being accepted for the Warrenton Police Academy; classes begin May 11

The Warrenton Police Department is accepting applications for its Warrenton Police Academy, a seven-week course designed to introduce residents to the structure and daily operations of the WPD.

The program is offered at no cost; applicants must be residents of Fauquier County, be at least 21 years old, pass a background check and be willing to attend sessions one evening a week for seven weeks. The academy will meet on Tuesdays, from 5:30 p.m. to 8:30 p.m. Graduation will be held on the eighth week. The first class will be

held on Wednesday, May 11.

Participants are also asked to commit to 10 hours of annual volunteer service to WPD, post-graduation.

Participants who are selected from the competitive application process will have the opportunity to hear directly from subject matter experts in local law enforcement through presentations, demonstrations, displays and hands-on activities. Once the academy class of 15 is full, the enrollment process will be closed, and all remaining

students will be placed on a waiting list. If vacancies occur, they will be filled in the order the applications were received.

Questions relating to the Warrenton Community Police Academy program can be directed to the volunteer coordinator in the Office of Public Information and Community Engagement at pio@warrentonva.gov or call (540) 347-1107. An application is available at: <https://www.warrentonva.gov/DocumentCenter/View/1062/Community-Police-Academy-Application---Session-2>

generator
SUPERCENTER
THE STANDBY POWER PEOPLE™

We'll be there in the darkest moments.
703.880.9850

We Have Generators In Stock!

GENERAC®

Generac® Home Standby Generators automatically provide you backup power during a utility power outage – whether you're home or away. Whether it's for a few hours or several days, your family and home are protected. **Generator Supercenter is the #1 Generac dealer in North America.** We have the experience and expertise you need. From design, local permitting, installation and long-term maintenance support, we are there for you. **That's why they call us the Standby Power People.**



FREE Whole Home Surge Protector

with a generator purchase from Generator Supercenter of Virginia. Limited time offer. Call for details.

Schedule Your Free Estimate Today!
Generator Supercenter of Virginia

www.GeneratorSupercenterNOVA.com

Visit our showroom at 21005 Ashburn Crossing Drive, Suites 125-130, Ashburn, VA



A communications tower in Catlett
FAUQUIER TIMES
STAFF PHOTO/COY
FERRELL

Fauquier County files \$10 million counterclaim against Data Stream

County says broadband company lied about its finances

By Coy Ferrell

FAUQUIER TIMES STAFF WRITER

Two months after Data Stream Mobile Technologies filed a \$27 million lawsuit against Fauquier County, the county filed a countersuit Aug. 26 that demands at least \$10 million in damages from the Florida-based broadband company. The county claims that Data Stream lied about its finances before agreeing in 2019 to a multimillion-dollar contract to provide subsidized internet service in rural areas of the county. The county's filing also alleges that Data Stream has been unresponsive to customers and potential customers and that its network has experienced "frequent outages," as has been previously reported.

The two sides have been engaged in a running dispute since at least March 2021 over some of the issues outlined in the lawsuits, each claiming that the other first failed to meet its contractual obligations. The Aug. 26 counterclaim escalates the dispute further, alleging that Data Stream "fraudulently induced" the county into signing the initial contracts. The filing also sheds new light on the state of Data Stream's finances during the initial round of contract negotiations and its statements to the county in the leadup to the 2019 agreement.

"This case is about Data Stream's failure to perform its contractual obligations," the Aug. 26 filing says. "But it is also about Data Stream's fraudulent conduct, its refusal to act in good faith and the resulting damage to the county, the [Fauquier County Broadband Authority] and the citizens of Fauquier County."

Data Stream's June 30 lawsuit against the county claimed that the county failed to meet its contract obligations and that county officials had engaged in "business conspiracy" and defamed the company's reputation. County supervisors voted last month to hire an outside law firm, Alexandria-based Harman, Claytor, Corrigan & Wellman, to represent the county in the case.

As of March, Data Stream provided fixed-wireless internet service to 629 homes and businesses in Fauquier County from 15 towers under the Sept. 12, 2019, agreement and subsequent amendments to that agreement. The county has paid \$4.7

million under the contract. Last year, however, the county ceased subsidy payments to Data Stream, claiming that Data Stream had failed "to provide broadband service in good faith to the citizens of the county" and had breached specific terms of its contracts.

Data Stream's attorney, Michael Daniels, declined to comment on the new filing, adding that he had not yet read the counterclaim in detail. "Even after I review the pleadings, I probably won't have a comment," he wrote in an email. "As I said before, I have no desire to try this case in the media."

David Corrigan, an attorney for the law firm representing the county, wrote in an email that "We have no comment beyond what is in the pleadings at this time."

'Fraudulent misrepresentations'

The county's Aug. 26 countersuit contains previously unreported allegations that Data Stream, which is a single-member business entity controlled entirely by South Florida resident Sean P. Lee, lied about its revenue, outstanding debts and outside contractual obligations as county supervisors were considering a public-private broadband initiative in 2019. The lawsuit emphasizes that the county agreed to the terms of the 2019 agreement based in part on Data Stream's own representations of its finances.

"Selecting a contractor that did not face financial pressures that would force it to compromise the service offered to the county's citizens," the lawsuit says, "was an essential component of the county's decision process." But, the lawsuit claims, "Data Stream's fraudulent misrepresentations induced the county to enter into the MOU and pay millions of dollars to Data Stream that it would not otherwise have paid."

Specifically, the lawsuit points to a 2017 line-of-credit agreement between Data Stream and Bank of America. That loan agreement stipulated that Data Stream would give "first position security interest" to Bank of America, giving the bank the exclusive right to repossess collateral if Data Stream defaulted on the loan — up to "all of its equipment, fixtures, inventory and receivables."

See **DATA STREAM**, page 7



Archwood Green Barns Farmers Market

The Plains, Virginia

SUNDAYS, 10 AM TO 2 PM

Beautiful summer produce is still in peak season and farmers are planting fall crops to keep market baskets filled!

UPCOMING EVENTS

KINLOCH FARM STORE IS OPEN

10 am - 6 pm Thurs - Sunday

HONEY TASTING

September 18th, 10 am - 2 pm

FAUQUIER FALL FARM TOUR & SATURDAY FARMERS MARKET

October 8th, 10 am - 4 pm

HOLIDAY MARKETS

November 27th - December 18th



www.archwoodgreenbarns.com
www.kinlochfarm.com/farm-store

Fauquier County files \$10 million counterclaim against Data Stream

DATA STREAM, from page 3

The 2019 agreement between Data Stream and the county, however, stipulated that the county would have a “first person security interest” in the same collateral. “Data Stream, therefore, promised to give the county a security interest that it knew it was legally incapable of giving,” the county’s filing claims. The county also alleges that, in the summer of 2019, Data Stream knowingly lied about the amount and terms of the line of credit with Bank of America.

Data Stream also lied in June 2019 about its revenue from the previous year, the county claims. A financial statement submitted by Data Stream at the time showed that the company’s gross revenues totaled \$9.14 million in 2018. An application from Data Stream to the Federal Communications Commission, however, stated that the company’s revenues were \$8.29 million in 2018, according to the county. “Data Stream, therefore, overstated [to the county] its gross revenue by ... approximately 10%,” the Aug. 26 filing alleges.

Other lawsuits against Data Stream

The Bank of America line of credit was itself recently subject to litigation. Two days before Data Stream sued Fauquier County, Bank of America sued Data Stream, claiming that the company had defaulted on at least \$511,000. Lee personally guaranteed the company’s line of credit, according to the bank. The case has yet to be resolved.

As the *Fauquier Times* has previously reported, documents attached to the Bank of America case show that Data Stream was allegedly experiencing financial difficulties while county officials were pressing the company about “deficiencies” in its service to Fauquier customers. On Jan. 26, 2021, about three months before county officials sent the first formal complaint to Data Stream, the bank agreed to extend the repayment deadline for the line of credit until March 4, 2021. On May 3, 2021, the deadline was again extended, this time to Nov. 15, 2021. The bank sent an “additional notice of default” to Data Stream on April 28, 2022. The dispute with the county escalated in the two following months, according to public documents, and culminated with Data Stream’s June 28, 2022, lawsuit.

Another lawsuit filed against Data Stream has also woven its way into the Fauquier County case. It has not been previously reported.

On Feb. 5, 2021, Cliff Padgett, also of Florida, filed a lawsuit against a company which he sold to Lee in May 2019, four months before Data Stream signed the agreement with Fauquier County. As part of the 2019 sale, Lee agreed to hire Padgett for at least three years and pay Padgett a salary and benefits totaling \$10,700 per month and reimburse Padgett for any expenses he incurred on behalf of Lee’s companies, according to documents

attached to the suit. Lee also agreed to take on any debts that Padgett’s company had previously incurred, though public records do not indicate whether or not the company had existing debt when Lee purchased it.

Padgett is listed as the person “responsible for Data Stream civil construction of a tower site” in a June 17, 2019, memo from Data Stream to Fauquier County.

In October 2020, Lee’s business entity stopped paying Padgett his agreed-upon salary and refused to reimburse him for expenses totaling more than \$24,000, Padgett claimed in his lawsuit. Padgett and Lee settled the case in February 2022 for an undisclosed financial sum.

In its Aug. 26 filing, the county contends that Data Stream failed to disclose its agreement with Padgett during the discussions that led to the September 2019 agreement with Fauquier County. “Data Stream identified neither this long-term employment contract nor its assumption of [Padgett’s former company’s] liabilities on the financial statements it provided to the county” in 2019, the lawsuit says.

‘Failure to perform’

County officials have claimed publicly for months that Data Stream had failed broadly to provide adequate customer service to existing and potential customers, allegations that are repeated in the Aug. 26 counterclaim. The filing also alleges that customers, and “even members of the board of supervisors who are themselves Data Stream subscribers,” have complained of “consistent service disruptions that can last for days or even weeks.”

“Data Stream’s failure to perform is unsurprising in light of the fact that the financial incentive structure contemplated by the [2019] MOU was built on misrepresentations by Data Stream,” the county claims.

Documents attached to the Aug. 26 filing also provide new details about the level of service Data Stream indicated in 2019 it would provide if contracted for the broadband initiative.

For instance, a “deployment plan” submitted by Data Stream to the county on June 17, 2019, indicated that the company’s “goal” was “to reach 90% of the county’s population,” or about 20,000 households, utilizing at least 25 communications towers. The document also claimed that Data Stream had plans for “redundancy” networks that would ensure “99.99% uptime” for its customers.

A table included in the “deployment plan” indicates that each tower location could serve hundreds of subscribers. Within one year, the document claimed, more than 15,000 households would have the option to subscribe to internet service through Data Stream. Another document indicated that Data Stream expected to sign up about 3,000 customers through the deployment of the first seven towers in the network.

See **DATA STREAM**, page 13

HELP the MUSIC!

ANNUAL TAG DAY SEPT 10

COMING TO YOUR NEIGHBORHOOD

IF WE MISS YOU, LOOK FOR A TAG ON YOUR DOOR TO DONATE ONLINE OR BY MAIL

All Proceeds Directly Help the Music Students at FHS, LHS, & KRHS

For More Information:
www.FauquierMusic.net
www.lhs-band.com
www.kettlerunband.org

Andrea Ferrero
Orthopedic patient

Today a new knee keeps Andrea moving.

Take our free joint pain assessment at
FauquierHealth.org/Joint

To learn more about joint replacement surgery,
 call **540.316.2696**

Scan to watch
 Andrea's story

FAUQUIER HEALTH

Enhanced cleaning, mask requirements
 and social distancing to help keep you safe.

County supervisors will appoint Kevin Carter to Center District seat

CARTER, from page 1

Carter said he does not have a specific agenda for his time on the county board beyond a broad goal of promoting business-friendly policies. "I've never been a single-issue person," he said, "so I really did sign up for this with an open heart, with the mindset that I need to consider all sides and all issues." He said that he would like to emulate his predecessor's approach to governing. "I like the way Chris did his job. I have a lot of respect for him," he said.

He also wants to act as a mediator between the county and the town of Warrenton, which makes up the bulk of the Center District constituency. As a town council member, he has had an "outstanding relationship with everyone on the board of supervisors," he said. The town and county, he acknowledged, "have competing interests, so we're going to have disagreements. ... But that doesn't need to be translated into a poor relationship. You can disagree without being disagreeable."

Data center and boundary proposals

Carter will leave behind a council that has come under intense scrutiny from activist groups, especially concerning last year's passage of the town's comprehensive plan, Amazon Web Services' current application to build a data center in an industrial-zoned area, and the council's years-long efforts to expand the town boundaries.

By leaving the council, Carter will give up any say on the Amazon application process, which is a town zoning matter. The transmission lines that Dominion Energy says would be necessary to build to power the facility are under the jurisdiction of the State Corporation Commission.

The Amazon application is still in front of the town planning com-

mission, and Carter declined to comment in detail on the application since it has not yet been brought to the council. But he said that a sober, fact-based discussion should take place around the proposal. "That just needs to continue to be vetted out," he said of the Amazon proposal. "That process is going to continue to happen as it should with a series of public hearings."

He added, "I have the upmost trust that [the council] will do right by their constituents."

Carter said that he does not regret his vote last year to pass a zoning ordinance text amendment allowing the town council to consider data center applications in industrial-zoned areas. "It's not kind of a free license," he said, noting that the amendment did not, in any circumstance, allow construction of any data centers without public hearings and a council vote. And, he said, the town's ordinance is stricter than the county's.

On the boundary line adjustment proposal, which similarly has been the subject of criticism and speculation from activist groups, Carter again urged calm. "The residents of the town should have the opportunity to have some say in how [water and sewer] services are being used and in development around the town," he said, emphasizing that negotiations with the county are in the "very early stages."

As a supervisor, Carter will have a vote on any final boundary line adjustment proposal if negotiations progress to that point by the end of 2023, but he emphasized that he does not have a "foregone conclusion on where I would vote on this." He called it the "town council's responsibility" to consider boundary adjustments periodically, describing the current proposal as "worthy of discussion."

Reach Coy Ferrell at cferrell@fauquier.com

Fauquier County files \$10 million counterclaim against Data Stream

DATA STREAM, from page 7

Data Stream has never had more than 629 subscribers in Fauquier County, however. "This represents less than 25% of the total subscribers Data Stream told the county it anticipated being able to serve through just the deployment of the initial seven towers described in the [September 2019] MOU," the Aug. 26 counterclaim says. The Hume tower, for instance, has never had more than 24 subscribers, according to the county, despite indications from Data Stream in 2019 that the company had identified 724 households that could connect to the tower.

"Data Stream," the filing continues, "has made no effort to remedy this shortfall. It has not advertised its services in the county. It has made no effort to obtain additional subscribers."

Residents have also complained that the company "can take days to respond to a request for assistance or simply not respond at all," the county claims, even when a resident is inquiring about purchasing an internet subscription through Data Stream.

"Effectively," the Aug. 26 filing claims, "the [2019] MOU assigned responsibility for the lion's share of capital and operational costs to the county. All Data Stream had to do was provide reliable internet access and customer service to the county's citizens. But it has not done so."

Reach Coy Ferrell at cferrell@fauquier.com

MESSICK'S farm market

MUSIC NIGHT

on the farm

SEPT. 17, 2022 | 5:30PM

Fauquier's very own
MIKE PARKER

AMERICAN IDOL

TICKETS | \$15

scan to purchase tickets!

6025 Catlett Rd. Bealeton Va 22712

Visit our Instagram or Facebook @messicksfarmmarket or our website www.messicksfarmmarket.com for more info

24/7 CARE | ASSISTED LIVING | SECURE MEMORY CARE

HIDDEN SPRINGS

SENIOR LIVING

540-636-2008

CALL TODAY - Put Your Mind at Ease!

973 BUCK MOUNTAIN ROAD BENTONVILLE, VA 22610
HIDDENSPPRINGSSENIORLIVING.COM