

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

G. EDWARD WHITE, *et al.*,

Plaintiffs,

v.

CHARLOTTESVILLE CITY COUNCIL, *et al.*,

Defendants.

Case No.: CL24-25

FILED
3/15/24 @ 10:35 AM
(Date & Time)

City of Charlottesville
Circuit Court Clerk's Office
Lizette A. Dugger, Clerk
By [Signature]
Deputy Clerk

MOTION CRAVING OYER

Defendants Charlottesville City Council (“City Council”), City of Charlottesville (the “City”), and City of Charlottesville Planning Commission (the “Planning Commission” and together with the City Council and the City, the “Defendants”), respectfully move for entry of an Order Craving Oyer. This Motion requests that the Court accept into the record eight specific documents referenced in the Complaint and constituting key parts of the legislative record for this Court’s efficient consideration of Defendants’ Demurrer to the Complaint.¹

This Motion is limited to eight documents—all of which were submitted to, and considered by, City Council during the legislative review process of the challenged new Development Code and Zoning Ordinance (the “NZO”) and Zoning Map. These specific documents are either referenced in the Complaint or contradict the allegations in the Complaint.

¹ This Motion is filed for the limited purpose of streamlining the Court’s review by having those key excerpts from the legislative record available to the Court during its consideration of Defendants’ Demurrer. Defendants reserve their right to supplement this Motion to request that the full legislative record, including all documents related to the City Council’s adoption of the 2021 Comprehensive Plan and the NZO and updated Zoning Map, be made a part of the Court’s record in this case.

I. THE LAW OF CRAVING OYER

“[T]he motion craving *oyer* has been, since the early days of the common law, a remedy afforded to a litigant who has been sued on a claim based upon a written document mentioned in a claimant’s pleading but not made a part of the record.” *Byrne v. City of Alexandria*, 298 Va. 694, 700 (2020). The Supreme Court of Virginia stated, “a litigant has no right to put blinkers on the court and attempt to restrict its vision to only such parts of the record as the litigant thinks tend to support his view. When a court is asked to make a ruling upon any paper or record, it is its duty to require the pleader to produce all material parts.” *Culpepper Nat’l Bank v. Morris*, 168 Va. 379, 382-23 (1937).

II. THE ALLEGATIONS IN THE COMPLAINT

Plaintiffs’ Complaint alleges procedural and substantive errors by the City Council in adopting the 2021 Comprehensive Plan and the December 18, 2023 updated Development Code and Zoning Map (the “NZO”). For example, the Complaint argues that “City Council failed to conduct any studies about the impact of the NZO on the City’s transportation, schools, water, sewer, public services or infrastructure[.]” Compl., p. 2. The Complaint also argues that “[r]esidents are being harmed and will continue to be harmed by City Council’s failure to consider necessary infrastructure improvements to address the increased density due to the NZO . . . [and] by the failure to . . . address off and on-street parking and traffic congestion due to increased population and development density[.]” *Id.* at ¶¶ 22-23; *see also id.* at ¶¶ 34-37 (transportation); *id.* at ¶¶ 53-57 (impact of density on utilities such as “stormwater management, water, sanitary sewer, parking, traffic, transportation, or recreational resources”); *id.* at ¶¶ 89-92 (same).

These allegations are put into context and contradicted by the documents in the legislative record and the documents related to the City Council’s action on both the 2021 Comprehensive

Plan and the NZO. Those documents demonstrate that the City did, in fact, consider the impact of added density on utilities and transportation, among other things raised by the Plaintiffs, including density generally—for which the City commissioned several studies which demonstrate that Charlottesville’s population and density would increase gradually in response to the NZO. Accordingly, these documents should be accepted by the Court as part of the record and considered when it rules on the Defendants’ Demurrer.

III. MOTIONS CRAVING OYER ARE APPROPRIATE FOR CASES CHALLENGING LEGISLATIVE LAND USE DECISIONS

In the context of judicial review of legislative zoning decisions, the Supreme Court has held that including the legislative record pursuant to a Motion Craving Oyer is appropriate in declaratory judgment actions challenging a governing body’s decision in a land use matter. In *Byrne v. City of Alexandria*, the Supreme Court affirmed the decision of the trial court to sustain a demurrer after granting a motion craving oyer that resulted in the entire legislative record regarding the zoning decision being considered by the court. 298 Va. at 702. Similarly, in *EMAC, LLC v. Cnty. of Hanover*, 291 Va. 13 (2016), the Court observed that documents in the legislative record that come in as the result of a motion craving oyer can be considered by a court when ruling on a demurrer.

We have held that documents brought into a case as a result of a motion craving oyer are incorporated into the pleadings and may be used to “amplif[y]” the facts alleged in a complaint when a court decides whether to sustain or overrule a demurrer. . . . Furthermore, “a court considering a demurrer may ignore a party’s factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings.”

EMAC, LLC, 291 Va. at 21 (first alteration in original) (internal citations omitted); *accord Resk v. Roanoke Cnty.*, 73 Va. Cir. 272, 273 (Roanoke County Cir. Ct. 2007) (granting motion craving oyer as to documents in the legislative record showing “what the Board considered and the process

that the Board went through in making its decision to adopt the ordinance[,]” and holding “the role of the Court in this case is to decide whether the Board, as the legislative body, complied with the law when it passed the ordinance that rezoned the land and granted the special use permit[,] . . . [t]he Court is required to review how the Board went about making its decision, not the wisdom or appropriateness of that decision.”); *see also Hartley v. Bd of Supervisors*, No. 1298-22-2, 2024 Va. App. LEXIS 69, *14-15 (Va. Ct. App. Feb. 13, 2024) (unpub.) (“At this [demurrer] stage, we may also consider any exhibits included in the pleadings, including the legislative record brought in by the motion craving over.”).

IV. THE EIGHT KEY DOCUMENTS

In order to review how the City Council went about making its decision and the validity of the claims asserted in Plaintiffs’ Complaint, the Court should consider the documents constituting the legislative record regarding the adoption of the 2021 Comprehensive Plan and the NZO and Zoning Map.² The eight documents that are referenced in the Demurrer to address specific allegations in the Complaint include:

- **Demurrer Exhibit 2: Excerpts from the December 18, 2023 City Council Agenda Packet**, which includes the City’s consideration of parking minimums in the proposed zoning ordinance and the amendments to the City’s Development Code as adopted in the NZO, including the City Council’s formal adoption of those amendments.
- **Demurrer Exhibit 3: Excerpts from the March 2021 Charlottesville Affordable Housing Plan**, which identifies a need for more affordable housing in the Charlottesville community and proposes strategies for meeting that need.

² Alternatively, Defendants ask the Court to take judicial notice of these documents excerpted from the legislative record, pursuant to Rule 2:201, which states that “[a] court may take judicial notice of a factual matter not subject to reasonable dispute in that it is either (1) common knowledge or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 2:201(a). In addition, “[j]udicial notice may be taken at any stage of the proceeding.” Rule 2:202(b).

- **Demurrer Exhibit 4: Excerpts from the 2021 Comprehensive Plan**, which contemplates increased density as a proposed solution for an affordable housing crisis, and proposes strategies for implementing those changes and the potential impact on public resources such as utilities and transportation.
- **Demurrer Exhibit 5: Excerpts from the August 2022 City of Charlottesville City of Charlottesville Inclusionary Zoning Analysis**, which considers the potential population change and density that could result from the proposed zoning ordinance.
- **Demurrer Exhibit 6: Excerpts from the February 3, 2023 Zoning Diagnostic and Approach Document**, which include proposals to achieve more affordable housing in the Charlottesville community and that address the potential impact of increased density on public resources such as utilities and transportation.
- **Demurrer Exhibit 7: Excerpts from the July 2023 City of Charlottesville Inclusionary Zoning Feasibility Analysis, Zoning Rate of Change Analysis**, which considers the number of available parcels that would potentially be sold for infill or redevelopment under the proposed zoning ordinance.
- **Demurrer Exhibit 8: July 7, 2023 Infrastructure Capacity Memorandum**, which includes materials that evaluate, and propose solutions to address the potential impact of increased density on public resources such as utilities and transportation.
- **Demurrer Exhibit 9: Email Correspondence between the City and VDOT dated November 29, 2023 and December 18, 2023**, in which VDOT stated that “[t]he City must determine whether its proposed rezoning falls under the requirements of Sec. 15.2-2222.1(B).”

Defendants have filed a resource notebook with the eight specific documents for the Court’s ease of reference.³

V. CONCLUSION

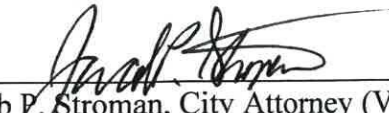
WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court grant their Motion Craving Oyer and consider the eight documents as part of the pleadings.

³ The eight specific documents that are the subject of this Motion are all available on the City’s website. For purposes of streamlining the Court’s review, only the relevant portions of those documents are attached to this Motion and the Defendants’ Demurrer. The full documents are available online at the URL provided on the exhibit cover pages.

Respectfully submitted,

CHARLOTTESVILLE CITY COUNCIL,
CITY OF CHARLOTTESVILLE, AND
CITY OF CHARLOTTESVILLE
PLANNING COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2024, the foregoing was sent via U.S. Mail and email to the following counsel of record:

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