

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

JOHN DOE AND JANE DOE NO. 1, et al.,

Plaintiffs,

v.

Case No.: CL21-610

CHARLOTTESVILLE CITY COUNCIL, and
THE CITY OF CHARLOTTESVILLE,

Defendants.

**DEFENDANTS' DEMURRER TO THE PLAINTIFFS' COMPLAINT FOR
DECLARATORY JUDGMENT**

COME NOW the City of Charlottesville and the Charlottesville City Council (together, "City" or "Defendants"), by counsel, and submit their Demurrer to Plaintiffs' Complaint for Declaratory Judgment ("Complaint"). The City submits that the Complaint is not sufficient in law and ought not to be prosecuted, on the following grounds:

DEMURRER

I. Plaintiffs have no right of action against the City, as to any of Counts I-IV.

1. The General Assembly has not, by statute, authorized a legal action against either of the Defendants to enforce the statutory provisions set forth within Virginia Code Title 15, Article 3.

2. Plaintiffs have no express right of action under Virginia Code §15.2-2223, or any provision of Title 15, Article 3, to challenge the sufficiency of the City's Comprehensive Plan. Nothing in the plain language of any of the statutory provisions within Title 15, Article 3 supplies any of the Plaintiffs an implied right of action against the Defendants.

3. The Virginia Supreme Court's holding in *Town of Jonesville v. Powell Valley*, 254 Va. 70 (1997), does not apply to the circumstances that are the subject of this Complaint.

FILED

4/7/22 (Date & Time) 2:55pm

City of Charlottesville
Circuit Court Clerk's Office
Lizelle A. Dugger, Clerk

By  Deputy Clerk

Jonesville involved a challenge to a locality's newly-enacted zoning ordinance, brought by a landowner who was denied a building permit in derogation of a claimed vested right.

4. None of the Plaintiffs asserts a claim that the City has acted in derogation of a cognizable legal, vested right in their property. No property owners have any vested property right in the continuation of any prior Comprehensive Plan's future land use categorization(s).

5. The legal consequences of the Comprehensive Plan are as specified within Virginia Code §15.2-2232; none of those legal consequences involves any of the Plaintiffs' interests alleged within ¶¶1 through 7 of the Complaint.

II. Count I (alleging the Comprehensive Plan is void ab initio because it is not general in nature) fails to state a claim against the City

1. Count 1 of the Complaint alleges that the Defendants exceeded their authority by adopting a Comprehensive Plan that is specific with respect to "zoning classification", and that designates "new zoning classifications" for City parcels.

2. On its face the Comprehensive Plan identifies land use categories (including "general residential", "medium intensity residential", and "higher intensity residential"), consistent with state enabling legislation authorizing the City to *designate* areas for various types of residential use. Virginia Code §15.2-2223(C)(1).

3. The land use categories identified within the Comprehensive Plan are also, on their face, consistent with the state mandate that the City shall include the *designation* of areas and implementation of measures for the construction of affordable housing. Virginia Code §15.2-2223(D).

4. In connection with its statutory references to designation of areas, the General Assembly has not prescribed any mode or manner for executing such designations. In the

absence of such prescriptions, the City is free to choose the manner in which it designates areas to be planned for various residential or other uses within the Comprehensive Plan.

5. The regulatory provisions that legally restrict the use of any of the Plaintiffs' individual parcels are determined by each parcel's zoning classification, a matter that is designated on a different map that is a component of the zoning ordinance, *see* City Code §34-1 and Virginia Code §15.2-2285(A). The adoption of the Comprehensive Plan *did not* and *cannot* change the zoning district classification of any of the Plaintiffs' properties, as set forth on the map referenced within City Code §34-1.

III. Count III (alleging that the public hearing notice failed to satisfy requirements of Virginia Code §15.2-2204) fails to state a claim against the Defendants

1. Virginia Code §15.2-2204(A) requires a descriptive summary of comprehensive plan amendments, with reference to a place where an interested citizen may examine the "proposed action". The words "proposed action" simply refer to what's being proposed—not whether a locality will take a vote on a particular date.

2. On its face, the notice of public hearing set forth in Complaint ¶20 gives notice to the public that there will be a public hearing, and correctly summarizes the proposed action as being an "update". The plain meaning of the word "update" effectively communicates an intention to amend existing provisions.

3. Contrary to the allegations in Complaint ¶21 (ii), Virginia Code §15.2-2204(A) does not require a summary of each and every "policy" to be adopted. The public hearing notice set forth within Complaint ¶20 does, in fact, refer to the place or places at which the proposed plan or amendments could be examined.

IV. Count IV (alleging that the failure to add new transportation facilities within the City of Charlottesville renders the Comprehensive Plan void ab initio) fails to state a claim against the Defendants

1. Nothing in the plain wording of Virginia Code §15.2-2223 manifests an intention by the General Assembly to mandate that every Comprehensive Plan must introduce new or expanded road improvements (public streets or highways) to support an increase in density or intensity of use contemplated by the future land use map designations.

2. Virginia Code §15.2-2223(A) merely states that a general or approximate location shall be designated for “any” road or transportation improvement shown on the plan. The General Assembly requires this, not as a means of mandating new public facilities, but simply to regulate their location and extent.

3. The only person(s) who incur legal consequences as a result of the adoption of a Comprehensive Plan are the Defendants. Once a Comprehensive Plan is adopted “*no new street... whether publicly or privately owned, shall be constructed, established or authorized*” until the Planning Commission certifies that the facility is in accordance with the Comprehensive Plan. See Virginia Code §15.2-2232 (Legal status of plan).

4. If the General Assembly has not expressly mandated any particular mode or manner of determining when, or if, new transportation facilities are required in connection with future land uses contemplated within the City, then the City is free to determine those matters for itself.

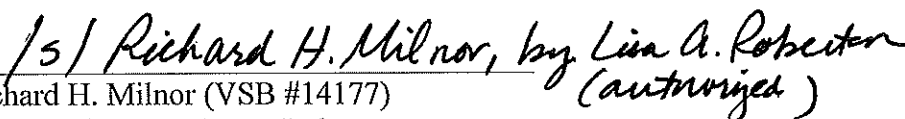
Respectfully Submitted,

CITY OF CHARLOTTESVILLE and
CHARLOTTESVILLE CITY COUNCIL,

By Counsel:



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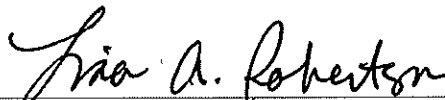


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CERTIFICATE OF SERVICE

I hereby certify that, on April 7, 2022, a paper copy of the foregoing document was hand-delivered to the Plaintiffs' counsel at the address given below:

Michael E. Derdeyn, Esq. and Marc A. Peritz, Esq.
FLORA PETTIT PC
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Lisa A. Robertson