

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

PLEA IN BAR

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”), pursuant to Rule 3:8, state as follows in support of their Plea in Bar to the Complaint for Declaratory and Injunctive Relief:

I. INTRODUCTION

Counts I, II, and III of the Complaint challenge the validity of the 2021 Comprehensive Plan. The Complaint asserts procedural defects in City Council’s process adopting the 2021 Comprehensive Plan. The Plaintiffs filed this action on January 16, 2024; more than two years after City Council adopted the 2021 Comprehensive Plan. As reviewed in the Defendants’ Demurrer, no statute provides for a citizen action challenging the adoption of a comprehensive plan. Even if there was such a statute authorizing a right of action, the Complaint comes too late.

By comparison, Virginia Code § 15.2-2285(F) authorizes a right of action to challenge the adoption of a zoning ordinance, but requires any such action be brought within 30 days of the action. Section 15.2-2285(F) does not authorize a right of action to challenge the adoption of a

FILED
3/15/24 @ 10:35
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Lizelle A. Dugger, Clerk
By  Deputy Clerk

comprehensive plan, but it illustrates the need for prompt action in challenging legislative land use actions.

To assert these untimely claims, Plaintiffs tie their challenge of the 2021 Comprehensive Plan to the City Council's December 18, 2023 adoption of a new zoning ordinance (the "NZO"). However, the City Council's adoption of the 2021 Comprehensive Plan (November 15, 2021) and the NZO (December 18, 2023) are two separate legislative acts. In addition, allowing Plaintiffs to lodge a challenge to a locality's comprehensive plan any time after a later zoning amendment or ordinance is adopted, would place localities in an impossible and untenable position. In this case, Plaintiffs cannot bootstrap their challenge to the adoption of the 2021 Comprehensive Plan to the City Council's adoption of the NZO in December 2023. Counts I, II, and III should be dismissed.

II. LEGAL STANDARD

"A plea in bar asserts a single issue, which, if proved, creates a bar to a plaintiff's recovery." *Massenburg v. City of Petersburg*, 298 Va. 212, 216 (2019). "Under modern practice, a plea in bar does not point out the legal insufficiency of allegations but rather demonstrates their irrelevance because of some other dispositive point—usually some affirmative defense such as the statute of limitations, *res judicata*, collateral estoppel by judgment, accord and satisfaction, or statute of frauds." *Cal. Condo Ass'n v. Peterson*, 301 Va. 14, 20 (2022).

III. COUNTS I, II, AND III, WHICH CHALLENGE THE 2021 COMPREHENSIVE PLAN, ARE UNTIMELY.

Counts I, II, and III challenge the adoption of the 2021 Comprehensive Plan. City Council adopted the 2021 Comprehensive Plan on November 15, 2021. City Council subsequently amended and readopted the 2021 Comprehensive Plan on January 17, 2023. The Plaintiffs filed the Complaint on January 16, 2024; more than two years after the City Council's adoption of the 2021 Comprehensive Plan. Even if a statute provided for a right of action to challenge the adoption

of a comprehensive plan (which there is not), the Plaintiffs have waited too long to challenge the adoption of the 2021 Comprehensive Plan.

As set forth in Defendants' Demurrer, there is no constitutional, statutory, or common law right to challenge a governing body's adoption of a comprehensive plan. This Court previously held that there is no private right to challenge the same 2021 Comprehensive Plan that Plaintiffs seek to challenge in this new action. *Doe v. Charlottesville City Council et al.*, Case No. CL21-610 (Sept. 22, 2022 Order).¹

As noted above, § 15.2-2285(F) provides for a right of action to challenge the adoption of a zoning ordinance. Section 15.2-2285(F) requires any such action to be brought within 30 days of the challenged zoning ordinance. Section 15.2-2285(F) does not apply to the adoption of a comprehensive plan. Nevertheless, the 30-day period in § 15.2-2285(F) illustrates the need for prompt action in challenging legislative land use decisions. *See* § 15.2-2285(F) ("Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision."). Such challenges are "purely statutory in nature" and prescribe the time-period in which they must be filed. *Friends of Clark Mountain Found., Inc. v. Bd. of Supervisors*, 242 Va. 16, 21 (1991); *Bd. of Supervisors v. Bd. of Zoning Appeals*, 225 Va. 235, 238 (1983).

Accordingly, even if Plaintiffs could challenge the 2021 Comprehensive Plan, Plaintiffs' challenge is untimely. Count I seeks a declaration that the 2021 Comprehensive Plan "is void for failure to comply with Virginia Code § 15.2-2222.1," and Count II seeks a declaration that the 2021 Comprehensive Plan "is void for failure to comply with Virginia Code § 15.2-2223(B)(1)."

¹ A copy of the September 22, 2022 Order and hearing transcript is attached as **Exhibit 1**.

Compl. pp. 21-22. In Count III, Plaintiffs assert that, because the 2021 Comprehensive Plan is void, the 2013 Comprehensive Plan was in effect when the City Council adopted the NZO. The Plaintiffs argue that, because the NZO does not reasonably consider the 2013 Comprehensive Plan, the NZO is void. In other words, in Counts I and II, Plaintiffs seek a declaration from the Court that the 2021 Comprehensive Plan is void. In Count III, the Plaintiffs base their claim on the premise that the 2021 Comprehensive Plan is void.

The 2021 Comprehensive Plan was adopted “in November of 2021” and subsequently amended and re-enacted on January 17, 2023. *Id.* at ¶ 30-33. This Complaint was not filed until January 16, 2024. Accordingly, even if Plaintiffs’ challenge to the 2021 Comprehensive Plan could be construed as a challenge to a zoning decision under § 15.2-2285(F), Plaintiffs’ challenge comes two years after the November 15, 2021 adoption of the 2021 Comprehensive Plan. Accordingly, Plaintiffs’ challenges to the validity of the 2021 Comprehensive Plan set forth in Counts I, II, and III of the Complaint are time-barred. It follows that Counts I, II, and III should be dismissed.

IV. CONCLUSION

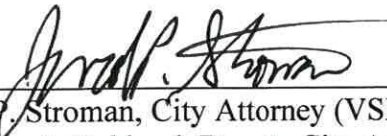
For the foregoing reasons, Defendants respectfully request that the Court sustain their Plea in Bar, dismiss Counts I, II, and III of the Complaint with prejudice, and grant them all other appropriate relief to which they may be entitled.

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Respectfully submitted,

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

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