

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CABELL J. MARSHALL

Plaintiff,

v.

Case No.: CL22-234

CHARLOTTESVILLE CITY COUNCIL,

Serve: Lisa Robertson, Esq.  
City Attorney  
605 E. Main Street  
Charlottesville, VA

And

CITY OF CHARLOTTESVILLE,

Serve: Lisa Robertson, Esq.  
City Attorney  
605 E. Main Street  
Charlottesville, VA

Defendants.

### COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, as counsel and proceeding pursuant to Virginia Code Section 8.01-184, et. seq., brings this action seeking a declaration that the ordinances rezoning 240 Stribling Ave. and approving an Infrastructure Funding Plan adopted by the Charlottesville City Council ("City Counsel") on April 18, 2022 are void *ab initio* due to the failure to comply with the applicable statutory requirements for the creation, intent, content, review, approval and adoption of such ordinances. Specifically, the City of Charlottesville (the "City") and City Council:

FILED  
5/18/22 @ 3:50p  
(Date & Time)  
City of Charlottesville  
Circuit Court Clerk's Office  
Liezelle A. Dugger, Clerk  
By [Signature]  
Deputy Clerk



- Failed to comply with the requirement in the Constitution of Virginia, Article I, Section 11 that "a taking or damaging of private property is not" (does not meet the requirements for being deemed as) "for public use if the primary use is ... increasing tax revenues;" and
- Failed to comply with the requirement in the Constitution of Virginia, Article VII Section 10 (1946, c.384; 2020, cc. 813, 814) and in the City of Charlottesville Charter, 1946, c. 384 that the City may borrow funds "... provided the notes shall mature not later than twelve (12) months after the date of issue," and
- Failed to comply with the requirement in the Virginia Code section 2.2-3103 that no employee of a local government or advisory agency shall use for his own benefit "or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;" and
- Failed to comply with the City of Charlottesville Charter, 1946, c. 384 section 12 that Council "and its meetings shall be open" pursuant to the general laws of the Commonwealth 2020 cc. 813, 814, and
- Failed to comply with the requirement in Virginia Code Section 15.2 - 2204 A. that during the approval process ordinances "shall contain a reference to the place ... within the locality where copies of the proposed plans, ordinances... may be examined" and the "notice shall specify the time and place of hearing at which persons affected may appear and present their views," and
- Failed to comply with the Council powers enumerated in section 14 of the City of Charlottesville Charter, 1946, c. 384, First, that Council is responsible "to ... widen,...improve...streets... and have them properly lighted and kept in good order," and
- Failed to comply with the Council powers enumerated in section 14 of the City of Charlottesville Charter, 1946, c.384, Fifth, that Council shall "provide for the preservation of the general health of the inhabitants of said City..."

## **THE PARTIES**

1. Cabell Marshall occupies a property across from 240 Stribling Avenue. The older home is being redecorated in anticipation of grandchildren. It was bought due to its location on a quiet, historic street with many older single family homes with a variety of architectural styles, with deep front yards and with huge trees. It is near the picturesque Huntley School which was the first home built in the Fry's Spring area.



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

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

**THE ORDINANCES: 1. REZONING 240 STRIBLING AVE.  
and 2. INFRASTRUCTURE FUNDING AGREEMENT**

4. On November 9, 2021, the City's Planning Commission recommended approval of the Rezoning Application ZM20-00002 concerning 240 Stribling Avenue.

5. On April 18, 2022 the Rezoning Ordinance was approved.

6. On March 21, 2022 an Infrastructure Funding Agreement was discussed.

7. On April 18, 2022 City Council adopted the Ordinance for an Infrastructure Funding Agreement.

**Damaging Private Property for the Primary Purpose of Increasing Tax Revenue**

8. During the Planning Commission and Council meetings, the large amount of tax revenue to be gained from increasing the density was discussed as the primary reason for backing this ordinance. A large chart was displayed showing the projected tax revenues over time.

9. The density is being increased from 64 (as zoned for many years and relied on by everyone purchasing a home in the neighborhood) to 170 dwelling units. This will almost triple the headlights shining into Plaintiff's windows at night as an estimated 1200 car trips per 24



hours go in and out of the PUD. It will also increase the amount of exhaust fumes in the air and the frequency of the sound of car engines revving and doors slamming and car radios playing. Thus, the increase in density and congestion will negatively impact the Plaintiff's quality of life.

10. The plat shows a confusing 0 to 10 foot setback from Stribling so the 3 story townhomes may be built up very close to the street thereby enabling the new inhabitants to look down into the pre-existing home across the street and to hear all conversations in the yard or on the porch. There will be a significant loss of privacy and value to Plaintiff.

11. The other older homes sit 45' to 90' plus back from the street so the new 240 Stribling PUD buildings will not be harmonious or coordinated with the existing streetscape although paragraphs 6 and 8 of the enabling legislation for a PUD require that they should be. This loss of homogeneous setbacks will negatively impact the streetscape and the value of the older home.

#### **Failure to Comply with Statutory Regulations Concerning Borrowing**

12. The Infrastructure Funding Agreement does not comply with the clear mandate of Article VII Section 10 of the Constitution of Virginia that a City can only borrow money "provided the notes shall mature not later than twelve (12) months after the date of issue." In breach of this law, Council assures the lender that it is its "intent" to make "annual appropriations to fund the reimbursement ..." over several years.

#### **Failure to Comply with Code Concerning Prohibited Conduct**

13. Before the Developer finally purchased 240 Stribling Avenue, he has stated he was



"told by the city" to seek a higher density. Since he was on a very friendly, first name basis with most of the city staff when seen on zoom meetings, it appeared that he had gotten insider information. Many neighbors on Stribling felt overwhelmed by his seemingly unfair advantage in getting advance encouragement directly from the city. Virginia Code section 2.3-3103 prohibits a city employee or someone in an advisory agency from using for his own benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public.

14. The fact that the Developer was willing to make a \$2,900,000, multi year loan to the City with only a statement of "intention" to repay ( # 6, Funding Agreement) increased the perception that the parties were not negotiating at arm's length or in the best interest of the public.

15. The fact that in section 2.d. of the Funding Agreement, the City agreed to let the Developer "deduct" an unspecified, open ended amount for his engineering and surveying work to date from the sidewalk funds does not sound prudent.

16. During the last public discussion of the Funding Agreement before the final vote, two of the professional staff people, including the traffic engineer assigned to spearhead the sidewalk project, said they could not answer Council's questions about the agreement because they had not yet read it. This deepens the appearance that the developer has some kind of inside track that is hidden from the public and even Council's own professional staff.

#### **Failure to Hold Open Meetings**

17. Stribling Avenue has a very diverse population in all respects: age, income, ethnicity, language, race, education, family size, professions, day/night shift and so forth. Many people



do not have the skill or equipment or schedule to participate in zoom meetings. Most of the public discussion of this 240 Stribling PUD rezoning took place during the pandemic. Many neighbors were excluded from the meetings. *Because of masking and isolation restrictions,* neighbors were not able to congregate or spread the word about the possible PUD. Then, even after students were required to return to school and then, most recently when masking was no longer required, the City Council continued to hold itself inaccessible to many Stribling and neighborhood residents by holding zoom meetings when there was no longer a necessity for doing so.

18. Conveniently for the Developer, it appears that the City rushed the final vote on the PUD to happen before Council fully reopened to the public. Their meetings seem to have stayed inaccessible for reasons other than medical. That goes against the mandate in the City's Charter and the general laws of the Commonwealth 2020 cc. 813, 814 that says that Council's meetings "shall be open." Council pursued this course even after pleas by Plaintiff and many others that the final votes on these matters be scheduled when meetings were fully open.

**Failure to Have Plans Available for Accessible Examination and to Have In Person Interaction With Council**

19. Despite access via newspapers and a wide street front on Stribling where posters could have been mounted, the Council did not make an effort to share the proposed PUD plans with the Stribling neighborhood during the almost two years when city offices were closed.

As was described in ongoing articles in the news about the lower income children who did not have access to computers during the school closures, those without computers or computer skills on Stribling were excluded from the democratic process. The Council did not meet the



requirement in Virginia Code Section 15.2 -2204 A that during the approval process ordinances "shall contain a reference to the place... within the locality where copies of the proposed plans, ordinances... may be examined." Council also failed to meet another requirement in that section that there be ... a " place of hearing at which persons affected may appear and present their views." It is well documented now that some elements of human communication are lost in zoom meetings. Educators now have statistics proving that point. Since the scope and impact of this PUD is significant, Council should have delayed the final hearing on these ordinances until the full community could get caught up and participate in person.

#### **Failure of Council to Keep Streets in Good Order**

20. In section 14 of the City of Charlottesville Code, 1946, c. 384 First, Council is held responsible "to... widen,...improve...streets...and have them properly lighted and kept in good order." There is ongoing debate about the ability of Stribling Avenue, a narrow country road with a blind dip and a blind curve and with narrow areas with insufficient parking and tight roadside parking, to safely absorb the estimated 1200 additional car trips per day from the 240 PUD. The engineering plan is not yet fully designed and the traffic study was done at the start of the pandemic when very few people were venturing out.

21. There is also fear that the intersection of Stribling into Jefferson Park Ave and diagonally across from the end of Robertson Ave will become deadly with the influx of so many more cars because this is the paved exit out of the PUD. Although the Infrastructure Funding Plan provides for sidewalks to keep pedestrians safe, it does not include upgrades to make the JPA intersection safer. Most of the neighbors had been led to believe that such upgrades



would be included. In the final approval meeting of April 18, 2022, the Mayor said that Council was aware that it was a dangerous intersection and that it was fixable but Council failed to allocate any funds for repairs or improvements and failed to set a time frame for future funding.

#### **Failure to Provide for the Preservation of the General Health of the Inhabitants**

22. Under section 14 of the City of Charlottesville Charter, 1946, c.384, Fifth, the Council must "provide for the preservation of the general health of the inhabitants of said City.." Approving an ordinance for a PUD that will bring approximately 1200 more car trips per day onto a substandard street and then out into a divided thoroughfare with bike lanes and an off set approaching street and without a timely traffic study or complete engineering plan does not meet the demands of the Charter.

### **Count I**

**Declaration that the rezoning Ordinance allowing the 240 Stribling PUD is *Void Ab Initio* because it damages private property and its primary use is to increase tax revenues.**

#### **23. Plaintiff incorporates the preceding allegations.**

23. A. Further evidence of Council's focus on the tax revenue instead of on helping people needing affordable housing is that Plaintiff sent a letter to the Developer two years ago and copied Council. It is now in Council's files. The letter encouraged Council to ensure that the Developer employed minorities and women subcontractors and contractors and that he paid a rate above minimum wage. It encouraged such things as the use of state of the art air infiltration prevention insulation technology, solar panels, gray water recycling, sound insulation, reflective windows, electric car recharging stations, ceiling fans, cross ventilation air flow design, programmable thermostats, decks for potted plants and the cooling effects of moisture evaporation from leaves as well as other suggestions. No mention of any of these



opportunities has been made in the considerations about the PUD. Lower utility bills can make a big difference in a family's budget.

23. B. Another omission indicates that Council's focus has been primarily on the potential tax revenues. Many people needing affordable housing have transportation issues. Although it was mentioned several times in meetings, it is barely mentioned in the write up of the evolution of this PUD. This PUD is a 15 minute walk from a convenience store and a 10 minute drive to a grocery store or pharmacy. Taxis get expensive for trips to shop or to get to a child's school or to go to the doctor. No mention has been made of going through the established arbitration procedures set up Albemarle County to get the gravel end of Stribling paved. Once reliable, it could serve as a safe alternate route for residents of the PUD as well as for future residents in the undeveloped wooded areas off the gravel road. It could provide a circular route to Fontaine Research Park, UVA and the hospital.

23. C. Yet another indicator that Council's interest is in the tax revenue and not the welfare of the present and future residents is that a walk and bike way could be built over the train tracks to connect the Sunset area of Stribling with a finger street coming off of Fontaine. Such an alternate route would be particularly helpful during the days of construction and would encourage even more people to get out and walk or bike. In line with this, Council seemed to wash its hands of responsibility to keep Stribling open for emergency vehicles for the safety of existing residents during construction. It seems that Council is unaware of the immensity of the disruption and danger the road and PUD construction will cause.

23. D. Although the concern over the loss of trees was mentioned many times by many people, that level of interest is not reflected in the write-ups nor are all of the emails and letters neighbors sent to Council over the past few years summarized in Council's overview.



The recent study that showed an alarming decrease in the city's tree canopy was not incorporated into the discussion of the PUD and Stribling sidewalk. It does not appear that Council is willing to explore alternate sidewalk construction techniques in order to save 19 trees and protect many more that will be weakened.

23. E. The Council seems blinded by the possible increase in tax revenues and is not keeping abreast of the research being requested by the General Assembly to help mitigate climate change. They want building codes to be as stringent or more than the International Energy Conservation Code. There is now a carbon sequestration task force and policy to accelerate transportation electrification.

### **Count II**

**Declaration that the Ordinance of the Infrastructure Funding Agreement is Void *Ab Initio* because it breaches the requirement that any loans taken out by the city be repayable within twelve months after the date of issue.**

24. Plaintiff incorporates the preceding allegations.

### **Count III**

**Declaration that the Approval Process of this Rezoning Ordinance was Flawed and Renders the Ordinance Void *Ab Initio* Because Government and/or Agency Employees Gave Developer Insider Encouragement that a Higher Density Would Be Acceptable When the General Public Did Not Have Access to Such Information.**

25. Plaintiff incorporates the preceding allegations.

### **Count IV**



**Declaration that the Approval Process for Both of These Ordinances Was Flawed Because the Council Did Not Hold Open Meetings Even After Schools Were Reopened and Thus the Ordinances are Void *Ab Initio*.**

26. Plaintiff incorporates the preceding allegations.

### **Count V**

**Declaration that the Approval Process for Both of These Ordinances Was Flawed and They Are Both Void *Ab Initio* Because Council Did Not Provide a Place Where the Plans Could Be Reviewed by the Public and Particularly Neighbors In a Modest Neighborhood and Because Council Did Not Specify a Time and Place of Hearing Where Neighbors in a Modest Neighborhood Could Appear and Present Their Views Although Mask Wearing was No Longer Required and School Children Were Required to Go School.**

27. Plaintiff incorporates the preceding allegations.

### **Count VI**

**Declaration that Council Failed to Meet Its Responsibility To Improve Streets and Keep Them In Good Order In Anticipation of the Impact of the Rezoning Ordinance and Thus the Approval Process for Both of These Ordinances is Rendered Flawed and the Ordinances Are Void *Ab Initio*.**

28. Plaintiff incorporates the preceding allegations.

### **Count VII**

**Declaration That Both Ordinances Are Void *Ab Initio* Because Council Did Not Provide for the Preservation of the General Health of the Inhabitants of Charlottesville**

29. Plaintiff incorporates the preceding allegations.

29. A. The failure of Council to remedy the dangerous and mis-aligned intersection of Stribling With Jefferson Park Ave and Robertson Ave is evidence of potential gross negligence as Found in Chapman v. City of Virginia Beach, 475 S-E-2nd 798 (1996), where "specifically, despite repeated notices by its own employees that the gate was broken and in need of repair,



the city made a deliberate decision not to take any remedial action" and a girl's head got stuck in the broken gate and she died.

WHEREFORE Plaintiff respectfully requests that this Court enter an Order finding that the Plan is void *ab initio* due to the failure to abide by statutory requirements and is otherwise invalid and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

Plaintiff

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