

**VIRGINIA:**  
**IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE**

**BOARD OF SUPERVISORS OF THE  
COUNTY OF ALBEMARLE, VIRGINIA,**

**and**

**COUNTY OF ALBEMARLE, VIRGINIA,  
a political subdivision of the Commonwealth  
of Virginia,**

**Plaintiffs,**

**v.**

**Case No. CL17000203-00**

**CITY COUNCIL OF THE CITY OF  
CHARLOTTESVILLE, VIRGINIA,**

**and**

**CITY OF CHARLOTTESVILLE,  
VIRGINIA, et al.**

**Defendants.**

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**FINAL ORDER**

**CAME THE PARTIES TO THIS CAUSE** upon the cross Motions for Summary Declaratory Judgment and agreement that the case was ripe for judgment upon the issue presented in the parties' briefs. The parties further agreed to present a dispositive issue upon written briefs with exhibits supporting their respective positions. Based upon such agreement and consideration of the briefs and exhibits, the Court hereby **ORDERS, ADJUDGES, and DECREES:**

1. The Court's opinion letter of July 13, 2022, is amended to clarify that this case was filed and decided in the Circuit Court of the City of Charlottesville,

Virginia (rather than the Circuit Court of Albemarle County, Virginia, as stated in the letter);

2. For the findings and reasons stated in the Court's opinion letter of July 13, 2022, a true copy of which is attached hereto and incorporated herein:
  - a. the Plaintiffs' Motion for Summary Declaratory Judgment is granted;
  - b. the Defendants' Cross Motion for Declaratory Judgment is denied; and
  - c. the Defendant's Counterclaim is dismissed;
3. *Charlottesville City Code Sections 18-21 through 18-27, as amended*, are preempted by *Albemarle County Code Section 11-303, as amended*.
4. The only activities permitted on the Ragged Mountain Reservoir property (Albemarle County Parcel ID Number 07500-00-00-00100) are those expressly authorized by and enumerated in the Albemarle County Code, as amended from time to time.
5. The parties will bear their respective attorney's fees and costs;
6. The Clerk will mail or deliver certified copies of this Final Order to Counsel of Record; and
7. There being nothing further to be done, this matter is placed amongst the ended causes.

Entered:



Claude V. Worrell, II  
Judge

9/30/22  
Date

Seen and agreed to for the reasons stated in the Plaintiffs' Brief and this Court's 7/13/22 letter opinion:



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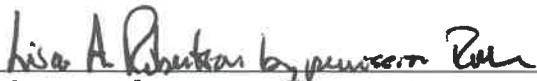
Steven L. Rosenberg, VSB #31422  
Richard A. DeLoria, VSB #30859  
Albemarle County Attorney's Office  
401 McIntire Road, Suite 325  
Charlottesville, Virginia 22902  
Telephone: (434) 972-4067  
Fax: (434) 972-4068  
*Counsel for Plaintiffs*  
srosenberg@albemarle.org  
rdeloria@albemarle.org

Seen and Objected to for the reasons stated in and arguments in the City of Charlottesville, *et al.*, Brief in Support of Cross Motion for Declaratory Judgment and for those other reasons attached hereto:



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Richard H. Milnor, VSB #14177  
Zunka, Milnor & Carter, Ltd.  
414 Park Street  
P.O. Box 1567  
Charlottesville, Virginia 22902  
rmilnor@zmc-law.com  
*Counsel for Defendants; and*



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Lisa A. Robertson, VSB #32486  
City Attorney  
Allyson Manson Davies, VSB#42996  
Senior Deputy City Attorney  
Office of the Charlottesville City Attorney  
P.O. Box 911  
Charlottesville, Virginia 22902  
robertsonl@charlottesville.org  
*Counsel for Defendants.*

SEEN AND OBJECTED by Defendants for the following additional reasons:

The provisions of Alb. County Code §11-303 should not be given precedence over the landowner's [City's] regulation of the land pursuant to Va. Code §15.2-1806, because the County ordinance is not enabled by the state code provisions relied upon within the County's briefs and the Court's opinion. Va. Code §15.2-2144 allows a locality to regulate and inspect a "water supply"; however, the provisions of Albemarle County Code §11-303 don't pertain to any inspection of a water supply, or to the process by which an operator produces, prepares, or distributes water. Alb. County Code §11-303 regulates only land uses, and the County articulated no rational basis supporting the contention that all land-using activities (other than fishing, hiking, birdwatching and picnicking) will pollute the water supply. The Commonwealth of Virginia has established a regulatory scheme for pollution created by land use activities (*see* Title 62.1, Chapter 3.1 (State Water Control Law), implemented within Chapter 17 of Albemarle County Code (Water Protection)), and the County adduced no exhibits/evidence establishing that the City proposes to establish bike trails other than in compliance with *bona fide* applicable water protection codes.

The Charlottesville City Code sections at issue as enacted in 2016 do not permit bicycling generally in the RMNA (to the extent that is indicated in the Court's letter opinion) but as specifically authorized by the General Assembly in Section 15.2-1806 only permits bicycling on designated trails in the RMNA park owned by it (not the County of Albemarle).

Section 15.2-1806 pertaining to uses permitted and regulated in the RMNA does not apply to Albemarle County since it does not own or lease the land.

Given that Albemarle County does not own the water or waterworks, the City—as owner of both the RMNA land and the water—has the express superior legal right to "regulate" the use of the land adjacent to the reservoir, consistent with the express authority set forth in Va. Code §15.2-1806 and laws applicable to land development. City Council did not place the land under any permanent easement in 1997, and subsequent city councils should not be precluded from approving uses different than those approved in 1997.

# COMMONWEALTH OF VIRGINIA



Timothy K. Sanner  
P.O. Box 799  
Louisa, Virginia 23093  
(540) 967-5300  
(540) 967-5681 (fax)

Cheryl V. Higgins  
501 E. Jefferson St., 3rd Floor  
Charlottesville, Virginia 22902  
(434) 972-4015  
(434) 972-4071 (fax)

Richard E. Moore  
315 E. High Street  
Charlottesville, Virginia 22902  
(434) 970-3760  
(434) 970-3038 (fax)

## Sixteenth Judicial Court

Albemarle Culpeper Fluvanna Goochland  
Greene Louisa Madison Orange Charlottesville

Dale B. Durrer  
135 West Cameron Street  
Culpeper, Virginia 22701  
(540) 727-3440  
(540) 727-7535 (fax)

Claude V. Worrell, II  
P.O. Box 386  
Stanardsville, Virginia 22973  
(434) 985-1431  
(434) 985-5243 (fax)

David B. Franzen  
P.O. Box 230  
Orange, Virginia 22960  
(540) 672-2433  
(540) 672-2189 (fax)

July 13, 2022

Allyson Davies, Esquire  
Office of the Charlottesville City Attorney  
605 East Market Street  
Charlottesville, VA 22902

Richard A. DeLoria, Esquire, Esquire  
Albemarle County Attorney's Office  
401 McIntire Road, Suite 325  
Charlottesville, VA 22902

Richard H. Milnor, Esquire  
Zunka, Milnor & Carter, Ltd  
414 Park Street  
Charlottesville, VA 22902

In re: Board of Supervisors of the County of Albemarle v. City Council of the City of Charlottesville, Circuit Court of Albemarle County CL17000203-00

Dear Counsel:

Before the Court is a motion brought by Plaintiff Board of Supervisors of the County of Albemarle, Virginia and cross-motion brought by Defendant City Council of the City of Charlottesville against Plaintiff Board of Supervisors of the County of Albemarle, Virginia for a final Declaratory Judgement regarding bike usage on the Ragged Mountain Natural Area as enabled by Va. Code Ann. § 15.2-1806 (1950, as amended). For the reasons below, the Court grants a declaratory judgement in favor of the Plaintiff.

### Facts and Proceedings

I have fully considered the arguments of counsel and have reviewed all briefs filed by the parties along with any exhibits attached thereto. To the extent my discussion of the facts of this case today differs from a party's view of the facts of the case, my recitation of factual matters will constitute my findings of fact.

The Albemarle County Code forbidding biking on the Ragged Mountain Reservoir was passed in 1988: "Any activity not expressly permitted...shall be prohibited within the boundaries of both the upper and lower reservoir." Biking was not enumerated in the permitted activities provision.

In a proposal letter – dated February 1997 – to the Charlottesville City Council and the Albemarle County Board of Supervisors, the Ivy Creek Foundation specifically stated that the proposed development was to be "designated for foot travel only (with the exception of non-combustion type devices intended to aid the handicapped), for the purposes of hiking, nature observation, and study, and fishing. This would preclude bicycles, all-terrain vehicles, horses, pets, etc." *Plaintiff Exhibit 15*. Development of the Ragged Mountain Reservoir represented a collaboration effort between the City of Charlottesville, Albemarle County, and the Rivanna Water & Sewer Authority.

In March 1997, the Board of Supervisors of Albemarle County voted in favor of the Ivy Creek Foundation's proposal to develop the Ragged Mountain Reservoir for "hiking and nature observation." *Plaintiff Exhibit 14*. County approval and participation was contingent on approval by the Charlottesville City Council and the Rivanna Water and Sewer Authority. The City and the County provided an initial contribution of 5,000 dollars, respectively, for the project that would be overseen and executed by the Ivy Creek Foundation. The City and County provided ongoing financial contributions for annual operating costs. *Plaintiff Exhibit 17*.

The Charlottesville City Council voted to approve funding for the Ivy Creek Project in April 1997. *Plaintiff Exhibit 16*. In September 1997, the County Board of Supervisors amended the Ragged Mountain Comprehensive Plan to include the provision that the Ivy Creek Foundation and the County "will work with adjacent landowners to minimize adverse impacts in the development and the use of trails." *Plaintiff Exhibit 18*. While there is no explicatory language for "adverse impacts," Ivy Creek emphasized the importance of general nature preservation in its initial proposal, specifically emphasizing foot traffic public access only.

The City Council sought to override the County's restriction against biking on the Ragged Mountain Reservoir. On December 19, 2016, the City Council voted to request that the Albemarle County Board of Supervisors amend the County Code sec. 11-303 to "prohibit only those activities that are specifically found to pose a threat of pollution to the Ragged Mountain Reservoir that is dangerous to the health of lives of persons residing in the County." Specifically, the City Council passed an ordinance entitled "Ragged Mountain Natural Area Rules of Use" which specifically allowed biking. *Plaintiff Exhibit 23*. The 2016 ordinance stands in conflict

with the 1988 Albemarle County Code given that the county ordinance does not expressly permit biking within the boundaries of the Ragged Mountain Reservoir.

The Plaintiffs moved for summary judgement on their claim for declaratory and injunctive relief and to dismiss the Defendant's counterclaim with prejudice on March 12, 2021. Defendants cross-motined on March 12, 2021, claiming that the City of Charlottesville Code – which would enable biking on Ragged Mountain – is valid under Va. Code Ann. § 15.2-1806 (Parks, recreation facilities, playgrounds, etc.; authority for localities to establish parks and recreation facilities on lands owned by them) and pre-empts Va. Code Ann. § 15.2-1725 (Extending police powers of localities over lands lying beyond boundaries thereof; prohibiting conflicting ordinances).

### **Discussion**

#### *Controlling Statutory Authority*

Virginia Code § 15.2-1725 states that: "...no ordinances in conflict with an ordinance of the jurisdiction wherein the property is located shall be enacted." The language of the County ordinance, as it is implemented, stands in direct conflict with the Charlottesville ordinance: the county code does not include biking in the permissible activities list, and therefore, biking has been forbidden on the Ragged Mountain Reservoir since 1988. The Charlottesville City Code, as passed in 2016, includes biking in a list of permissible activities on Ragged Mountain Reservoir. This Court finds that implementation of both ordinances is impossible, as the county and city codes stand in direct conflict with one another.

The City asserts that Va. Code Ann. § 15.2-1806 controls because it more specifically addresses the locality regulatory authority over park and recreation areas. *See generally Commonwealth v. Brown*, 259 Va. 679, 706 (2000). § 15.2-1806 states that "A locality may establish parks, recreation facilities and playgrounds... A locality may also establish, conduct, and regulate a system of hiking, biking, and horseback riding trails." The City claims that its authority to control biking is supported by this code section. However, the City fails to demonstrate how § 15.2-1806 has a more specific application as compared to § 15.2-1725, which states:

"Any locality owning and operating [a] ...public water supply or watershed, public park, recreational area, .... and other public property located beyond the limits of the locality shall have and may exercise full police power over the property, and over persons using the property, and may, by ordinance, prescribe rules for the operation and use of the property..."

The general police power, as enumerated in Va Code Ann. § 15.2-2144, enables localities to "regulate...public and private water supplies...It may prevent the pollution of water." § 11-303 regulating permissible activities on Ragged Mountain is part of the Albemarle County Code dealing with "Water Supply Reservoirs Utilized by the RWSA." As evidenced by the materials submitted into evidence, the Ragged Mountain Reservoir was established for foot travel only. *Plaintiff Exhibit 15*. Limiting Ragged Mountain Reservoir access to solely foot travel falls

squarely within a locality's police power to regulate public and private water supplies. Therefore, § 15.2-1806 is not necessarily more specific than § 15.2-1725.

The City asserts that biking does not necessarily contribute to water pollution and therefore § 15.2-2144 is inapplicable. Yet, § 15.2-2144 also enables general regulation of public and private water supplies, which is exactly what County Code § 11-303 seeks to accomplish. Further, Defendants failed to demonstrate how the County Code is not also a means of regulating a hiking and biking system under § 15.2-1806.

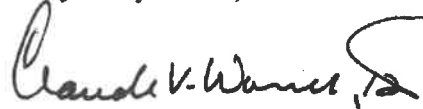
The City bases its argument on a misunderstanding of what it means to "regulate." Defendants argue that the County "does not attempt to regulate bicycle riding...by limiting it to a system of dedicated trails or multi-use bike riding trails." *Defendant Brief* ¶ 9. Va. Code Ann § 2.2-4101 states that "'Rule' or 'regulation' means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws." Under this definition, the County ordinance does seek to regulate biking on Ragged Mountain. The County does not include biking in the authorized activity provision: "Any activity not expressly permitted...shall be prohibited within the boundaries of both the upper and lower reservoir." The following activities are included in the authorized activities section of the Albemarle County Code: reservoir bank fishing, hiking, birdwatching and picnicking. This Court finds that Albemarle County Code § 11-303 qualifies as a regulation under Va. Code Ann. § 15.2-2144.

*Amending the County Ordinance*

§ 15.2-1433 of the Virginia Code states that "Any locality may codify or recodify any or all of its ordinances, in permanently bound or loose-leaf form. Such ordinances may be changed, altered or amended by the governing body, and ordinances or portions thereof may be deleted and new material may be added by the governing body." Amendments to the County Code must be done by the County itself. Therefore, the City's effort to authorize biking on Ragged Mountain is not binding upon the County Code.

The Court finds that the Albemarle County Code § 11-303 pre-empts Charlottesville Code § 18-21-27. Only the enumerated activities in county code are permitted. Mr. Deloria please prepare an order consistent with this opinion.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Claude V. Worrell, II", with a stylized flourish at the end.

Claude V. Worrell, II  
Judge

cc: Albemarle County Circuit Court