

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. **CL24-25**
(CLERK'S OFFICE USE ONLY)

Charlottesville

Circuit Court

White, et al.
PLAINTIFF(S)

v./In re:

Charlottesville City Council, et al.
DEFENDANT(S)

I, the undersigned [] plaintiff [] defendant [x] attorney for [x] plaintiff [] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- [] Claim Impleading Third Party Defendant
[] Monetary Damages
[] No Monetary Damages
[] Counterclaim
[] Monetary Damages
[] No Monetary Damages
[] Cross Claim
[] Interpleader
[] Reinstatement (other than divorce or driving privileges)
[] Removal of Case to Federal Court

Business & Contract

- [] Attachment
[] Confessed Judgment
[] Contract Action
[] Contract Specific Performance
[] Detinue
[] Garnishment

Property

- [] Annexation
[] Condemnation
[] Ejectment
[] Encumber/Sell Real Estate
[] Enforce Vendor's Lien
[] Escheatment
[] Establish Boundaries
[] Landlord/Tenant
[] Unlawful Detainer
[] Mechanics Lien
[] Partition
[] Quiet Title
[] Termination of Mineral Rights

Tort

- [] Asbestos Litigation
[] Compromise Settlement
[] Intentional Tort
[] Medical Malpractice
[] Motor Vehicle Tort
[] Product Liability
[] Wrongful Death
[] Other General Tort Liability

ADMINISTRATIVE LAW

- [] Appeal/Judicial Review of Decision of (select one)
[] ABC Board
[] Board of Zoning
[] Compensation Board
[] DMV License Suspension
[] Employee Grievance Decision
[] Employment Commission
[] Local Government
[] Marine Resources Commission
[] School Board
[] Voter Registration
[] Other Administrative Appeal

DOMESTIC/FAMILY

- [] Adoption
[] Adoption - Foreign
[] Adult Protection
[] Annulment
[] Annulment - Counterclaim/Responsive Pleading
[] Child Abuse and Neglect - Unfounded Complaint
[] Civil Contempt
[] Divorce (select one)
[] Complaint - Contested*
[] Complaint - Uncontested*
[] Counterclaim/Responsive Pleading
[] Reinstatement - Custody/Visitation/Support/Equitable Distribution
[] Separate Maintenance
[] Separate Maintenance Counterclaim

WRITS

- [] Certiorari
[] Habeas Corpus
[] Mandamus
[] Prohibition
[] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [] Accounting
[] Aid and Guidance
[] Appointment (select one)
[] Guardian/Conservator
[] Standby Guardian/Conservator
[] Custodian/Successor Custodian (UTMA)
[] Trust (select one)
[] Impress/Declare/Create
[] Reformation
[] Will (select one)
[] Construe
[] Contested

MISCELLANEOUS

- [] Amend Death Certificate
[] Appointment (select one)
[] Church Trustee
[] Conservator of Peace
[] Marriage Celebrant
[] Approval of Transfer of Structured Settlement
[] Bond Forfeiture Appeal
[x] Declaratory Judgment
[] Declare Death
[] Driving Privileges (select one)
[] Reinstatement pursuant to § 46.2-427
[] Restoration - Habitual Offender or 3rd Offense
[] Expungement
[] Firearms Rights - Restoration
[] Forfeiture of Property or Money
[] Freedom of Information
[] Injunction
[] Interdiction
[] Interrogatory
[] Judgment Lien-Bill to Enforce
[] Law Enforcement/Public Official Petition
[] Name Change
[] Referendum Elections
[] Sever Order
[] Taxes (select one)
[] Correct Erroneous State/Local
[] Delinquent
[] Vehicle Confiscation
[] Voting Rights - Restoration
[] Other (please specify)

[] Damages in the amount of \$ are claimed.

01/16/2024

DATE

Michael E. Derdeyn, Esq. and Marc A. Peritz, Esq. / FLORA PETTIT
PRINT NAME

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[x] PLAINTIFF [] DEFENDANT [x] ATTORNEY FOR [] PLAINTIFF [] DEFENDANT

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

G. EDWARD WHITE, SUSAN D. WHITE
ROY VAN DOORN, KRISTI VAN DOORN,
THOMAS J. HILL, Trustee of the Thomas J. Hill Trust,
u/a June 1, 2005, as amended, KEMP P. HILL, Trustee
of the Kemp P. Hill Trust, u/a June 1, 2005, as amended,
JENNY CLAY, MICHAEL BEVIER AND
LILLIAN BEVIER,

Plaintiffs,

v.

Case No.: CL24-25

CHARLOTTESVILLE CITY COUNCIL,
Serve: Jacob Stroman, Esq.
City Attorney
605 E. Main Street
Charlottesville, VA

and

CITY OF CHARLOTTESVILLE,
Serve: Jacob Stroman, Esq.
City Attorney
605 E. Main Street
Charlottesville, VA

and

CITY OF CHARLOTTESVILLE PLANNING COMMISSION,
Serve: Jacob Stroman, Esq.
City Attorney
605 E. Main Street
Charlottesville, VA

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs G. Edward White, Susan D. White, Roy Van Doorn, Kristi Van Doorn, Thomas J. Hill, Trustee of the Thomas J. Hill Trust u/a June 1, 2005, as amended, Kemp Hill, Trustee of the Thomas J. Hill Trust u/a June 1, 2005, as amended, Jenny Clay, Michael Bevier and Lillian Bevier (collectively, "Residents"), by counsel and proceeding pursuant to Virginia Code §§ 8.01-

FILED
1/16/24 e 3:45p
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk
By [Signature]
Deputy Clerk

184, et. seq. and 15.2-2285(F), bring this action seeking a declaration that the zoning ordinance adopted by the Charlottesville City Council (“City Council”) on December 18, 2023 (the “NZO”) is void *ab initio* due to the failure to abide by statutory requirements and is otherwise invalid, and state as follows in support thereof:

INTRODUCTION

As Benjamin Franklin is quoted as saying, “if you fail to plan, you are planning to fail.” That is precisely what City Council has done in drastically upzoning the City of Charlottesville (the “City”) in adopting the NZO, which, among other things, eliminates all single-family residential zoning. The NZO empowers developers to tear down existing houses and replace them by right with 3 dwelling units per lot in the R-A zoning district, 6 dwelling units per lot in the R-B zoning district, and 8 dwelling units per lot in the R-C zoning district. Additional density is available in each of these districts for affordable units. In these districts alone the NZO will permit the by right construction of 62,000 additional housing units, which equates to a population increase of roughly 150,000 people – more than three times the City’s current population. Under the NZO, developers can purchase an unlimited number of residential lots with single family homes on them, raze those homes, and replace them with far larger multiplexes, fundamentally changing the density and nature of the residential neighborhoods.

Despite advocating for this enormous increase in density, 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, among other things. Indeed, the City’s Director of Neighborhood Development Services made clear that no traffic impact analysis has been done when he advised a citizen on June 27, 2022, that traffic analysis was unnecessary “for a plan and zoning that speak to gradual change over a long period of time.” This is consistent with the

comments by two of the City's transportation planners at a September 2023 neighborhood association meeting in which the planners erroneously claimed that the City was exempt from any statutory requirement to conduct traffic impact analyses.

City Council was also misleading about the manner in which it described the scope of the changes. City Council repeatedly represented that the character of existing residential neighborhoods would not be fundamentally changed because the NZO would only permit structures that are "house sized" and "compatible" with the existing neighborhoods. Contrary to those representations, in R-A districts – the lowest density areas in the NZO – the NZO will permit by right on a half-acre lot three structures totaling 9000 square feet each, or 27,000 square feet of total building space. Such structures are not "house sized" within the context of existing structures in the City and having three of them on one lot is hardly compatible with existing neighborhoods.

City Council's authority to enact the NZO is granted by, and subject to, statute. The Virginia Code establishes strict substantive requirements that must be complied with by the City Council before enacting a zoning ordinance. Failure to comply with these requirements renders the ordinance void and invalid. See *Town of Jonesville v. Powell Valley*, 254 Va. 70, 74 (1997) ("Municipalities in Virginia can only exercise those powers expressly or impliedly granted to them *and only in the manner prescribed by the General Assembly*. Failure to abide by the statutory prescriptions for the adoption of an ordinance renders the ordinance void *ab initio*") (emphasis added).

City Council failed to comply with these statutory requirements, thereby rendering the NZO void and otherwise invalid. Among other reasons, the NZO is void because:

- **The Comprehensive Plan upon which it is based is void for failure to comply with statutory requirements.**

- Pursuant to Virginia Code § 15.2-2284, “[z]oning ordinances and districts shall be drawn and applied with reasonable consideration for . . . the comprehensive plan.”
- The Comprehensive Plan is void for failure to comply with statutory requirements, including but not limited to failing to submit the proposed plan to the Virginia Department of Transportation (“VDOT”) for review, as required by Virginia Code 15.2-2222.1.
- Because the Comprehensive Plan is void, the 2013 Comprehensive Plan remains in effect and the NZO failed to give any consideration, much less “reasonable consideration,” to that Comprehensive Plan, in adopting the NZO.
- **City council failed to give “reasonable consideration” to the impact of the NZO on traffic and road congestion, necessary water and sanitary sewer infrastructure, and adequate schools and recreation areas to serve the significant increase in population density as required by Virginia Code §§ 15.2-2283 and 15.2-2284.**

THE RESIDENTS

1. Susan D. White and G. Edward White (the “Whites”) own real property located in the City at 621 Park Street. The Whites purchased their property due to its location in a low-density neighborhood. The Whites’ property and the properties next to them are now located in an R-B zoning district, allowing the by right development of 6 dwelling units per lot, 8 units if the existing structure is preserved and 12 units if the additional units are affordable.

2. The Whites have a direct, pecuniary and substantial interest in the NZO because it will result in higher tax assessments to the Whites’ property due to the increase in density permitted on the property. Moreover, under the NZO, the Whites’ neighbors will also be able to build large multiplex units by right. In addition, the Whites’ property is located in close-proximity to areas designated as CX-3 – which have no density limitations and no requirements for on-site parking, which will necessarily result in increased traffic and parking density in the Whites’ neighborhood.

3. While the neighboring lots on either side of, and across the street from, the Whites are zoned R-B and have the right to construct up to 12 units per lot, the properties immediately

behind the Whites are in an R-A zoning district and will not suffer the same increase in density from the lots on either side or across the street from them.

4. The direct, pecuniary and substantial harm to the Whites set forth hereinabove is different than that suffered by other residents as a result of the NZO.

5. Roy Van Doorn and Kristi Van Doorn (the “Van Doorns”) own real property located in the City at 1522 Rugby Avenue. The Van Doorns purchased their property due to its location in a low-density neighborhood. The Van Doorns’ property and the properties next to them are now located in an R-C zoning district, allowing the by right development of 8 dwelling units per lot, 10 units if the existing structure is preserved and 12 units if the additional units are affordable.

6. The Van Doorns have a direct, pecuniary and substantial interest in the NZO because it will result in higher tax assessments to the Van Doorns’ property due to the increase in density permitted on the property. Moreover, under the NZO, the Van Doorns’ neighbors will also be able to build large multiplex units by right. In addition, the Van Doorns’ property is located in close-proximity to areas designated as CX-3 and NX-3 – which have no density limitations and no requirements for on-site parking, which will necessarily result in increased traffic and parking density in the Van Doorns’ neighborhood.

7. While the neighboring lots on either side of, and across the street from, the Van Doorns are zoned R-C and have the right to construct up to 12 units per lot, the properties immediately behind the Van Doorns are in an R-A zoning district and will not suffer the same increase in density from the lots on either side or across the street from them.

8. The direct, pecuniary and substantial harm to the Van Doorns set forth hereinabove is different than that suffered by other residents as a result of the NZO.

9. Thomas J. Hill, Trustee of the Thomas J. Hill Trust u/a June 1, 2005, as amended, and Kemp Hill, Trustee of the Thomas J. Hill Trust u/a June 1, 2005, as amended (the “Hills”) own real property located in the City at 1719 Mason Lane. The Hills purchased their property due to its location in a low-density neighborhood. The Hills’ property and the properties next to them are now located in an R-C zoning district, allowing the by right development of 8 dwelling units per lot, 10 units if the existing structure is preserved and 12 units if the additional units are affordable.

10. The Hills have a direct, pecuniary and substantial interest in the NZO because it will result in higher tax assessments to their property due to the increase in density permitted on the property. Moreover, under the NZO, the Hills’ neighbors will also be able to build large multiplex units by right. In addition, the Hills’ property is located in close-proximity to areas designated as RX-3 – which have no density limitations and no requirements for on-site parking, which will necessarily result in increased traffic and parking density in the Hills’ neighborhood.

11. While the neighboring lots on the side of, and across the street from, the Hills are zoned R-C and have the right to construct up to 12 units per lot, the properties immediately behind the Hills are in an R-A zoning district and will not suffer the same increase in density from their lots on either side or across the street from them.

12. The direct, pecuniary and substantial harm to the Hills set forth hereinabove is different than that suffered by other residents as a result of the NZO.

13. Jenny Clay (“Clay”) owns real property located in the City at 1511 Rugby Avenue. Clay purchased her property due to its location in a low-density neighborhood. Clay’s property and the properties next to her are now located in an R-C zoning district, allowing the by

right development of 8 dwelling units per lot, 10 units if the existing structure is preserved and 12 units if the additional units are affordable.

14. Clay has a direct, pecuniary and substantial interest in the NZO because it will result in higher tax assessments to Clay's property due to the increase in density permitted on the property. Moreover, under the NZO, Clay's neighbors will also be able to build large multiplex units by right. In addition, Clay's property is located in close-proximity to areas designated as CX-3 and NX-3 – which have no density limitations and no requirements for on-site parking, which will necessarily result in increased traffic and parking density in Clay's neighborhood.

15. While the neighboring lots on either side of, and across the street from, Clay are zoned R-C and have the right to construct up to 12 units per lot, the properties immediately behind Clay are in an R-A zoning district and will not suffer the same increase in density from the lots on either side or across the street from them.

16. The direct, pecuniary and substantial harm to Clay set forth hereinabove is different than that suffered by other residents as a result of the NZO.

17. Michael and Lillian Bevier (the "Beviers") own real property located in the City at 712 Rugby Road. The Beviers purchased their property due to its location in a low-density neighborhood. Their property and the properties next to them are now located in an R-B zoning district, allowing by right development of 6 dwelling units per lot, 8 units if the existing structure is preserved and 12 units if the additional units are affordable.

18. The Beviers have a direct, pecuniary and substantial interest in the NZO because it will result in higher tax assessments to the Beviers' property due to the increase in density permitted on the property. Moreover, under the NZO, the Beviers' neighbors will also be able to build large multiplex units by right. In addition, the Beviers' property is located in close-

proximity to areas designated as RX-3 and RX-5 – which have no density limitations and no requirements for on-site parking, which will necessarily result in increased traffic and parking density in the Bevier’s neighborhood.

19. While the neighboring lots on either side of, and across the street from, the Beviers are zoned R-B and have the right to construct up to 12 units per lot, the properties immediately behind the Beviers are in an R-A zoning district and will not suffer the same increase in density from the lots on either side of them.

20. The direct, pecuniary and substantial harm to the Beviers as set forth hereinabove is different than that suffered by other residents as a result of the NZO.

21. Residents, who wish to remain in lower density areas, are being harmed and will continue to be harmed by increases in property taxes, noise and impact on light and quiet enjoyment. Thus, the increase in density negatively impacts Residents’ use of their own property.

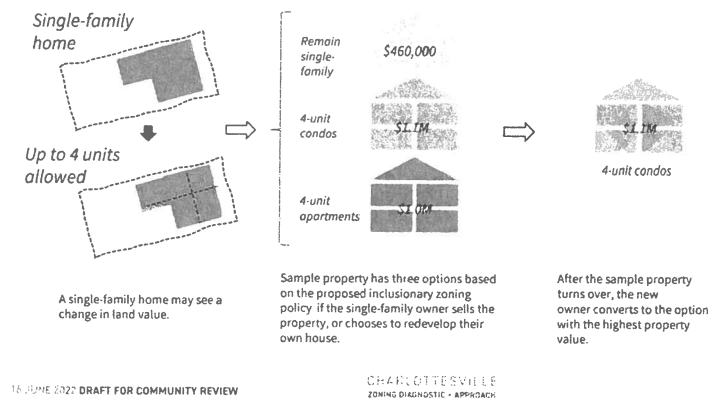
22. Residents are being harmed and will continue to be harmed by City Council’s failure to consider necessary infrastructure improvements to address the increased density due to the NZO.

23. Residents are being harmed and will continue to be harmed by the failure to include residential development requirements to address off and on-street parking and traffic congestion due to the increased population and development density specific to their neighborhoods.

24. By singling out Residents’ neighborhoods for more significant increases in density than in other areas, Residents will suffer particularized harm not applicable to the public generally in the form of increased traffic and parking congestion, intensified storm water runoff

and volume and tree canopy diminution. As a result, Residents’ properties will suffer noise, safety, flooding, as well as a loss of residential quietude that will not be suffered by the public generally.

25. Residents are also being harmed and will continue to be harmed by prohibitively expensive tax assessment increases. The City has conceded that density increases will result in increases in property values – and therefore increases in taxes – as reflected in this graphic from June of 2022:



Thus, Defendants recognize the pecuniary harm that these changes will have on Residents.

26. The increase in property values is already being seen, as evidenced by the listing for sale of 1316 Chesapeake Street – an 892 square foot single family whom with an assessed value of \$277,200, which is being offered for sale at \$499,900. The listing refers potential purchasers to the “new law and build rights” set forth in the NZO.

THE DEFENDANTS

27. The City is a municipal corporation and political subdivision of the Commonwealth of Virginia.

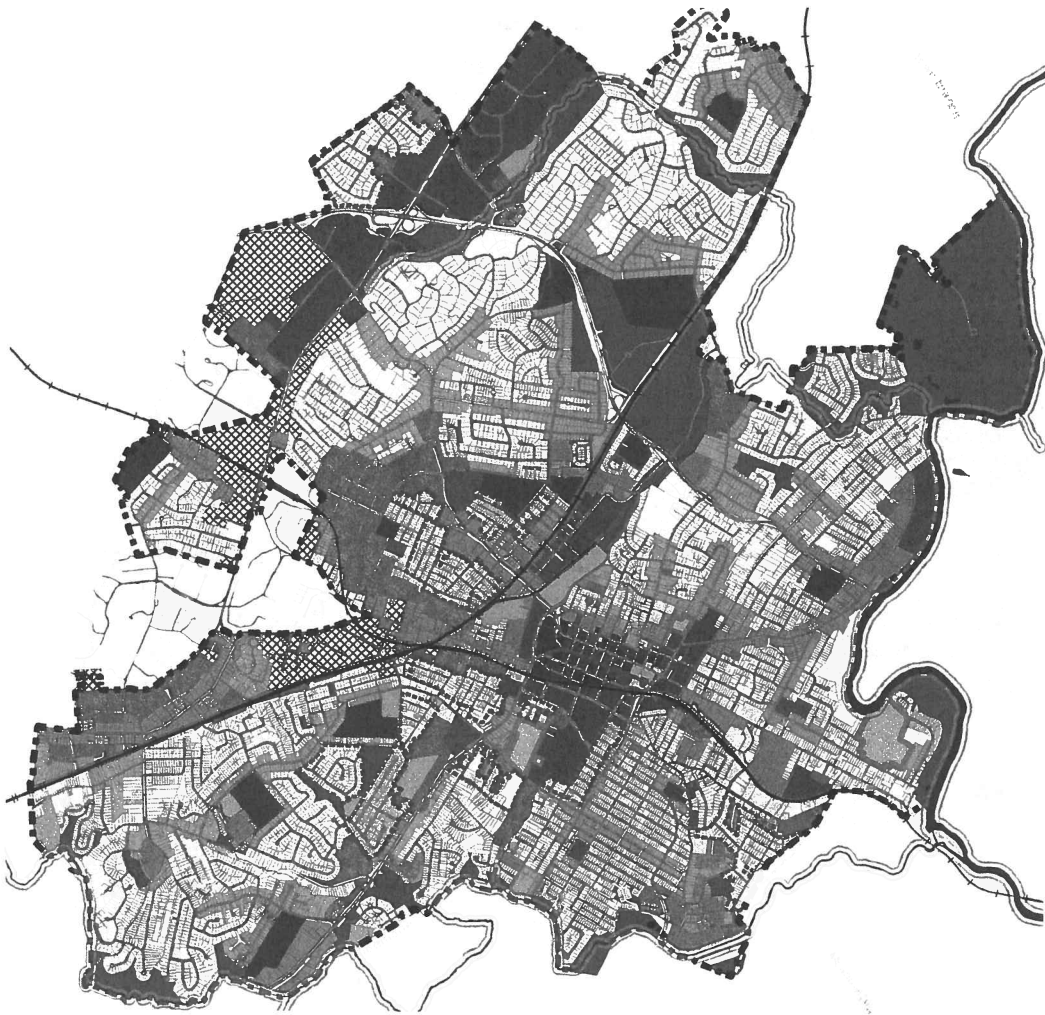
28. City Council is the governing body of the City. Its powers are conferred by the General Assembly of the Commonwealth of Virginia.

29. The City of Charlottesville Planning Commission (the “Planning Commission”) advises City Council and was created according to Virginia Code § 15.2-2210 “to promote the orderly development of [the City] and its environs.”

THE COMPREHENSIVE PLAN IS VOID FOR FAILURE TO COMPLY WITH THE STATUTORY REQUIRMENTS FOR TRANSPORATION PLANNING

30. In January of 2020, the City began a process named “Cville Plans Together,” “which resulted in a new Comprehensive Plan adopted by City Council in November of 2021” (the “2021 Comp Plan”). See December 18, 2023 Ordinance adopting the NZO (**Exhibit A**).

31. The 2021 Comp Plan included a Future Land Use Map (the “FLUM”) that identifies new zoning districts as reflected in the image below:



32. The residential zoning classifications that apply to the various colors on the FLUM are as follows:

Table 2 Land Use Category Descriptions			
RESIDENTIAL			
<i>Limited commercial uses allowed in all residential districts, to be further described in the Zoning Ordinance. Zoning tools will regulate affordability and maximum allowable development for all categories and will consider demolition disincentives, as feasible.</i>			
Description	Form	Height	Use and Affordability
<p>General Residential Allow for additional housing choice within existing residential neighborhoods throughout the city.</p>	Compatible with existing context, including house-sized structures with similar ground floor footprint area and setbacks as surrounding residential structures. Zoning tools will define contextual building form and neighborhood compatibility criteria for development.	Up to 2.5 stories.	Up to 3-unit dwellings including existing single-family splits, accessory dwelling units (ADUs), and new housing infill. Zoning ordinances will consider ways to support townhomes in this category on a site-specific basis. Allow up to 4-unit dwellings if the existing structure is maintained. Allow additional units and height under an affordability bonus program or other zoning mechanism.
<p>General Residential (Sensitive Community Areas) Allow for additional housing choice, and tools to mitigate displacement, within existing residential neighborhoods that have high proportions of populations that may be sensitive to displacement pressures. (Note: The boundaries for these areas should evolve during the zoning update process, as described on page 27.)</p>	Compatible with existing context, including house-sized structures with similar ground floor footprint area and setbacks as surrounding residential structures. Zoning tools will define contextual building form and neighborhood compatibility criteria for development.	Up to 2.5 stories.	Allow 1 unit per lot. (Zoning ordinance to consider support for existing "plexes" - e.g., duplexes - at the base level.) Allow up to 3-unit dwellings if the first unit meets affordability requirements. Allow up to 4-unit dwellings if the existing structure is maintained and at least one affordable unit is provided. Consider allowing additional units and height under a bonus program or other zoning mechanism with greater and deeper affordability than non-sensitive areas.
<p>Medium Intensity Residential Increase opportunities for housing development including affordable housing, along neighborhoods corridors, near community amenities, employment centers, and in neighborhoods that are traditionally less affordable.</p>	Compatible with existing residential and historic neighborhood context. House-sized infill to include structures with similar building height, building width, and side and front yard setbacks as surrounding residential structures. Zoning tools will define building form and neighborhood compatibility criteria for development (e.g., lot coverage, topography, parking, environmental resources, etc.)	Up to 4 stories.	Allow small, "house-sized" multi-unit buildings (up to 12-unit dwellings), accessory dwelling units (ADUs), cottage courts, and rowhouses / townhouses. Utilize a bonus program or other inclusionary zoning mechanism to support affordability.
<p>Higher-Intensity Residential Provide opportunities for higher density, multi-family focused development. Incentivize affordability and increased intensity to meet Affordable Housing Plan goals.</p>	Compatible with existing residential and historic neighborhood context. Highest building heights according to context. Zoning tools will define building form and neighborhood compatibility criteria for development (e.g., lot coverage, topography, parking, environmental resources, etc.)	Up to 5 stories.	Multi-unit housing (13+ units per lot). May include large and/or smaller-scaled buildings. Limited ground floor commercial uses are encouraged. Requirements for affordability to be determined in the inclusionary zoning study, following the adoption of the Comprehensive Plan.

33. On January 17, 2023, City Council "amended and re-enacted" the 2021 Comp Plan to attempt to cure certain defects, including but not limited to the failure of the 2021 Comp

Plan to address strategies to promote manufactured housing as a source of affordable housing, as required by Virginia Code § 15.2-2223.5.

34. Despite providing for a significant upzoning, which will result in significant population increases, the 2021 Comp Plan does not include any transportation infrastructure improvements to support the increased density.

35. Instead, the 2021 Comp Plan merely recycles existing transportation plans and projects that pre-dated any proposed increase in population density. For example, the appendices to the “Transportation” Chapter of the 2021 Comp Plan include (i) the 2015 Bicycle and Pedestrian Master Plan, (ii) the 2016 Streets that Work Plan, and (iii) the previously adopted “Small Areas Plan.”

36. The lack of any new transportation facilities to address the increase in density is underscored by the Transportation Chapter in the 2021 Comp Plan, the first goal of which is to merely “[c]ontinue to implement projects from the City’s Bicycle and Pedestrian Master Plan, Streets that Work Design Guidelines, Safe Routes to School planning and small area plans”

37. The 2021 Comp Plan fails to propose improvements to the City’s road system to accommodate the increase in density. Indeed, the Transportation Narrative attached to the 2021 Comp Plan affirmatively states on page one thereof that “[b]ecause of the built-out nature of the City, constructing new roadways or widening existing roadways are either not viable, palatable, or affordable.”

Statutory Requirements Regarding Transportation

38. There are two mandatory statutory requirements relating to transportation that a municipality must comply with in order to adopt a valid comprehensive plan or valid amendments thereto: (i) pursuant to Virginia Code § 15.2-2222.1 and the corresponding Traffic

Impact Analysis Regulations in 24VAC30-155-30, the municipality “shall submit” the entire plan to VDOT for review and comment “[p]rior to adoption” if the plan, assuming the highest density of potential use, is reasonably anticipated to generate 5,000 additional vehicle trips per day on state highways, and (ii) pursuant to Virginia Code § 15.2-2223(B)(1), the municipality must “develop a transportation plan” that includes “new and expanded transportation facilities that support the planned development.”

39. The City failed to do either of these things. The City failed to submit the 2021 Comp Plan to VDOT for review and comment as required by Virginia Code § 15.2-2222.1 and the applicable Traffic Impact Analysis Regulations set forth in 24VAC30-155-30, which require, among other things, that the City – in addition to providing the entire Plan to VDOT, submit (i) a summary of the proposed amendments to the comprehensive plan, (ii) an overview of the reasoning and purpose for the amendments, including maps and narratives detailing the proposed amendments, (iii) a description of any changes to the planning assumptions associated with the amendments, and (iv) *an assessment of the potential impacts the amendment may have on the local transportation system.* 24VAC30-155-30(B)(2) (emphasis added).

40. The City failed to submit any of this required information to VDOT, despite the fact that the 2021 Comp Plan, assuming the highest density of permissible use, would result in an increase of more than 5,000 vehicle trips per day.

41. By way of example, the 2021 Comp Plan would allow the construction of an additional 62,000 residential units in areas that were previously zoned R-1 and R-2, which areas currently house only approximately 19,000 housing units. This equates to a population increase of roughly 150,000 people. That increase in population alone would result in the generation of at least 5,000 additional vehicle trips per day on state-controlled highways.

42. On December 6, 2022, VDOT alerted the City that the City “must submit a comp plan change to VDOT for review in conformance with subsection A of 15.2-2222.1 of the Code of Virginia and 24VAC30-155-30 (TIA Regulations).” See Email String attached (**Exhibit B**). In response, the City erroneously denied that the 2021 Comp Plan would “substantially affect transportation on state controlled highways” and failed to submit the 2021 Comp Plan to VDOT. Id.

43. The City’s failure to make the required submission to VDOT is attributable, at least in part, to the City’s failure to understand – or its intentional disregard – of its legal obligation to “assess[] [] the potential impacts [the plan] may have on the local transportation system.” Indeed, in its Summer of 2022 Frequently Asked Questions, the City’s outside consultants – in response to the question “How will infrastructure needs be addressed to adjust for increases in intensity of uses?” – noted that:

- Zoning by itself does not change the rate of growth, though the proposed zoning has the potential to redirect some of the region’s growth to areas where we have existing infrastructure, thereby reducing the amount of new infrastructure that may need to be built on the periphery of our region. Over time, as this change occurs, the existing infrastructure planning processes will ensure the City and region are meeting the needs of our residents.

In other words, the City determined that the assessment of the impact of the increase in density on the City’s transportation system would occur in the future – not in connection with the 2021 Comp Plan as required by statute.

44. The City’s Director of Neighborhood Development Services confirmed that the City failed to do any such assessment when he informed a citizen on June 27, 2022 that no traffic

impact analysis has been done because that analysis was unnecessary “for a plan and zoning that speak to gradual change over a long period of time.” See June 27, 2022 Email (**Exhibit C**).

45. The City’s refusal to submit the 2021 Comp Plan to VDOT for review and comment violates the City’s mandatory obligations under § 15.2-2222.1 of the Virginia Code and renders the Plan void *ab initio*.

46. The City also failed to identify in its transportation plan “new and expanded transportation facilities . . . that support the planned development” as required by Virginia Code § 15.2-2223(B)(1). Despite the tremendous increase in density afforded by the 2021 Comp Plan, the Plan failed to propose improvements to the City’s road system – or any other new transportation facilities – to accommodate that density.

47. Although the City submitted the Transportation Chapter of the 2021 Comp Plan to VDOT pursuant to Virginia Code § 15.2-2223(B), the City neglected to submit the entire 2021 Comp Plan to VDOT and failed to disclose that the Plan involved any increase in density. As a result, VDOT did not make a determination that the transportation plan was consistent with the requirement in Virginia Code § 15.2-2223(B)(1) that the plan contain “new and expanded transportation facilities . . . that support the planned development.”

48. Instead, VDOT merely reviewed the transportation portion of the 2021 Comp Plan under Code § 15.2-2223(B)(3) for consistency with the Commonwealth Transportation Board’s Statewide Transportation Plan and the Six-Year Improvement Plan. Section 15.2-2223(B)(3) provides in relevant part that:

The transportation plan, and any amendment thereto . . . shall be consistent with the Commonwealth Transportation Board's Statewide Transportation Plan . . . , the Six-Year Improvement Program . . . , and the location of routes to be followed by roads comprising systems of state highways. . . . The locality shall consult with the Virginia Department of Transportation to assure such consistency is achieved

49. This is reflected in VDOT's email and other correspondence with the City. By email dated October 4, 2021, Charles Proctor with VDOT notes that he only "reviewed the transportation portion of the Comp Plan" and by letter dated November 5, 2021, Mr. Proctor noted that transportation chapter is "required to be consistent with the state transportation plan (Vtrans), reflects [sic] the projects in the Six Year Improvement Program and contains all the route [sic] identified by the Commonwealth Transportation Board." See Email String with VDOT and November 5, 2021 Letter (**Exhibits D and E**).

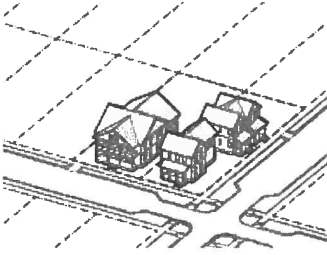
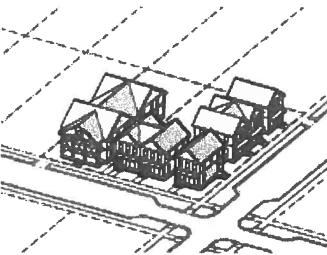
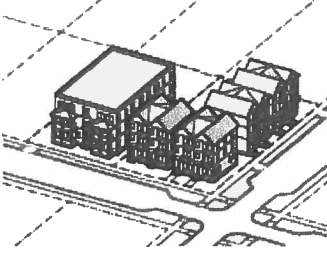
50. Because the City failed and refused to submit the entire 2021 Comp Plan to VDOT, and because the City did not disclose to VDOT that the 2021 Comp Plan involved any increase in density, VDOT could not and did not make any determination that the transportation plan contained "new and expanded transportation facilities . . . that support the planned development" as required by Virginia Code § 15.2-2223(B)(1).

51. The goals of the mandatory statutory requirements set forth in §§ 15.2-2222.1 and 15.2-2223(B)(1) are obvious: (i) to ensure that municipalities plan responsibly for increases in population by including local transportation facilities that can accommodate that growth, and (ii) to ensure that VDOT is aware of the proposed increases in population so that it can review and comment on the adequacy of the local transportation plan on the municipality's infrastructure and measure the impact on state-controlled highways.

52. By flouting its statutory obligations, the City has thwarted these goals and adopted a plan that is void *ab initio*. See Town of Jonesville, 254 Va. at 74. (stating that failure to abide by the statutory requirements for adoption renders the action void *ab initio*).

**THE NZO IS VOID OR OTHERWISE INVALID FOR FAILURE
TO COMPLY WITH OTHER STATUTORY REQUIREMENTS**

53. On December 18, 2023, City Council adopted the NZO, which substantially increases density in the City by, among other things, eliminating single family housing and creating the following residential zoning districts in its place:

		
R-A	R-B	R-C
25' or 40' lot width (min)	25' or 40' lot width (min)	25' or 40' lot width (min)
3 dwelling units (max)	6 dwelling units (max)	8 dwelling units (max)
2.5 stories / 32' height (max)	2.5 stories / 32' height (max)	3 stories / 35' height (max)
60' building width (max)	60' building width (max)	70' building width (max)
Limited small-scale commercial in some locations	Limited small-scale commercial in some locations	Limited small-scale commercial in some locations

54. At a minimum, with respect to residential zoning districts, this increases the density – by right – to 3, 6 or 8 units per lot – with additional density permitted by right if there are affordable units included. These new zoning districts replace current residential zoning throughout the City and affect all lots. The zoning map adopted as part of the NZO, a portion of which is set forth below, shows where these various districts are located throughout the City:



55. Assuming development at maximum allowable density in the R-A, R-B and R-C districts, the NZO will permit the by right construction of 62,000 additional housing units, which equates to a population increase of roughly 150,000 people – more than three times the City’s current population.

56. The density of allowable development in other areas of the City have also been substantially increased – in fact there are no density restrictions in those districts. As a result, the areas designated as NX-3, NX-5, NX-8 and NX-10 have no limits on density and permit the by-right construction of buildings that are 3, 5, 8 and 10 stories tall, respectively. Likewise, the

areas designed as CX-3, CX-5 and CX-8 permit the by-right construction of buildings that are 3, 5 and 8 stories tall – with no limits on density.

57. Despite this massive increase in density, City Council failed to commission appropriate studies about the impact of the NZO on stormwater management, water, sanitary sewer, parking, traffic, transportation or recreational resources.

58. City Council did not conduct sufficient studies for reasonable consideration of “the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies” and the community’s transportation, schooling, recreational areas and public service requirements as required by Virginia Code § 15.2-2284.

59. As noted above, the City has admitted that it failed to conduct any traffic impact analysis. That failure was confirmed as recently as September of 2023 when two of the City’s transportation planners attended a neighborhood association meeting in which the planners erroneously claimed that the City was exempt from any requirement to conduct traffic impact analyses.

60. With respect to sewer capacity, the sum total of City Council’s inquiry consisted of the following exchange at a public hearing on December 13, 2023 – just five days before the NZO was adopted:

*You know when James first introduced this concept about adding additional dwelling units on each parcel, you know, we kind of took a look at it and kind of, you know, you figure it’s spread out across certain areas. And, you know, when we looked at it, we thought the existing infrastructure has adequate capacity.
(City Staff Member)*

And you looked at it with this specific question in mind, I think? (Mr. Snook)

Yes, I did. I did. I mean, it's a lot of capacity. You know, because in an 8 inch sewer line has a lot of capacity. You know, people don't think it does, but it has a lot of capacity. So it's it's not. (City Staff Member)

61. Likewise, City Council did not commission a study with respect to “recreational areas” until August 17, 2023. The RFP for that project requires the contractor to, among other things, “[p]rovide an evaluation on how changing demographics and City culture will affect future recreation needs.” The study was not completed before the City Council adopted the NZO and is not expected to be completed until 2025, long after City Council adopted the NZO.

62. Moreover, because the 2021 Comp Plan is void for the reasons set forth above, City Council also failed to give reasonable consideration to the operative comprehensive plan – the 2013 Comprehensive Plan – as required by Virginia Code § 15.2-2284.

63. City Council also failed to comply with the provisions of Virginia Code § 15.2-2283, which mandate that zoning ordinances “shall be designed to give reasonable consideration to each of the following purposes . . . (ii) to reduce or prevent congestion in the public streets; . . . [and] (iv) to facilitate the provision of adequate . . . transportation, water, sewerage, . . . schools, parks, forests, playgrounds, and recreational facilities”

64. In addition to the failings noted above, the NZO is devoid of any parking requirements to accommodate the increase in density allowed by the NZO.

65. There is an actual controversy between the parties concerning the validity of the 2021 Comp Plan and the NZO.

66. As a result of the actual controversy between the parties, this Court has the power, pursuant to Va. Code § 8.01-184 *et al.*, to make a final and binding determination as to the validity of the Plan and the NZO and whether the Plan or the NZO are void *ab initio*.

COUNT I

THE COMPREHENSIVE PLAN UPON WHICH THE NZO IS BASED IS VOID FOR FAILURE TO COMPLY WITH VIRGINIA CODE § 15.2-2222.1

67. Residents incorporate the preceding allegations.

68. City Council failed to comply with its obligations under Virginia Code § 15.2-2222.1 and the corresponding Traffic Impact Analysis Regulations set forth in 24VAC30-155-30.

69. Section 15.2-2222.1(A)(1) requires that:

Prior to adoption of any comprehensive plan . . . or any amendment to any comprehensive plan . . . , *the locality shall submit such plan or amendment to the Department of Transportation for review and comment if the plan or amendment will substantially affect transportation on state-controlled highways as defined by regulations promulgated by the Department.* The Department's comments on the proposed plan or amendment shall relate to plans and capacities for construction of transportation facilities affected by the proposal. (emphasis added).

70. The regulations promulgated by the Department provide that a plan or amendment substantially affects transportation on state-controlled highways where the plan or amendment “includes substantial changes or impacts to the existing transportation network” that would “allow the generation of 5,000 additional vehicle trips per day on state-controlled highways compared to the existing comprehensive plan, *assuming the highest density of permissible use.*” 24VAC30-155-30(A) (emphasis added).

71. The increase in density permitted under the Plan would “allow the generation” of more than “5,000 additional vehicle trips per day on state-controlled highways” and, therefore, will substantially affect transportation on state-controlled highways.

72. The City failed, however, to submit the 2021 Comp Plan to VDOT for any such review.

73. Because City Council failed to abide by the statutory requirements for adoption of a comprehensive plan or amendments thereto, City Council acted outside of the scope of its authority, rendering the 2021 Comp Plan void *ab initio*. See Town of Jonesville, 254 Va. at 74 (stating that failure to abide by the statutory requirements for adoption renders the action void *ab initio*).

COUNT II

THE COMPREHENSIVE PLAN UPON WHICH THE NZO IS BASED IS VOID FOR FAILURE TO COMPLY WITH VIRGINIA CODE § 15.2-2223(B)(1)

74. Residents incorporate the preceding allegations.

75. Virginia Code § 15.2-2223(B)(1) provides, in relevant part, that:

As part of the comprehensive plan, each locality shall develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that *include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, but not be limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. The plan shall recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors . . .* (emphasis added).

76. The City failed to identify any “new and expanded transportation facilities . . . that support the planned development” in the 2021 Comp Plan despite the tremendous increase in density.

77. Although the City provided the Transportation chapter of the 2021 Comp Plan to VDOT, because the City did not provide the entire plan to VDOT – or even a description of the substantial increase in density contemplated by the plan – VDOT could not and did not review the 2021 Comp Plan for compliance with § 15.2-2223(B)(1).

78. Instead, VDOT merely reviewed the 2021 Comp Plan for compliance with § 15.2-2223(B)(3).

79. The City has failed to comply with the requirements of § 15.2-2223(B)(1) and therefore acted outside the scope of its authority, rendering the 2021 Comp Plan void *ab initio*. See Town of Jonesville, 254 Va. at 74 (stating that failure to abide by the statutory requirements for adoption renders the action void *ab initio*).

COUNT III

THE NZO IS VOID FOR FAILURE TO COMPLY WITH VIRGINIA CODE § 15.2-2284

80. Residents incorporate the preceding allegations.

81. Virginia Code § 15.2-2284 provides that:

Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality. (emphasis added).

82. Because the 2021 Comp Plan is void, the 2013 Comprehensive Plan was in effect at the time the NZO was adopted and City Council failed to consider the 2013 Comprehensive Plan, despite its obligation to reasonably consider that plan when drawing and applying zoning ordinances. Moreover, the 2013 Comprehensive Plan bears no resemblance to the NZO.

83. City Council also failed to consider the community's current and future requirements based on appropriate studies, and the community's transportation, school, recreational facility and public service requirements.

84. Indeed, City Council did not consider or investigate many of these aspects at all and merely cursorily reviewed other aspects.

85. As a result, City Council failed to abide by its enabling legislation in enacting the NZO and therefore acted outside the scope of its power, rendering the NZO void *ab initio*. See Town of Jonesville, 254 Va. at 74 (stating that failure to abide by the statutory requirements for adoption renders the action void *ab initio*).

COUNT IV

THE NZO IS ARBITRARY, CAPRICIOUS AND BEARS NO REASONABLE RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY, MORALS OR GENERAL WELFARE

86. Residents incorporate the preceding allegations.

87. City Council may amend zoning ordinances so long as the amendment is reasonable, not arbitrary or capricious and bears a “reasonable or substantial relation to the public health, safety, morals, or general welfare.” Norton v. Board of Sup’rs of Fairfax County, 299 Va. 749, 858 S.E.2d 170, 173 (2021) (quoting Board of Sup’rs of Fairfax County v. Carper, 200 Va. 653, 660 (1959)).

88. In allowing density at a ratio much greater than the 2013 Comprehensive Plan in effect at the time the NZO was adopted, the NZO is arbitrary and capricious.

89. City Council neither commissioned nor conducted studies on stormwater management, sanitary sewer systems, schools, traffic volume, public services and recreational facilities.

90. City Council failed to reasonably consider the basic statutory requirements outlined in Virginia Code § 15.2-2284, such as transportation, schools, recreational areas and public services.

91. Similarly, City Council did not design the NZO to give reasonable consideration to the factors outlined in Virginia Code § 15.2-2283.

92. City Council did not reasonably investigate the basic considerations of modern urban planning when population density is drastically increased by right, such as impacts on stormwater management, sanitary sewer, water supply and traffic congestion.

93. Due to the lack of consideration, study and planning, the NZO is unreasonable, arbitrary and capricious, and bears no reasonable or substantial relation to the public health, safety, morals or general welfare and is therefore void *ab initio* or otherwise invalid.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Residents respectfully request that this Court grant and order the foregoing relief:

a. Declare that the 2021 Comp Plan is void *ab initio* for failure to comply with the provisions of Virginia Code § 15.2-2222.1 and the applicable Traffic Impact Analysis Regulations;

b. Declare that the 2021 Comp Plan is void *ab initio* for failure to comply with the provisions of Virginia Code § 15.2-2223(B)(1);

c. Declare that the NZO is void *ab initio* for failure to reasonably consider the factors under Virginia Code § 15.2-2284.

d. Declare that the NZO is void *ab initio* or otherwise invalid because it is unreasonable, arbitrary and capricious, and bears no reasonable or substantial relation to the public health, safety, morals or general welfare.

e. Enjoin the NZO from going into effect because it is void *ab initio*.

f. Award such other and further relief as this Court deems appropriate.

Respectfully submitted,

RESIDENTS

By Counsel

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized, somewhat abstract shape.

Michael E. Derdeyn, Esq. (VSB No.: 40240)

Marc A. Peritz, Esq. (VSB No.: 39054)

FLORA PETTIT PC

530 East Main Street

P.O. Box 2057

Charlottesville, VA 22902

Tel: 434-979-1400

Fax: 434-977-5109

Email: med@fplegal.com

map@fplegal.com

VERIFICATION

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Signature: Jenny Strauss Clay
Printed Name: Jenny Strauss Clay
Date: 01/15/2023

VERIFICATION

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Signature: Lillian R. Bevier

Printed Name: Lillian R. Bevier

Date: 1/15/24

VERIFICATION

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Signature: 

Printed Name: Michael BeVier

Date: 1/15/24

VERIFICATION

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Thomas J. Hill, Trustee of the Thomas J. Hill Trust,
w/a June 1, 2005, as amended

DocuSigned by:
Signature: Thomas J. Hill

4423EC6F01DD457...
Date: 1/16/2024 | 10:56 AM EST

DECLARATION

Pursuant to Virginia Code § 8.01-4.3, I declare and verify under penalty of perjury that the allegations in the foregoing Verified Complaint are true to the best of my knowledge and belief.

Kemp P. Hill, Trustee of the Kemp P. Hill Trust,
u/a June 1, 2005, as amended

DocuSigned by:
Signature: Kemp P. Hill

BD39548E597B4D8
Date: 1/16/2024 | 10:48 AM EST

ORDINANCE

OF THE CHARLOTTESVILLE CITY COUNCIL:

REPEAL AND REORDAIN A NEW CHAPTER 34 AND REPEAL CHAPTER 29 OF THE CHARLOTTESVILLE CITY CODE AND ADOPT A NEW OFFICIAL ZONING MAP FOR THE CITY OF CHARLOTTESVILLE

WHEREAS, City Council has committed to an updated community land use vision to include more progressive planning and zoning inclusivity of the City while preserving historic features and shepherding of public and private resources to improve affordability and livability for all residents and to ensure ongoing vitality of the City; and

WHEREAS, pursuant to the direction of City Council, City staff began the Cville Plans Together process in January 2020, which resulted in a new Comprehensive Plan adopted by City Council in November 2021. Among other matters, the Comprehensive Plan recommended adoption of a new zoning ordinance and map, and work on the new Zoning Ordinance and Zoning Map began in January 2022; and

WHEREAS, the City's consultant recommended reorganization of the City's zoning and development regulations into a Development Code to replace the current Zoning Ordinance Chapter 34 and current Subdivision Ordinance Chapter 29 with a new Chapter 34 containing both sets of land use regulations; and

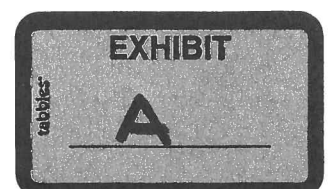
WHEREAS, on August 7, 2023, the City Council initiated the proposed City of Charlottesville Development Code and new Zoning Map and directed the Planning Commission to conduct a public hearing and provide recommendations to the City Council; and

WHEREAS, a public hearing on the proposed Development Code and new Zoning Map was held by the Planning Commission on September 14, 2023, after providing notice as required by law; and

WHEREAS, following conclusion of the public hearing and continued deliberation over several work sessions, on October 18, 2023, the Planning Commission recommended the proposed Development Code and the new Zoning Map with certain revisions/changes; and

WHEREAS, after a work session on November 1, 2023, City Council authorized advertisement of the proposed Development Code and new Zoning Map as recommended by the Planning Commission with certain revisions to enable consideration of provisions not recommended by the Planning Commission; and

WHEREAS, a public hearing on the proposed Development Code and new Zoning Map was held by City Council on December 5, 2023, after providing notice as required by law; and



WHEREAS, following conclusion of the public hearing, City Council determined that additional deliberation was required and continued its deliberation to a work session on December 13, 2023, then to a work session on December 14, 2023, and then to a meeting on December 18, 2023. At the conclusion of each session, the Council determined that it needed additional time to deliberate; and

WHEREAS, City Council also held work sessions on November 8, 13, 29, and December 4, 2023, to hear from its staff and consultants and to discuss the proposed Development Code and new Zoning Map; and

WHEREAS, City Council finds that public necessity, convenience, general welfare, and good zoning practice require adoption of the proposed Development Code and new Zoning Map as advertised with certain additional revisions/changes as described in the attached.

NOW, THEREFORE, BE IT ORDAINED that the Charlottesville City Council does hereby adopt the proposed City of Charlottesville Development Code as new Chapter 34 and new Zoning Map, respectively, with the changes outlined in Attachment A, Development Code updates of December 14, 2023, Attachment B, Zoning Map Updates of December 14, 2023, and repeal of current Chapter 34 and Chapter 29 of the Charlottesville City Code; and

BE IT FURTHER ORDAINED that the foregoing ordinances shall be effective February 19, 2024.

	<u>Aye</u>	<u>No</u>
Payne	<u> x </u>	<u> </u>
Pinkston	<u> x </u>	<u> </u>
Puryear	<u> x </u>	<u> </u>
Snook	<u> x </u>	<u> </u>
Wade	<u> x </u>	<u> </u>

Approved by Council
December 18, 2023



Kyna Thomas, MMC
Clerk of Council

Fwd: FW: Charlottesville attempts another end-around: new comp plan requires VDOT approval

1 message

Proctor, Charles <charles.proctor@vdot.virginia.gov>
To: "Hofrichter, Robert" <robert.hofrichter@vdot.virginia.gov>

Fri, Jan 13, 2023 at 2:42 PM

Rob,

Here is the response from the City Attorney regarding the issues

----- Forwarded message -----

From: **Nelson, Sean** <sean.nelson@vdot.virginia.gov>
Date: Tue, Dec 13, 2022 at 12:24 PM
Subject: Fwd: FW: Charlottesville attempts another end-around: new comp plan requires VDOT approval
To: Shephard, Carrie <carrie.shephard@vdot.virginia.gov>, Charles Proctor <charles.proctor@vdot.virginia.gov>
Cc: Londrey, Stacy <stacy.londrey@vdot.virginia.gov>

FYSA



Sean Nelson, P.E.
Culpeper District Engineer
Virginia Department of Transportation
804-921-5422
Sean.Nelson@VDOT.Virginia.gov

----- Forwarded message -----

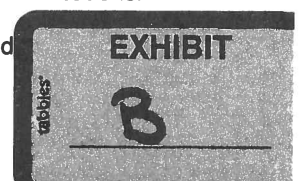
From: **Robertson, Lisa** <robertsonl@charlottesville.gov>
Date: Tue, Dec 6, 2022 at 3:33 PM
Subject: FW: Charlottesville attempts another end-around: new comp plan requires VDOT approval
To: sean.nelson@vdot.virginia.gov <sean.nelson@vdot.virginia.gov>
Cc: Sanders, Samuel <sanderss@charlottesville.gov>, Freas, James <freasj@charlottesville.gov>

Dear Mr. Nelson,

Last Fall, the City completed a lengthy review and update of its 2013 Comprehensive Plan. VDOT reviewed the Transportation Chapter, and provided the attached approval letter. The Charlottesville City Council adopted the updated Comprehensive Plan on November 15, 2021. Subsequently, in December 2021 a number of [anonymous] City residents filed a lawsuit against the City alleging that the Transportation section, and other provisions of the Plan were inadequate. The City has successfully obtained the dismissal of those portions of the lawsuit based, in part, on the Court having the evidence of VDOT's approval letter, attached. At this time, the only remaining issue in the litigation is whether or not the newspaper notice published by the City in the Fall of 2021 was sufficiently detailed.

At the present time, the November 15, 2021 Comprehensive Plan—as previously reviewed and approved by VDOT—is proposed to be RE-ENACTED as previously presented to public officials (including VDOT), with only two modifications:

- Inclusion of provisions that address *manufactured housing* as one source of affordable housing, and



- Inclusion of a climate action plan, as part of the Comp Plan's environmental component.

Neither of these items involves any new, expanded or relocated roadways.

There will be an additional public hearing on the entire plan (November 15, 2021, as amended). In the event that, following the public hearing, public officials desire to change or amend the previously-approved Transportation Plan (or other provisions of the previously-adopted Plan (11/15/2021)—the City would certainly refer any such changes to VDOT for review and comment prior to adopting them, as required by Virginia Code 15.2-2223(B)(4) ("prior to adoption of the Transportation Plan, *or any amendment thereto*...."). **However**, at the present time, none of the amendments proposed for consideration involve changes to the previously-adopted Transportation Plan, simply a proposed re-enactment of it.

Thank you and your team for the reminder to the City of the legal obligations under Virginia Code 15.2-2222.1 (which requires submission of a proposed Comp Plan, or amendment thereto, "...if the plan or amendment will **substantially affect transportation on state controlled highways**.....") It cannot be said that any of the amendments under consideration will have such an affect.

Lisa

Lisa A. Robertson

City Attorney

City of Charlottesville | Office of The City Attorney

P: 434.970.3131 | robertsonl@charlottesville.gov

M:434.987.0009

From: Nelson, Sean <sean.nelson@vdot.virginia.gov>

Sent: Tuesday, December 6, 2022 12:15 PM

To: Sanders, Samuel <sanderss@charlottesville.gov>

Subject: Fwd: Charlottesville attempts another end-around: new comp plan requires VDOT approval

**** WARNING:** This email has originated from **outside of the organization**. Do not click links or open attachments unless you recognize the sender and know the content is safe. **

VDOT



Sean Nelson, P.E.

Culpeper District Engineer

Virginia Department of Transportation

804-921-5422

Sean.Nelson@VDOT.Virginia.gov

----- Forwarded message -----

From: **Shepherd, Carrie** <carrie.shepherd@vdot.virginia.gov>
Date: Tue, Dec 6, 2022 at 11:08 AM
Subject: Fwd: Charlottesville attempts another end-around: new comp plan requires VDOT approval
To: Sean Nelson <sean.nelson@vdot.virginia.gov>

I feel like you should be aware of this.

----- Forwarded message -----

From: **Hofrichter, Robert** <robert.hofrichter@vdot.virginia.gov>
Date: Tue, Dec 6, 2022 at 11:00 AM
Subject: Fwd: Charlottesville attempts another end-around: new comp plan requires VDOT approval
To: Lantz, Chandra D. <CLantz@oag.state.va.us>
CC: Carrie Shepherd <carrie.shepherd@vdot.virginia.gov>, Proctor Charles olr13131 <charles.proctor@vdot.virginia.gov>, Barron Languin hed48002 <marshall.barron@vdot.virginia.gov>, John Wilson <john.c.wilson@vdot.virginia.gov>, Huckabee-Mayfield Jorg twg16167 <jorg.huckabee-mayfield@vdot.virginia.gov>, Marsha Fiol <marsha.fiol@vdot.virginia.gov>, Jo Maxwell <joanne.maxwell@vdot.virginia.gov>

Chandra,

I hope you are having a good week.

I received the following email and its attachments this morning. Essentially, the request is for VDOT to notify the City of Charlottesville that they must submit a comp plan change to VDOT for review in conformance with subsection A of 15.2-2222.1 of the Code of Virginia and 24VAC30-155-30 (TIA Regulations). Since legal action was (and may again be involved), I ask you to review and provide guidance with regard to my response.

I intended to

1. email Ms. Whittle that VDOT will contact the City of Charlottesville to remind City staff of the requirements of Code and regulation;
2. forward this to the Culpeper District, which is the usual contact point for VDOT with the planners in Charlottesville; and
3. ask the District to contact the City with a reminder of the requirements in Section 15.2-2222.1 and 24VAC30-155 with regards to changes in comprehensive plans.

If you have any guidance relative to these proposed steps, I would appreciate hearing from you by December 9.

Thanks.

Rob

----- Forwarded message -----

From: Mary Summers Whittle <msw828@gmail.com>

Date: Tue, Dec 6, 2022 at 10:27 AM

Subject: Charlottesville attempts another end-around: new comp plan requires VDOT approval

To: <Robert.Hofrichter@vdot.virginia.gov>

Cc: <med@fplegal.com>

Dear Mr. Hofrichter,

On May 16 of this year, I met with you at VDOT's Richmond offices to discuss the numerous code violations associated with Charlottesville's Comprehensive Plan, which the City's Council had approved on Nov. 15, 2021. (You may recall that the meeting was also attended by Vectre Corporation's David Skiles and another Charlottesville resident.)

During our meeting, I provided abundant documentation of the City's clear and numerous failures to comply both substantively and procedurally with the statutory requirements of § 15.2-2222.1, §15.2-2223B, § 24VAC30-155-30A, and § 24VAC30-155-30B. I also expressed concern about the City's apparent concealment of its land use plans from VDOT, as well as about the evident risks to the City posed by the noncompliant plans.

At the conclusion of our conversation, you pointed out that it was impossible for VDOT to revoke its approval letter as it applied to the Nov. 15 Comprehensive Plan, even if the City had failed to comply with statutory disclosure requirements, and even if it had engaged in outright deception. Importantly, however, you further commented that if the Comprehensive Plan were revoked or amended such that it had to be repassed, or if a zoning code relying upon the Plan was formally proposed, then VDOT could require a new submission that adhered to the relevant statutory requirements.

As it happens, the Plan has indeed faced a legal challenge (*Doe v. City of Charlottesville*), and the City has accepted that the Nov. 15 Plan is legally deficient (albeit for reasons other than those I've given above). As a result, the City has given notice of a public hearing and vote on a new plan next Tuesday, Dec. 13. The new plan is essentially a lightly amended version of the deficient one passed last year, but is nonetheless a new plan. As such, under § 24VAC30-155-30A, it should be submitted to you "...at least 100 days prior to final action by the locality." That is, the City is about to vote, once again, on a noncompliant plan.

I am writing not simply to inform you of this additional instance of noncompliance, but also to urge you to notify the City that any plan not submitted to VDOT at least 100 days before passage will be noncompliant with state law.

I have appended the city's Notice of Hearing to this email, along with the compelling and informative set of documents I presented to you in May. Given that the City's hearing and vote will take place within a week, I am copying Michael Derdeyn of the law firm Flora Petit on this email. Mr. Derdeyn is counsel to the litigants in *Doe v. Charlottesville City Council*. He has been made aware of this letter, which relates to portions of his pleadings in that case.

Mr. Derdeyn and I would be pleased to discuss this with you or others at VDOT this week, either by phone or in your offices. We appreciate that this is short notice for you, but it would be extremely unfortunate if the City managed, once again, to rush the passage of another plan that remains in both substantive and procedural noncompliance with VDOT's statutory requirements, and that so profoundly threatens Charlottesville's future.

Thank you for your attention to this consequential matter.

Sincerely,

Mary Whittle

(434) 825-3294

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Carrie Shephard, P.E.
Resident Engineer / Charlottesville
Virginia Department of Transportation
434-422-9779
Carrie.Shephard@VDOT.Virginia.gov

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Charles Proctor
Planning Manager / Culpeper District
Virginia Department of Transportation
O 540-829-7558 M 540-421-5514
charles.proctor@VDOT.Virginia.gov

VDOT Approval Letter.pdf
464K



----- Forwarded message -----

From: **Freas, James** <freasj@charlottesville.gov>
Date: Mon, Jun 27, 2022 at 11:46 AM
Subject: RE: Questions about zoning diagnostic
To: Mary Summers Whittle <maw828@gmail.com>
Cc: engage@cvilleplanstogether.com <engage@cvilleplanstogether.com>

Thank you for your email.

With regards to your first two questions – a traffic engineering study is unwarranted for a plan and zoning that speak to gradual change over a long period of time. Zoning is one of many different factors that contribute to the possibility of growth within a community and, as the City has done in the past, we will use growth projections based on a range of factors to make decisions about infrastructure investments. The plan does contain within it the expectation that the City will continue to advance a transportation system that is multi-modal, with increasing reliance on biking, walking, and transit and anticipates we will need to make investments to realize those expectations. The streets that work and bicycle and pedestrian plans already adopted by the City point in that direction and we can anticipate updates to those plans as we go forward, as well as investments in planning and design for key intersections and corridors.

The sensitive community areas, identified based on a range of demographic factors, represent areas where there is an existing risk of displacement. Our treatment of these areas under zoning is a challenging question as we attempt to address that issue and we anticipate continuing conversations around issues of wealth building and fairness. No one is proposing



zoning based on race.

Renderings were not part of the scope of work for this project. The pictures and conceptual building plans share an idea of the types of buildings that might be seen and an upcoming analysis of the real estate market's potential response to the proposed zoning, looking at the potential pace, building types, etc based on realistic development scenarios, is forthcoming. Renderings are more useful where there is a specific desired outcome and that does not exist here.

Lastly, I simply don't agree with the premise offered in the last item. First, there is nothing in the existing zoning regime that is preventing transference of homes to investors – its happening all over the country right now in single family neighborhoods. Second, we are looking for ways to make it easier for individuals to buy and own their own home by taking down barriers in the existing zoning.

Thank you for your continuing attention to this important project.

James

From: Mary Summers Whittle <msw828@gmail.com>
Sent: Monday, June 27, 2022 9:01 AM
To: Cville Plans Together <engage@cvilleplanstogether.com>
Subject: Questions about zoning diagnostic

WARNING: This email has originated from **outside of the organization**. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am out of town today, 6/27, and cannot attend the zoning information session at the Ting Pavillion. Please answer the questions below.

1. The proposed zoning allows for the construction of more than 60,000 new housing units and the addition of approximately 150,000 new residents. Given such significant land use changes, **please explain why no traffic engineering or analytics firms were consulted in**

the planning and ensuing zoning processes, and why no traffic impact analysis has been conducted.

2. I notice that the transportation narrative composed as part of the comprehensive planning process describes Charlottesville as "built-out" and notes that it is impossible to widen existing roads or construct new roads in the city. **Please explain why you described the city as "built-out," given the zoning's allowance of significant construction on every residential lot in the city. Please also explain how people will move through the city given a far higher volume of traffic coupled with the same capacity for traffic.** I believe your hope is that people will walk or ride bikes. I am not sure if you have ever tried to walk or bike on Rugby Road, Rugby Ave, Rose Hill Drive, Barracks, Emmet, Preston, McIntire, West Main, University, 5th Street, Hydraulic Road, Park Street, Locust Ave., or anywhere else in the city, but it is unpleasant and extremely unsafe to do so. **Please describe, with specific plans rather than descriptive/hopeful generalities (e.g., "Charlottesville will be walkable") your transportation "vision" for a far more densely populated Charlottesville coupled with an unchanged transportation infrastructure.**

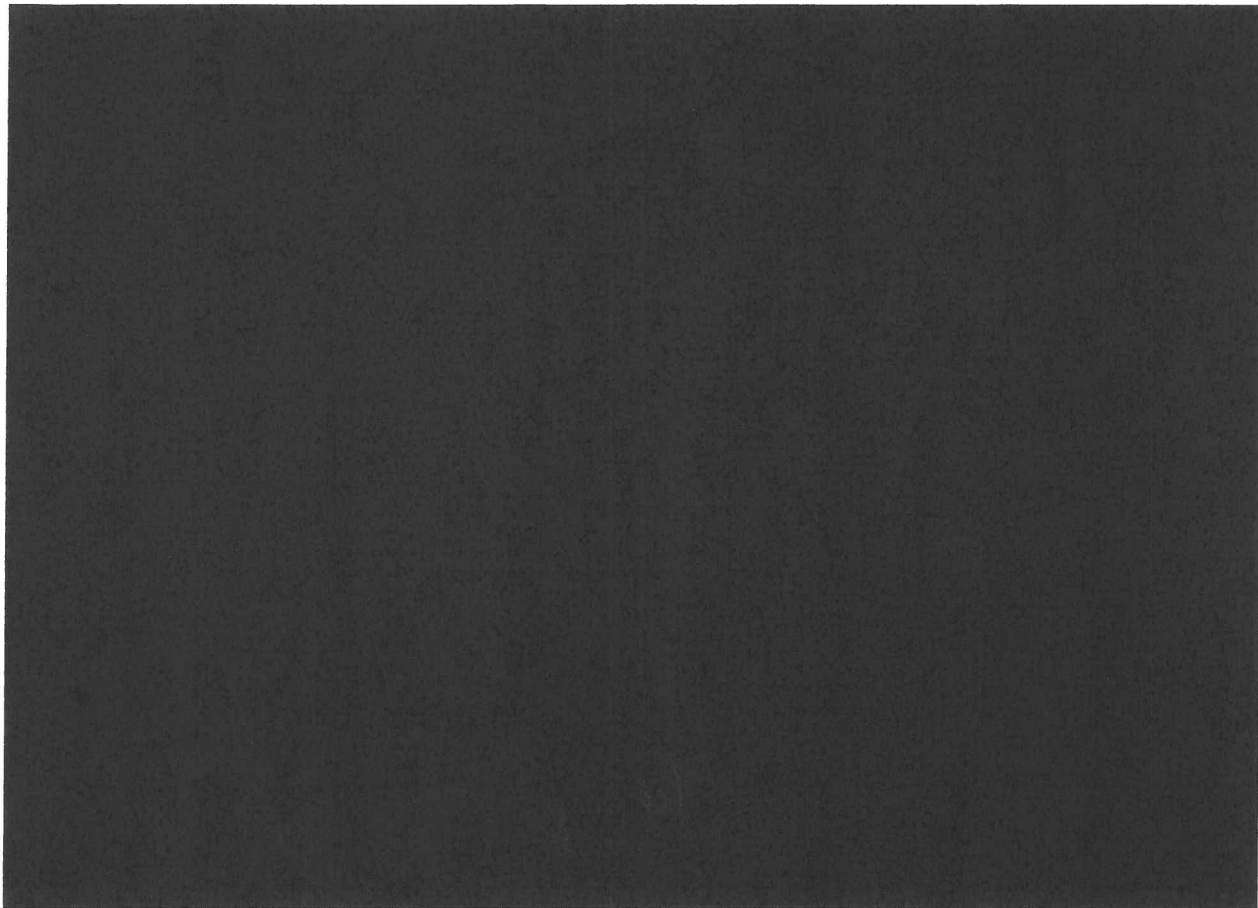
3. The premise behind the "sensitive" areas seems to be that upzoning leads to rising property values, demolition, and displacement. I noticed that the "sensitive" areas were chosen largely based on their racial makeup. (Language in last year's drafts noted that the sensitive areas were chosen based on "percent non-white/non-Hispanic residents.") So I have two questions: First, **is it legal to make zoning determinations based on race?** Second, what if a homeowner in a "sensitive" neighborhood wants to sell her property for top dollar—say, to a developer, perhaps for student housing? Won't the "sensitive" designation depress the value of her property, preventing her from building wealth (a.k.a "home equity") to the same degree as those in other (presumably white or Hispanic) neighborhoods? Is that fair or "equitable" to the sensitive-neighborhood resident? Similarly, is it legal to "target" citizens of your choice with higher taxes, unwanted zoning designations, demolition, and displacement? **Why not treat all citizens equally?**

4. The zoning diagnostic offers pictures and diagrams of houses and urban spaces in other cities, or nowhere at all—simply as sketched concepts. But Charlottesville is already occupied by buildings and roads. **Please provide clear, detailed descriptions and images of what you think a given existing area in Charlottesville will look like once the rezoning has taken effect—say, in 10 years.** For instance, we've all driven on Barracks Road. What will it look like as a medium-intensity corridor? Will the current homes be demolished? What will the new buildings look like? Where will the driveways be? What will happen to the trees and rock walls? Where are the sidewalks, bike lanes, and parking? How is the Barracks/Emmet intersection impacted? How is Meadowcreek impacted? What happens at the Rugby Ave. and Rugby/Preston intersections? Those streets/intersections are horribly unsafe for walking and biking, and they've all been upzoned to medium intensity. **I think residents and homeowners deserve to be offered a realistic rendering of what your vision is for the physical reality that is Charlottesville.**

5. Please describe your economic "vision" for Charlottesville. I am not sure if any of you own a home, but purchasing a home is a major financial and life commitment. *Nobody except a developer* would choose to purchase property on a street or in a neighborhood that stands to be dramatically upzoned or affected by upzoning. **Please provide a clear, compelling, fact-based argument to convince me that you do not hope to force single-family homeowners to sell their homes to investors and developers.** As I hope you are aware, homeownership is a critical factor in building lasting intergenerational wealth. **Explain why you feel it is desirable to allow the concentration of land/property ownership in the hands of developers and investors rather than individuals.**

In general, your plan is worrying. It is a great shame that the comprehensive plan contains no input from experts in transportation or environmental impact, nor studies of water, sewer, tax/economic outcomes, nor an accurate count of how many affordable houses the city has or needs, nor a definition of "affordable."

Mary Whittle



From: Proctor, Charles <charles.proctor@vdot.virginia.gov>
Sent: Monday, October 4, 2021 5:07 PM
To: Creasy, Missy <CreasyM@charlottesville.gov>
Cc: Freas, James <freasj@charlottesville.gov>; Jennifer Koch <jenniferk@rhiplaces.com>
Subject: Re: FW: Compliance with Comp Plan Transportation Plan requirements - Charlottesville -
Materials Attached - feedback needed Oct 1

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Missy,

I have reviewed the transportation portion of the Comp Plan that you provided and it appears to meet the requirement of the Code of Virginia section 15.2-2223 B. The Functional Classification map in the plan does match the approved map from 2014. I did notice in reviewing the maps there are two sections of the approved map that do not appear correct (9th St from Market to E. High St. and High St from Hazel to Long St should be Principal Arterial) The PA Sections in the City should follow US 29, BUS 29, US 250 and BUS 250 sections through the City and also 5th St/Ridge St from I-64 to



W. Market St. Here is the link to the approved map <http://arcg.is/1ljCjXA> It is also available through Pathway for Planning web application. If you can get that corrected we should be good on the rest and I will send a review completion letter.

Thanks,

On Mon, Oct 4, 2021 at 7:56 AM Creasy, Missy <CreasyM@charlottesville.gov> wrote:

Hi Chuck,
Hoping to get some feedback from you today. If you are able to tell us when comments may be available, we can work out how we can address with our hearing process and timing.
Thank you
Missy

From: Creasy, Missy <CreasyM@charlottesville.gov>
Sent: Friday, October 1, 2021 12:57 PM
To: Proctor, Charles <charles.proctor@vdot.virginia.gov>
Cc: Jennifer Koch <jenniferk@rhiplaces.com>; Freas, James <freasj@charlottesville.gov>
Subject: Fw: Compliance with Comp Plan Transportation Plan requirements - Charlottesville - Materials Attached - feedback needed Oct 1

Hi Chuck,
if you have a general timeframe when you may be providing comments today, that would be great. We want to inform our consultants on the timing if possible.
Thank you so much.
Missy

From: Creasy, Missy <CreasyM@charlottesville.gov>
Sent: Wednesday, September 29, 2021 2:22 PM
To: Proctor, Charles <charles.proctor@vdot.virginia.gov>
Cc: Jennifer Koch <jenniferk@rhiplaces.com>; Poncy, Amanda <PONCY@charlottesville.gov>
Subject: Fw: Compliance with Comp Plan Transportation Plan requirements - Charlottesville - Materials Attached - feedback needed Oct 1

Hi Chuck,
Checking back in. We are hopeful to receive your feedback by October 1.
Provide us with any status you have.
Thank you.
Missy

From: Creasy, Missy
Sent: Wednesday, September 22, 2021 8:17 AM

To: charles.proctor@vdot.virginia.gov <charles.proctor@vdot.virginia.gov>
Cc: Jennifer Koch <jenniferk@rhiplaces.com>; Poncy, Amanda <PONCY@charlottesville.gov>
Subject: FW: Compliance with Comp Plan Transportation Plan requirements - Charlottesville -
Materials Attached

Chuck,

A reminder to assure this is still on your radar.

Thank you in advance for your review.

Missy Creasy

From: Creasy, Missy <CreasyM@charlottesville.gov>
Sent: Friday, September 10, 2021 7:22 AM
To: Proctor, Charles <charles.proctor@vdot.virginia.gov>
Cc: Jennifer Koch <jenniferk@rhiplaces.com>; Poncy, Amanda
<PONCY@charlottesville.gov>
Subject: Compliance with Comp Plan Transportation Plan requirements - Charlottesville -
Materials Attached

Hi Chuck,

I have attached the materials for review

they include:

1. Transportation Narrative and Master Plan (includes maps)
2. Transportation (goals/objectives)

Please let me know what additional information is needed for your review. As noted before we are hoping to have your comments no later than October 1st so we can integrate any updates into the materials moving forward for public hearing the following week. If there are concerns with that schedule, please let us know as soon as you are able.

Missy

From: Creasy, Missy <CreasyM@charlottesville.gov>
Sent: Thursday, August 26, 2021 10:29 AM
To: Proctor, Charles <charles.proctor@vdot.virginia.gov>

Subject: Re: Compliance with Comp Plan Transportation Plan requirements -
Charlottesville

I'm glad we were able to connect. I worked with our consultants this morning on the timeline. Any feedback about how this would work with your schedule would be great.

The materials will be available on September 7th (we would direct to you as soon as available)

We were hoping for comments from you on October 1st so they could be integrated into materials that go for a hearing packet the following week.

There will be a chapter (the updated version of the current draft: https://drive.google.com/file/d/1j0PwX-WeiBPiHn_7BD0Wtf8btjvtPCna/view (pages 30-40 of document), maps and a transportation narrative.

We are reviewing the legislation but if you have a checklist or other guidance documents, please let us know.

Please provide feedback on that above schedule when you have an opportunity.

From: Proctor, Charles <charles.proctor@vdot.virginia.gov>
Sent: Thursday, August 26, 2021 8:07 AM
To: Creasy, Missy <CreasyM@charlottesville.gov>
Subject: Re: Compliance with Comp Plan Transportation Plan requirements -
Charlottesville

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Hi,

I am it. I will let you know my comments once I go through it.

What is the timeframe for providing comments?

Let me know.

Thanks,

On Thu, Aug 26, 2021 at 7:39 AM Creasy, Missy <CreasyM@charlottesville.gov> wrote:

Hi there,

hoping to hear from you soon

thank you

Missy Creasy

From: Creasy, Missy <CreasyM@charlottesville.gov>

Sent: Monday, August 23, 2021 2:34 PM

To: charles.proctor@vdot.virginia.gov <charles.proctor@vdot.virginia.gov>

Subject: Re: Compliance with Comp Plan Transportation Plan requirements - Charlottesville

Hi there,

keeping this on the radar.

thank you in advance.

Missy

From: Creasy, Missy <CreasyM@charlottesville.gov>

Sent: Friday, August 20, 2021 12:20 PM

To: charles.proctor@vdot.virginia.gov <charles.proctor@vdot.virginia.gov>

Subject: Re: Compliance with Comp Plan Transportation Plan requirements - Charlottesville

Hi Chuck,

Hoping for an update early next week. It can just be a receipt and a timeframe for me to check back in if that is available.

thank you and have a great weekend.

Missy

From: Creasy, Missy

Sent: Wednesday, August 18, 2021 11:30 AM

To: charles.proctor@vdot.virginia.gov <charles.proctor@vdot.virginia.gov>

Subject: Compliance with Comp Plan Transportation Plan requirements - Charlottesville

Hi Chuck,

We have not had any meetings together since the Hydraulic/29 Small Area plan work done a few years back. I hope things are going okay.

We are working towards final drafting of our comp plan update and trying to make sure we have all items in the works. For our last comp plan update, i coordinated the transportation review with Dan Painter (it has been a little while) so i am not sure who on your team I need to reach out to concerning that so hoping you can provide me with a contact.

Last time we did this, it was a new review and we thought there may be a more detailed process (application/checklist etc.) so wanted to get that information.

I look forward to hearing from you soon

thank you so much

Missy

<https://law.lis.virginia.gov/vacode/15.2-2223/>

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Charles Proctor

Planning Manager / Culpeper District



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COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1601 ORANGE ROAD
CULPEPER, VIRGINIA 22701-3819

Stephen C. Brich, P.E.
COMMISSIONER

November 5, 2021

Missy Creasy
Planning Manager
P.O. Box 911
Charlottesville, Virginia 22902

RE: Comprehensive Plan Review

Missy,

In accordance with the Code of Virginia section § 15.2-2223.B localities are required to develop a transportation chapter as part of the overall Comprehensive Plan that is consistent with the state transportation plan (VTrans), reflects the projects in the Six-Year Improvement Program and contains all the route identified by the Commonwealth Transportation Board.

The City of Charlottesville undertook this process over several years. The process called C'ville Plans Together began in 2020 with the development of an Affordable Housing Plan, and update to their Comprehensive Plan and culminated in a rewrite of the Zoning Codes. These efforts started with a review of the existing condition and gathering input on the goals and priorities for the community and where the gaps in access to things that define a good quality of life.

Similarly, the Transportation Plan started with the development of the draft goals that include Complete Streets, Land Use and Community Design, Efficient Mobility, Parking Supply and Management, Transit System, Regional Transportation, Sustainable Transportation Infrastructure, and Infrastructure Funding. These focused on developing a safe, equitable, reliable and efficient transportation system for all users across all modes.

The resulting Comprehensive Plan integrates all the requirements of the Code of Virginia, and includes many of the new mobility ideas available today and envisioned for the future.

Let me know if there are any questions concerning this evaluation.

Thank you.

Charles C. Proctor III
VDOT Culpeper District Planning Manager

