

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
BOARD OF SUPERVISORS OF THE
COUNTY OF ALBEMARLE, VIRGINIA,
and
COUNTY OF ALBEMARLE, VIRGINIA,
a political subdivision of the Commonwealth
of Virginia,

Plaintiffs,

v.

Case No. CL17000203-00

CITY COUNCIL OF THE CITY OF
CHARLOTTESVILLE, VIRGINIA,
and
CITY OF CHARLOTTESVILLE,
VIRGINIA,
and
MAURICE JONES,

Defendants.

ANSWER

COME NOW your defendants, City Council of the City of Charlottesville, Virginia (the “Council”), and City of Charlottesville, Virginia (the “City”), by counsel, and for Answer to the Complaint heretofore filed against them say as follows:

1. The allegations contained in Paragraph 1 of the Complaint are admitted and that the new Ragged Mountain Reservoir is located on land owned by the City within five (5) miles of the City.
2. Defendants admit the allegations contained in the first sentence of Paragraph 2. Defendants deny the remainder of the allegations contained in Paragraph 2.
3. The allegations contained in Paragraph 3 of the Complaint are admitted.
4. The allegations contained in Paragraph 4 of the Complaint are admitted.
5. The allegations contained in Paragraph 5 of the Complaint are admitted.

6. The allegations contained in Paragraph 6 of the Complaint are admitted.
7. The allegations contained in Paragraph 7 of the Complaint are admitted.
8. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and call for strict proof thereof. The City admits that it owns a 980 acre tract of land on which the Ragged Mountain Reservoir is located and that it is within five (5) miles of the City.
9. The allegations contained in Paragraph 9 of the Complaint are admitted and that the Parcel is within five (5) miles of the City.
10. The allegations contained in Paragraph 10 of the Complaint are admitted, and Defendants state that the Rivanna Water & Sewer Authority (the "Authority") is a separate public body politic under Virginia law. The summary of agreements and deeds in Paragraph 10 of the Complaint omits various provisions of the agreements, and all of the referenced agreements, deeds, and leases speak for themselves.
11. Defendants incorporate and reallege their responses to Paragraphs 1 through 10 above as if fully set forth herein.
12. The allegations contained in Paragraph 12 of the Complaint are denied.
13. In response to the allegations contained in Paragraph 13, Defendants state that the Albemarle County Code speaks for itself, and to the extent that the allegations contained in Paragraph 13 conflict with the Albemarle County Code or are in excess of or bear no rational relationship to enabling legislation relied on by the County, Defendants deny the allegations.
14. In response to the allegations contained in Paragraph 14, Defendants state that the Albemarle County Code section alleged speaks for itself; otherwise, denied.

15. In response to the allegations contained in Paragraph 15, Defendants state that the Albemarle County Code section alleged speaks for itself; otherwise, denied.
16. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and call for strict proof thereof.
17. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and call for strict proof thereof.
18. The allegations contained in the first sentence of Paragraph 18 of the Complaint are denied. Defendants admit that Exhibit A is a copy of the Albemarle County Code sections alleged.
19. In response to the allegations contained in the first sentence of Paragraph 19, Defendants admit only that the ordinance speaks for itself; otherwise, denied. Defendants admit the second sentence of Paragraph 19.
20. In response to the allegations contained in Paragraph 20, Defendants admit only that the ordinance speaks for itself.
21. In response to the allegations contained in Paragraph 21, Defendants admit only that the ordinance speaks for itself.
22. In response to the allegations contained in Paragraph 22, Defendants admit only that the Ordinance speaks for itself and state that the ordinance is also enabled and authorized by §§15.2-1800 and 15.2-1806, Va. Code Ann. (1950), as amended.
23. In response to the allegations contained in Paragraph 23, Defendants admit only that §15.2-1725, in its entirety, speaks for itself; otherwise, denied.
24. The allegations contained in Paragraph 24 of the Complaint are denied.
25. The allegations contained in Paragraph 25 of the Complaint are denied.

26. In response to the allegations contained in Paragraph 26, Defendants admit only that the statute speaks for itself; otherwise, denied.

27. The allegations contained in Paragraph 27 of the Complaint are denied.

28. In response to the allegations contained in Paragraph 28, Defendants admit only that the Charter speaks for itself.

29. The allegations contained in Paragraph 29 of the Complaint are denied.

30. In response to the allegations contained in Paragraph 30, it is admitted only that the County can adopt ordinances that “apply to the unincorporated territory of Albemarle County”, but denied as to the remainder of the allegations, including justiciability, contained in Paragraph 30.

31. The allegations contained in Paragraph 31 of the Complaint are denied.

32. The allegations contained in Paragraph 32 of the Complaint are denied.

33. The allegations contained in Paragraph 33 of the Complaint are denied.

34. In response to the allegations contained in Paragraph 34, Defendants admit only that Exhibit C speaks for itself, and to the extent that the allegations contained in Paragraph 34 conflict with the Exhibit C, Defendants deny those allegations.

35. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint and call for strict proof thereof.

36. The allegations contained in Paragraph 36 of the Complaint are denied.

37. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and call for strict proof thereof.

38. The allegations contained in Paragraph 38 of the Complaint are admitted.

39. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint, which only contains a portion of the alleged motion, and call for strict proof thereof.

40. Defendants incorporate and reallege their responses to Paragraphs 1 through 39 above as if fully set forth herein.

41. The allegations contained in Paragraph 41 of the Complaint are denied.

42. The allegations contained in Paragraph 42 of the Complaint are denied.

43. Defendants deny that Plaintiffs are entitled to the relief and any judgment requested in Paragraphs 1-8 on pages 10 and 11 of the Complaint

AFFIRMATIVE DEFENSES

44. Albemarle County Code §11-303 is unlawful, because contrary to the requirements of §15.2-2282, Va. Code Ann. (1950), as amended, it establishes special restrictions for uses at RMNA that do not apply uniformly throughout the Rural Area Zoning District, and because §11-303 is a land use restriction which was not adopted in accordance with the procedures specified by §§15.2-2286(A)(7) and 15.2-2285, Va. Code Ann. (1950), as amended.

45. Albemarle County Code §11-303 is an unlawful water protection ordinance, because it has not been adopted in accordance with the requirements of §§ 62.1-44.15:33 and/or 62.1-44.15:65, Va. Code Ann. (1950), as amended:

46. Contrary to the City's express authority under § 15.2-1725 and §15.2-1806, Va. Code Ann. (1950), as amended, Albemarle County Code §11-303 grants the public the right to engage in certain activities regardless of the City's desires and treats the RMNA as if it were part of the County's park system.

47. Albemarle County's attempt to regulate and, in this case, ban the use of bicycles, horseback riding, and other by right public uses at RMNA is contrary to state law and the specific statute alleged above authorizing the City Ordinance, Charlottesville City Code §§18-21 through 18-27 (Collectively hereinafter referred to as "The City Ordinance").

48. Albemarle County Code §11-303, without any rational basis, differentiates and unlawfully targets bicycling, among other activities, at the City owned RMNA park while, at the same time, on information and belief, (i) allowing biking at Hedgerow Park (owned by the County) immediately adjacent to RMNA and (ii) allowing biking on trails at Panorama Farms immediately adjacent to the South Fork Rivanna Reservoir.

49. Albemarle County Code §11-303, attached to Plaintiffs' Complaint as Exhibit A, is not enabled by §15.2-1200 and/or §15.2-2144, Va. Code Ann. (1950), as amended, contrary to Plaintiffs' allegations in Paragraph 18 of the Complaint.

50. Albemarle County Code §11-303 damages the City and deprives the City of all economically viable use of its property.

51. Albemarle County Code §11-303 exceeds the enabling authority of §§15.2-1200 and 15.2-2144, Va. Code Ann. (1950), as amended, and is illegal and void *ab initio*.

52. Albemarle County Code §11-303 expressly applies to a former upper and lower reservoir which no longer exist. The County has not adopted an ordinance attempting to regulate uses at the current New Ragged Mountain Reservoir.

53. Albemarle County Code §11-303 purports to regulate activities on land such as bicycling on trails in the RMNA, which regulation is not rationally related to the prevention of pollution of water in the reservoir and is in excess of what is enabled by §§15.2-1200 and 15.2-2144, Va. Code Ann. (1950), as amended. The RWSA, by letter dated December 19, 2016, copied

to both the City and Albemarle County Department of Parks & Recreation (attached hereto as Exhibit 1), reports that, in fact, the Authority, which operates and maintains the reservoir (See ¶10 of the Complaint), “does not expect any significant additional water quality impact from recreational uses including dogs, hiking, running, or biking on trails around the reservoir”.

54. The City Ordinance, which pertains to the new Ragged Mountain Reservoir and RMNA, is not inconsistent with the purposes or scope of §15.2-1725, Va. Code Ann. (1950), as amended. In fact, Albemarle County initially admitted to the City in 2015 that there were “no significant conflicts between the two ordinances”.

55. The power to enact an ordinance under §§15.2-1200 (authorizing a county to adopt regulations for the prevention of pollution of the water which is dangerous to the health or lives of persons residing in the county) and 15.2-2144 (authorizing the regulation of public water supplies to prevent the pollution of such water supplies), Va. Code Ann. (1950), as amended, does not enable the County to arbitrarily or capriciously deprive the City of the legitimate use of its property or to use its police powers to regulate City property interests by means not reasonably suited to achieve the goal of the enabling statutes relied on by the County in Paragraph 18 of the Complaint.

56. Contrary to the City’s property and statutory rights, including those under §15.2-1806, Va. Code Ann. (1950), as amended, the Board of Supervisors and the County, in Albemarle County Code §11-303, have usurped and taken jurisdiction over the RMNA. Additionally, County Code §11-303(C), (E), and (G) unlawfully vests and delegates jurisdiction to a third party, the RSA, to determine whether City property can be used for specific purposes.

57. As applied to the facts in this case, Albemarle County Code §11-303 constitutes an unconstitutional exercise of the County’s police power.

58. Albemarle County Code §11-303 is overbroad, vague, both facially and as applied, and denies the City the right to due process and equal protection.

59. Albemarle County Code §11-303 prohibits numerous uses that are not related to water quality and constitutes a *de facto* zoning ordinance that violates the uniformity requirements of §15.2-2282, Va. Code Ann. (1950), as amended, and the procedural requirements for adoption of a zoning ordinance.

60. If the County ordinance is a measure of protection of water quality, then it exceeds state enabling legislation in §§62.1-44.15:33 and/or 62.1-44.15:65, Va. Code Ann. (1950), as amended, because it has not been adopted in accordance with those statutes and equal protection.

COUNTERCLAIM

REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW your defendants, City Council of the City of Charlottesville, Virginia (the “Council”), and City of Charlottesville, Virginia (the “City”), by counsel; and, for their Counterclaim against the Board of Supervisors of the County of Albemarle (“Board of Supervisors”), Virginia and the County of Albemarle, Virginia (the “County”) arising out of the controversy alleged in the Complaint, request, pursuant to §8.01-184, Va. Code Ann. (1950), as amended, a declaratory judgment and injunctive relief pursuant to §8.01-620, Va. Code Ann. (1950), as amended, against the Board of Supervisors and the County; and in support thereof, state as follows:

COUNT 1 – REQUEST FOR DECLARATORY JUDGMENT

61. The Council and City incorporate herein and reaver the allegations in its Answer and Affirmative Defenses.

62. The City owns the entire parcel of land located within five (5) miles of the City, in Albemarle County, referred to as the Ragged Mountain Natural Area (“RMNA”) (980 acres) which, as defined in the applicable City Ordinance §18-23, attached to the Complaint as Exhibit B, includes the new Ragged Mountain Reservoir and the large tract of surrounding City-owned real property identified in the Ordinance. The County of Albemarle has classified the RMNA as being within the RA – Rural Area Zoning District. Pursuant to Albemarle County Code Chapter 18 (Zoning)(“County Zoning Ordinance”), §3.1 and §10.2.1(9), Public Uses, including public parks, are permitted by right.

63. The provisions of the City’s Ordinance are lawful, are expressly authorized by §§15.2-1800 and 15.2-1806, Va. Code Ann. (1950), as amended, and are not in conflict with any lawful County ordinance(s).

64. In addition to §§15.2-1800 and 15.2-1806, Va. Code Ann. (1950), as amended, the City Ordinance (attached as Ex. B to the Complaint) is also expressly enabled by §§15.2-1725 & 15.2-2109, Va. Code Ann. (1950), as amended.

65. The City’s purchase of the RMNA real property for public use outside its boundaries is authorized pursuant to §15.2-1800(C), Va. Code Ann. (1950), as amended, and pursuant to §15.2-1814, Va. Code Ann. (1950), as amended, such acquisition is declared by statute to be for a public use.

66. Consistent with §15.2-1806(B), Va. Code Ann. (1950), as amended, the express purpose of Charlottesville City Code §18-22 is to permit certain recreational uses and activities at the RMNA and insure the preservation and protection of the Ragged Mountain Reservoir public water supply and the surrounding habitat.

67. The City is expressly authorized, pursuant to §15.2-1806(A)(3), Va. Code Ann. (1950), as amended, to operate and control the use of the RMNA through the City Department of Parks & Recreation.

68. The City is further expressly authorized and enabled, as it has done in §18-24 of the City Code, pursuant to §15.2-1806(B), Va. Code Ann. (1950), as amended, and Exhibit C to the Complaint to “establish, conduct and regulate a system of hiking, biking, and horseback riding trails” and may set apart for such use portions of the RMNA for those park uses.

69. Without County objection, the City Council approved shared use trails in October, 2015 and authorized construction of the trails.

70. Despite the express statutory authority granted by §15.2-1806(A)(3), Va. Code Ann. (1950), as amended, enabling the provisions of City Code §18-24(b), which permits biking on designated trails at the City owned RMNA park, the County has now reinforced its position and expressly usurped rights granted to and belonging rightfully to the City, as landowner, by posting the attached Notice (Exhibit 2) at the RMNA specifically banning bicycling and also prohibiting other public use activities other than fishing, hiking, birdwatching, picnicking, canoeing, and boating at the “Ragged Mountain Reservoir”.

71. Prior to this controversy and recent Notice posting, neither the County administration nor Albemarle County Code §11-303 singled out bicycling as a prohibited activity. Albemarle County Code §11-103 and §11-303(D) make it a crime (Class 1 Misdemeanor) for anyone to (1) ride a bike on a dedicated trail within the City’s public park at RMNA or (2) engage in any other public use activity not expressly permitted in §11-303 (limited to fishing, hiking, birdwatching and picnicking) (fires, and certain boating activities, are allowed only with a permit from an entity other than the City).

72. The City's Ordinance is enabled by §15.2-1800 and §15.2-1806, Va. Code Ann. (1950), as amended.

73. The City's Ordinance was endorsed by the County Director of Parks and Recreation as well as the former and current RWSA Director.

COUNT II - INJUNCTIVE RELIEF, Virginia Code §8.01-620

74. The Council and City incorporates herein and re-avers the allegations set forth in its Answer and its Affirmative Defenses.

75. The Council and City have no adequate remedy at law.

76. The Council and City are suffering, and will continue to suffer, irreparable injury because the Board of Supervisors, through its ordinance, and the County, by posting the Notice (Exhibit 2), is purportedly exercising its governmental powers in, and dominion over the RMNA which the City is expressly authorized to use and operate by state statute, and the Board of Supervisors has no power to do so; the Ordinance subverts and denigrates the authority of the City and Council enabled by state statute and prohibits by right public use and uses permitted by statute at the RMNA.


WHEREFORE, Defendants, City Council of the City of Charlottesville, Virginia, and City of Charlottesville, Virginia, by counsel, pray for entry of judgment and injunctive relief in their favor in this declaratory judgment action and against the Board of Supervisors of Albemarle County, Virginia and County of Albemarle, Virginia as follows:

1. A declaration that the City's Ordinance is valid pursuant to §§15.2-1800 and 15.2-1806.
2. A declaration that the Charlottesville City Ordinance is valid pursuant to §§15.2-1725 and 15.2-2109, Va. Code Ann. (1950), as amended.

3. A declaration that the County of Albemarle Code §11-303, which the County claims is enabled by §§15.2-1200 and 15.2-2144, Va. Code Ann. (1950), as amended is arbitrary, capricious, unreasonable, and not rationally related to the prevention of pollution in the reservoir since the separate body politic Authority which operates and maintains the reservoir, under an Agreement which the County and City are part of, has stated that it finds no significant additional water quality impact from recreational uses around the reservoir due to dogs, hiking, running, or biking on trails around the reservoir.
4. A declaration that the City's Ordinance is not inconsistent with Albemarle County Code §11-303 under §15.2-1725, Va. Code Ann. (1950), as amended.
5. A declaration that Albemarle County Code §11-303, regulation of land owned by the City, violates Article I, § 11 of the Virginia Constitution and is unconstitutional, *ultra vires*, invalid, void, and exceeds the enabling authority relied on by the County, and, further, if valid, Albemarle County Code §11-303 continues to damage the City's property and amounts to an inverse condemnation under Article I, §11 of the Virginia Constitution.
6. Award the Council and City reasonable costs and attorneys' fees pursuant to § 25.1-420, Va. Code Ann. (1950, as amended).
7. A declaration that Albemarle County Code §11-303 denies the City due process and equal protection of the law.
8. A permanent injunction ordering the County of Albemarle to repeal Albemarle County Code §11-303.
9. A preliminary and permanent injunction ordering the County to remove the Exhibit 2 Notice and any similar notices from RMNA and enjoining enforcement of Albemarle County Code §11-303.

CITY COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA,
and CITY OF CHARLOTTESVILLE, VIRGINIA,

By Counsel


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Charlottesville City Attorney
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Charlottesville VA 22902
Telephone: 434-970-3131

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was mailed this 7th day of June,

2017, to:

Greg Kamptner, Esquire
John C. Blair, II, Esquire
Richard A. DeLoria, Esquire
Albemarle County Attorney's Office
401 McIntire Road
Charlottesville, VA 22902
Counsel for Plaintiffs





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December 19, 2016

Maurice Jones, City Manager
City of Charlottesville
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902

Re: Ragged Mountain Reservoir

Dear Mr. Jones:

I am sending this letter as requested by your Parks and Recreation Department to address questions related to any impact on water quality in the Ragged Mountain Reservoir which may result from recreational uses in the surrounding Ragged Mountain Natural Area.

The Ragged Mountain Reservoir impounds 1.5 billion gallons of raw water to serve as a water supply for our Observatory Water Treatment Plant. The Observatory Water Treatment Plant produces about 1.5 million gallons per day of drinking water for the urban Charlottesville/Albemarle area. Our staff and consultants monitor the water quality in the Ragged Mountain Reservoir, as well as our other four water supply reservoirs (South Fork Rivanna, Beaver Creek, Totter Creek and Sugar Hollow). The Observatory Water Treatment Plant, as well as our other treatment plants (South Rivanna, North Rivanna, Crozet and Scottsville) have multi-barrier treatment systems designed to remove naturally occurring contaminants including those from humans.

We would not expect any significant additional water quality impact from recreational uses including dogs, hiking, running, or biking on trails around any of our reservoirs. That being said, if dogs are allowed around any of our reservoirs, we would encourage implementation of measures such as having dog waste stations to maintain positive conditions for our staff and the public. We are committed to being responsible stewards of the water resources we manage, and to providing clean, safe, and reliable drinking water.

Please have your staff contact our Water Resource Manager, Andrea Terry, or me if any additional information is desired.

Sincerely,

William I. Mawyer, Jr., P.E.
Executive Director

cc: Brian Daly, City of Charlottesville, Department of Parks and Recreation
Bob Crickenberger, Albemarle County, Department of Parks and Recreation



Ragged Mountain RESERVOIR

NOTICE OF COUNTY ORDINANCE

AUTHORIZED ACTIVITIES

Only the following activities are authorized
at Ragged Mountain Reservoir :

FISHING
HIKING

BIRDWATCHING

PICNICKING
CANOEING
BOATING

PROHIBITED ACTIVITIES

Any other activities (including bicycling)
at Ragged Mountain Reservoir are prohibited
by Albemarle County Code : 11-303

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and
CITY OF CHARLOTTESVILLE,
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MAURICE JONES,

Defendants.

MOTION TO DROP MAURICE JONES

COME NOW your defendants, City Council of the City of Charlottesville, Virginia, (“City Council”) City of Charlottesville, Virginia, (“City”) and Maurice Jones, by counsel, and submit a Motion to Drop Maurice Jones pursuant to Virginia Code § 8.01-5 and state as follows:

1. The Plaintiffs have joined Maurice Jones in the lawsuit that is presently before the Court.
2. Maurice Jones is the City Manager for the City of Charlottesville.
3. The Complaint fails to allege facts that support independent liability against Maurice Jones for his actions.
4. The only mention of Maurice Jones in the Complaint is when it alleges that he is the person who supervises and manages the employees of the City, including the City’s Parks and Recreation Department. According to the Complaint, the City’s Parks and Recreation Department

is encouraging members to ride bicycles on the trails in violation of plaintiffs' ordinance (Complaint ¶ 36.)

5. There is no allegation that Maurice Jones is in fact taking any action to require the City's Parks and Recreation Department to encourage riding bikes on the trail.

6. The Complaint's allegations are focused on the City and City Council and any relief granted to Plaintiffs would be binding on all employees of the City, including Maurice Jones and the employees that he supervises and manages.

7. If the City or City Council is bound by either a preliminary injunction or permanent injunction as a result of this lawsuit, there is no indication or allegation that Maurice Jones will not abide by the Court's restrictions and rulings.

8. In fact, according to the organization chart attached as *Exhibit A*, the City Manager is under the control of City Council.

9. As a result, Maurice Jones, individually, is an improper party for this suit and, accordingly, he should be dropped.

10. The Virginia Code provides that misjoinder of parties is resolved by a Motion to Drop by stating that "[n]o action or suit shall abate or be defeated by the nonjoinder or misjoinder of parties, plaintiff or defendant, but whenever such nonjoinder or misjoinder shall be made to appear by affidavit or otherwise, new parties may be added and parties misjoined may be dropped by order of the court at any time as the ends of justice may require." Va. Code Ann. § 8.01-5 (1950, as amended).

WHEREFORE, your defendants, City Council of the City of Charlottesville, Virginia, City of Charlottesville, Virginia, and Maurice Jones, by counsel, move this Court to enter an Order granting the Motion to Drop Maurice Jones from the case.

CITY COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA,
CITY OF CHARLOTTESVILLE, VIRGINIA, and
MAURICE JONES

By Counsel



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CERTIFICATE

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Albemarle County Attorney's Office
401 McIntire Road
Charlottesville, VA 22902
Counsel for Plaintiffs



CITY OF CHARLOTTESVILLE, VIRGINIA

ORGANIZATION CHART CITY OF CHARLOTTESVILLE

