VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

JAMES R. GARRETT, ELLEN ANN HARVEY-D'ARDENNE, MICHAEL F. FARRELL, KARYN B. FARRELL, WILLIAM A. HARRISON, JR., MATTHEW R. GOFF, JORDAN L. GOFF, CHARLOTTE D. McCAULEY, THOMAS E. WRAY, PAUL F. GLASSBRENNER, KATHRYN E. GLASSBRENNER, JOHN MICHAEL DILAURO, PAMELA R. DILAURO, AND DAVID G. HARRISON, INDIVIDUALLY AND AS TRUSTEE FOR THE DAVID GEORGE HARRISON REVOCABLE TRUST,

Plaintiffs,

v.

ROANOKE CITY COUNCIL,

Serve: Mayor Sherman P. Lea, Sr.
215 Church Avenue, SW
Roanoke, VA 24011

JOHN A. CARTER RENTAL PROPERTIES, LLC,

Serve: John A. Carter
5527 Orchard Villas Circle
Roanoke, VA 24019

KEAGY MEDMONT, LLC,

Serve: John Alexander Boone
3934 Electric Road, Suite A
Roanoke, VA 24018

and

ABOONE REAL ESTATE, INC.,

Serve: John Alexander Boone
3934 Electric Road, Suite A

Case No. CL 24-1535

JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE

CIRCUIT COURT
Received & Filed
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By Kelly Mitchell
Deputy Clerk
CITY OF ROANOKE

Roanoke, VA 24018)
)
Defendants.)

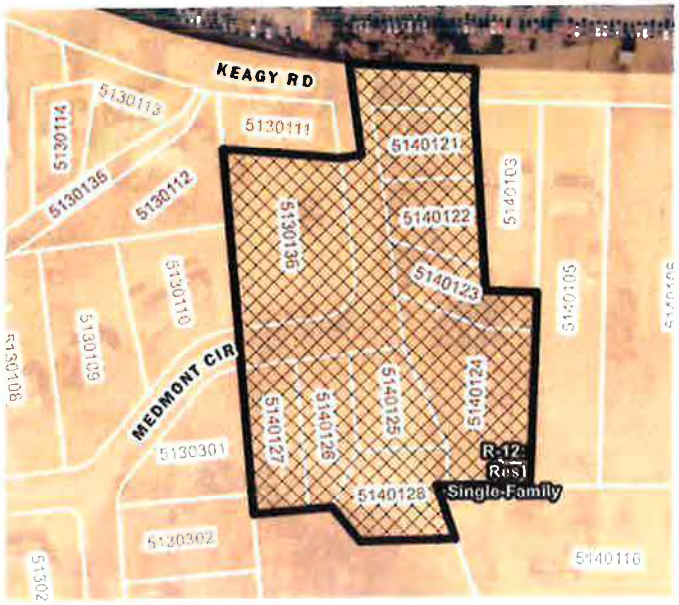
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COME NOW the Plaintiffs—James R. Garrett, Ellen Ann Harvey-D'Ardenne, Michael F. Farrell, Karyn B. Farrell, William A. Harrison, Jr., Matthew R. Goff, Jordan L. Goff, Charlotte D. McCauley, Thomas E. Wray, Paul F. Glassbrenner, Kathryn E. Glassbrenner, John Michael DiLauro, Pamela R. DiLauro, and David G. Harrison, individually and as trustee for the David George Harrison Revocable Trust—and state as follows for their Complaint against Defendants in this action for declaratory judgment and injunctive relief, arising out of a rezoning approved by Defendant Roanoke City Council on July 15, 2024, of properties owned by John A. Carter Rental Properties, LLC, and Keagy Medmont, LLC, upon the application of developer ABoone Real Estate, Inc.

INTRODUCTION

1. On July 15, 2024, the Roanoke City Council ("Council") approved a rezoning of the properties located at 5093 Medmont Circle, SW, and eight parcels addressed as 0 Medmont Circle, S. W., bearing Official Tax Map Nos. 5130136, 5140121, 5140122, 5140123, 5140124, 5140125, 5140126, 5140127, and 5140128, and the portion of right-of-way to be vacated adjacent to Official Tax Map Nos. 5140123, 5140124, 5140125, and 5140126 (hereinafter "Medmont Parcels"), from R-12, Residential District, to MXPUD, Mixed Use Planned Unit Development District (hereinafter "Medmont Rezoning").

2. The Medmont Parcels total approximately 3.51 acres and are outlined on the tax map below:



3. The Medmont Parcels are owned by John A. Carter Rental Properties, LLC, and Keagy Medmont, LLC.

4. The Medmont Rezoning was initiated by the application of developer ABoone Real Estate, Inc., originally submitted December 26, 2024, and amended three times, most recently on June 25, 2024, in order to develop 24 townhome units in a neighborhood surrounded by detached single-family homes (hereinafter "Medmont Project").

5. Council's approval of the Medmont Rezoning was done in violation of applicable law, rendering it *ultra vires* and void and subject to review and reversal by this Court, for the following reasons, among others

a. The Planning Commission failed to publish all notices required by Virginia Code § 15.2-2204, rendering the Medmont Rezoning *ultra vires* and void.

b. By rezoning the Medmont Parcels MXPUD, when the 24 townhomes to be developed by the Medmont Project constitute the same use, Council acted in excess of the authority granted to it pursuant to Virginia Code § 15.2-2286, rendering the Medmont Rezoning violative of Dillon's Rule, *ultra vires*, and void.

c. In approving the Medmont Rezoning, Council acted unreasonably, arbitrarily, and capriciously, and thus contrary to law, by relying on erroneous conclusions and summaries provided by staff.

d. In approving the Medmont Rezoning, Council failed to give reasonable consideration to safety from fire, congestion in public streets, facilitating adequate fire protection, protecting against overcrowding of land, and providing for protection of the natural environment, as required under Virginia Code § 15.2-2283, rendering the Medmont Rezoning unreasonable, arbitrary, and capricious, and thus contrary to law.

e. In approving the Medmont Rezoning, Council failed to give reasonable consideration to the comprehensive plan, safety from fire, congestion in streets, protecting against overcrowding of land, and avoiding undue concentration of population, as required under Roanoke City Charter § 62, rendering the Medmont Rezoning unreasonable, arbitrary, and capricious, and thus contrary to law.

f. In approving the Medmont Rezoning, Council failed to give reasonable consideration to the conservation of properties and their values, existing use and character of the property, and preservation of forestal land, as required under Virginia Code §15.2-2284, rendering the Medmont Rezoning unreasonable, arbitrary, and capricious, and thus contrary to law.

6. Plaintiffs are all aggrieved by Council's Medmont Rezoning decision for the following reasons, among others:

a. Plaintiffs' properties are within close proximity to the parcels rezoned by the Medmont Rezoning;

b. The Medmont Project will reduce the property values of Plaintiffs' homes and inhibit their quiet enjoyment of their properties; and

c. The Medmont Project will expose Plaintiffs to increased liability risks.

7. Plaintiffs therefore bring this Complaint for Declaratory and Injunctive Relief pursuant to Virginia Code §§ 8.01-184, 8.01-620, and 15.2-2285(F), and Rule 3:2(a) of the Rules of the Supreme Court of Virginia, and pray that this Court (a) declare that the Council's action in approving the Medmont Rezoning was contrary to law, arbitrary and capricious, unreasonable, and void; and (b) permanently and, while this action is pending, temporarily enjoin the development of the Parcels except as permitted by right in an R-12 district and other applicable law.

PARTIES

8. Plaintiff James R. Garrett owns and resides in a home at 3652 Keagy Road SW, Roanoke, Virginia, which is located approximately 100 feet from the Medmont Parcels.

9. Plaintiff Ellen Ann Harvey-D'Ardenne resides in a home at 5209 Medmont Circle SW, Roanoke, Virginia, which is located approximately 250 feet from the Medmont Parcels.

10. Plaintiffs Michael F. Farrell and Karyn B. Farrell own and reside in a home at 5217 Medmont Circle SW, Roanoke, Virginia, which is located approximately 360 feet from the Medmont Parcels.

11. Plaintiff William A. Harrison, Jr. owns and resides in a home at 3640 Keagy Road SW, Roanoke, Virginia, which is located approximately 265 feet from the Medmont Parcels.

12. Plaintiffs Matthew R. Goff and Jordan L. Goff own and reside in a home at 3662 Keagy Road SW, Roanoke, Virginia, which directly abuts the Medmont Parcels.

13. Plaintiff Charlotte D. McCauley owns and resides in a home at 5105 Medmont Circle SW, Roanoke, Virginia, which directly abuts the Medmont Parcels.

14. Plaintiff Thomas E. Wray owns and resides in a home at 5110 Medmont Circle SW, Roanoke, Virginia, which directly abuts the Medmont Parcels.

15. Plaintiffs Paul F. Glassbrenner and Kathryn E. Glassbrenner own and reside in a home at 5221 Medmont Circle SW, Roanoke, Virginia, which is located approximately 475 feet from the Medmont Parcels.

16. Plaintiffs John Michael DiLauro and Pamela R. DiLauro own and reside in a home at 1438 Barnhardt Drive SW, Roanoke, Virginia, which is located approximately 300 feet from the Medmont Parcels.

17. Plaintiff David G Harrison resides in a home at 5305 Medmont Circle SW, Roanoke, Virginia, which is owned by the David George Harrison Revocable Trust, for which David G. Harrison is trustee, and located approximately 580 feet from the Medmont Parcels.

18. Plaintiffs join their actions initially pursuant to Virginia Code § 8.01-267.5 because their claims involve common issues of fact and arise out of the same transaction or occurrence; common questions of law or fact predominate and are significant to their actions; consolidation will promote the ends of justice and the just and efficient conduct and disposition of their actions; consolidation is consistent with each party's right to due process of law; and consolidation will not prejudice each individual party's right to a fair and impartial resolution of each action.

19. Defendant Council is the governing body of the City of Roanoke, Virginia, established by the Roanoke City Charter, § 3.

20. Defendant John A. Carter Rental Properties, LLC, is a Virginia limited liability company with its principal office in Bedford, Virginia; owns eight of the nine Medmont Parcels; and signed the application for the Medmont Rezoning. As the owner of the Medmont Parcels, it is a necessary party to this action.

21. Defendant Keagy Medmont, LLC, is a Virginia limited liability company with its principal office in Roanoke, Virginia; owns one of the nine Medmont Parcels, specifically the parcel with Official Tax Map No. 5130136; and signed the application for the Medmont Rezoning. As the owner of the Medmont Parcels, it is a necessary party to this action.

22. Defendant ABoone Real Estate, Inc. (hereinafter "Applicant"), is a Virginia corporation with its principal office in Roanoke, Virginia; submitted the application for the Medmont Rezoning; and is the developer on the Medmont Project. As the applicant and developer of the Medmont Project, it is a necessary party to this action.

JURISDICTION AND VENUE

23. This Court has original, general, and exclusive jurisdiction of this matter pursuant to Virginia Code §§ 8.01-184, 8.01-620, and 15.2-2285(F).

24. Venue is proper in the City of Roanoke pursuant to Virginia Code §§ 8.01-261(15) and 8.01-262(1)-(4).

FACTUAL ALLEGATIONS

Background

25. The Medmont Parcels are a part of the Greater Deyerle neighborhood in the southwest part of Roanoke, Virginia; consist of a combined approximate 3.51 acres; and are bordered to the west, south, and east by a number of detached, single-family homes, all zoned R-

12, and to the north by Keagy Road SW, serving as a border between the cities of Roanoke and Salem.

26. Prior to July 15, 2024, the Medmont Parcels, consistent with the surrounding neighborhood, were zoned R-12.

27. R-12 is one of Roanoke's residential zoning districts, the purpose of which is "to protect residential neighborhoods, to provide a range of housing choices, and to incorporate neighborhood principles, including lot frontages, building setbacks and densities, that are customary in urban and suburban neighborhoods."[1]

28. The R-12 zoning district permits single-family detached dwellings by right, but does not permit single-family attached dwellings either by right or by special exception.

29. The City of Roanoke maintains Neighborhood Plans, which it describes as plans "where urban planners and community members work together to focus on the fine details," as opposed to the "City's Comprehensive Plan," which "helps shape the big picture of what Roanoke will look like in 20 years."

30. Under the Greater Deyerle Neighborhood Plan, maintaining the current residential zoning on Keagy Road is listed as a "high priority" initiative.

31. Under the Greater Deyerle Neighborhood Plan, the future land use of the Medmont Parcels is to remain single-family residential, as opposed to Mixed Density Residential, Commercial, or other land uses.

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1 On March 18, 2024, Council passed an ordinance enacting sweeping amendments to the City's Zoning Code, including the purpose of R-12 districts. In response to separate litigation, Council has begun the process of reconsidering such amendments, though it maintains that the amendments remain in full effect. Yet, Roanoke's publicly available Code of Ordinances, purportedly updated on May 30, 2024, do not include such amendments. Therefore, throughout this Complaint all references to the Roanoke, Virginia Code of Ordinances are to the publicly available version, purportedly updated on May 30, 2024, and do not reflect the amendments enacted by Council on March 18, 2024.

32. The Greater Deyerle Neighborhood Plan also expresses "the City's commitment to Greater Deyerle as a low-density, single-family neighborhood."

33. Roanoke's Comprehensive Plan, dubbed "Vision 2040," states: "No immediate changes to the City's zoning map are proposed as part of this broad land use plan. As neighborhood and area plans are developed it is expected that strategic map changes could be made to implement those plans."

34. Yet, despite the language of the Comprehensive Plan and Greater Deyerle Neighborhood Plan, Applicant sought to rezone the Medmont Parcels from R-12 to MXPUD (Mixed Use Planned Unit Development District) in order to build 24 attached single-family townhomes, which rezoning was ultimately approved by the Council on July 15, 2024.

35. Virginia law permits zoning ordinances to provide for mixed use developments or planned unit developments. *See* Va. Code § 15.2-2286(A)(9).

36. Virginia law defines a mixed use development as "property that incorporates two or more different uses, and may include a variety of housing types, within a single development." Va. Code § 15.2-2201.

37. Virginia law defines a planned unit development as "a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis." Va. Code § 15.2-2201.

38. The purpose of the MXPUD zoning district is "to encourage the orderly development of mixed residential/commercial sites and to encourage innovative development

patterns that create a desirable environment, particularly for lots which contain a number of constraints to conventional development." Roanoke, Virginia Code of Ordinances § 36.2-324(a).

39. One distinguishing feature of the MXPUD zoning district is that dimensional regulations are, by and large, specified in the development plan (submitted by the applicant) rather than mandated by municipal law. *See* Roanoke, Virginia Code of Ordinances § 36.2-328.

Medmont Rezoning Timeline

40. On December 26, 2023, Applicant submitted an application to rezone the Medmont Parcels from R-12 to MXPUD.

41. The purpose of the rezoning was to construct 24 townhomes across the nine Medmont Parcels, rather than develop single-family, detached residences as would be permitted by right in an R-12 district. According to the development plan, there will be four structures comprised of four townhome units each, one structure comprised of three townhome units, and one structure comprised of five townhome units.

42. On January 19, 2024, Applicant amended its application to rezone the Medmont Parcels from R-12 to MXPUD.

43. On February 12, 2024, the Medmont Rezoning was on the Planning Commission's agenda, but the Planning Commission, at the request of Applicant, requested a continuance of the matter until the Planning Commission's meeting scheduled for June 10, 2024, which was granted.

44. On February 20, 2024, the Medmont Rezoning was on Council's agenda, but Council likewise continued the matter until the Planning Commission's meeting scheduled for June 10, 2024.

45. On May 17, 2024, Applicant again amended its application to rezone the Medmont Parcels from R-12 to MXPUD.

46. On June 10, 2024, the Planning Commission held a public meeting to consider the Medmont Rezoning. For this public meeting, notice was published in the Roanoke Times on June 3, 2024, and June 10, 2024. Applicant, however, requested a continuance of the matter until the Planning Commission's meeting scheduled for July 8, 2024, which was granted; no reasons therefor are indicated in the minutes of the meeting of June 10, 2024.

47. On June 25, 2024, Applicant for the third and final time amended its application to rezone the Medmont Parcels from R-12 to MXPUD.

48. On July 8, 2024, the Planning Commission held a public meeting to consider the Medmont Rezoning. For this public meeting, notice was published in the Roanoke Times on July 1, 2024, and July 8, 2024. At the conclusion of this meeting, the Planning Commission voted to recommend approving the Medmont Rezoning.

49. On July 15, 2024, Council held a public meeting to consider the Medmont Rezoning. For this public meeting, notice was published in the Roanoke Times on July 1, 2024, and July 8, 2024.

50. At Council's meeting of July 15, 2024, 16 concerned citizens spoke out in opposition to the Medmont Rezoning.

51. Yet, at the conclusion of Council's meeting of July 15, 2024, Council unanimously voted to approve the Medmont Rezoning.

Deficiencies in Medmont Rezoning Process

52. The public meetings of the Planning Commission, as described above, were not properly advertised.

53. Advertisement of the Planning Commission meeting of July 8, 2024, failed to comply with Virginia law.

54. Furthermore, the second advertisement of the Planning Commission meeting of June 10, 2024, being made on the same day as the meeting itself, frustrated the intent and purpose of Virginia law because the timing of such advertisements provided insufficient time to generate informed public participation.

55. In approving the Medmont Rezoning, Council did not exercise independent judgment but instead relied upon the report of staff, which contained material omissions and generalities.

56. The staff report stated that the Medmont Rezoning application, as amended for a third and final time, was consistent with "the general principles within the City's Comprehensive Plan [and] Greater Deyerle Neighborhood Plan."

57. Yet, the staff report omitted the ways in which the Medmont Rezoning would conflict with both the Comprehensive Plan and Greater Deyerle Neighborhood Plan.

58. Roanoke's current Comprehensive Plan, dubbed "Vision 2040," states: "No immediate changes to the City's zoning map are proposed as part of this broad land use plan. As neighborhood and area plans are developed it is expected that strategic map changes could be made to implement those plans."

59. Under the Greater Deyerle Neighborhood Plan, maintaining the current residential zoning on Keagy Road is listed as a "high priority" initiative; the future land use of the Medmont Parcels is to remain single-family residential, as opposed to Mixed Density Residential, Commercial, or other land uses; and "the City's commitment to Greater Deyerle as a low-density, single-family neighborhood" is emphasized.

60. Regarding interdepartmental comments, the staff report summarized such comments in a 37-word paragraph, stating: "General comments were provided from the Western Virginia Water Authority, Fire department, and the Planning Building and Development department related to: water and sewer availability, fire code standards, building and zoning subdivision requirements, and the permitting process."

61. In truth, however, these departments provided eight pages of changes and comments on January 10, 2024; eight pages of changes and comments on May 10, 2024; and seven pages of changes and comments on July 11, 2024. Staff failed to fully inform the Planning Commission and Council of these voluminous comments and changes, including information regarding fire code requirements.

62. In approving the Medmont Rezoning, Council failed to reasonably consider the impact the Medmont Rezoning would have on safety from fire.

63. The Medmont Project will widen Medmont Circle in front of the developed townhomes from 18.5 feet to 22 feet of paved width, excluding proposed gutter pans, and 26 feet including the proposed gutter pans.

64. The Virginia Statewide Fire Prevention Code requires apparatus access roads to have an unobstructed width of not less than 20 feet, and obstructions include the parking of vehicles.

65. However, the Medmont Project, by design, will not feature enough off-road parking for the 24 townhomes to be developed, and thus on-street parking will be required; indeed, on-street parking has been encouraged.

66. When on-street parking on Medmont Circle is taken into account, the width of Medmont Circle as an apparatus road to the 24 townhomes will fail to comply with the Virginia

Statewide Fire Prevention Code and pose a substantial risk to the health, safety, and welfare of others.

67. In approving the Medmont Rezoning, Council failed to reasonably consider protection of the natural environment.

68. During the Medmont Rezoning process, Council was advised that an environmental specialist with Wetland Studies and Solutions, Inc., had observed the Medmont Parcels and opined that the lower portion of the Medmont Project may be wetlands protected by state and federal law.

69. Thus, the environmental specialist recommended that a study be conducted by someone holding a Wetlands Delineator license from the Virginia Department of Professional and Occupational Regulation.

70. No such study was ever conducted, yet Council went on to approve the Medmont Rezoning in spite of that fact.

71. In approving the Medmont Rezoning, Council failed to reasonably consider the impact the Medmont Rezoning would have on property values; no study was ever conducted and neither the Planning Commission nor Council nor staff gave any consideration to this subject.

72. In approving the Medmont Rezoning, Council failed to reasonably consider the traffic congestion and overcrowding that will necessarily result from 24 units being built in an area where, if the Medmont Parcels remained zoned R-12, only nine units at most could be built.

73. In approving the Medmont Rezoning, Council failed to reasonably consider the existing use and character of the property as R-12 residential single family, which comports with the Greater Deyerle Neighborhood Plan, whereas the Medmont Project will not comport with the Greater Deyerle Neighborhood Plan.

74. In approving the Medmont Rezoning, Council failed to reasonably consider preservation of forestal land, as the Medmont Parcels would replace approximately 3.51 acres of primarily forest with 24 townhome units featuring very limited open space.

STANDING

75. The Medmont Project, which will be permitted by the Medmont Rezoning, will result in the surrounding homes, including homes owned by Plaintiffs, decreasing in value, including because of increased housing density and traffic congestion.

76. The Medmont Project, which will be permitted by the Medmont Rezoning, will adversely impact nearby residents', including Plaintiffs', quiet enjoyment of their properties, including because of increased housing density and traffic congestion.

77. Plaintiffs each own by deed an undivided 1/48 interest in the lake and adjoining park close to the Medmont Parcels; the Medmont Project, which will be permitted by the Medmont Rezoning, will increase Plaintiffs' exposure to liability arising out of such ownership.

78. Plaintiffs' injuries resulting from the Medmont Rezoning are concrete and particularized and are not those shared by the general public.

79. Plaintiffs, therefore, have standing to challenge the Medmont Rezoning under applicable law, including *Morgan v. Bd. of Supervisors*, 302 Va. 46, 883 S.E.2d 131 (2023) and *Anders Larsen Tr. v. Bd. of Supervisors*, 301 Va. 116, 872 S.E.2d 449 (2022).

REQUEST FOR DECLARATORY JUDGMENT

COUNT ONE – FAILURE TO PUBLISH ALL REQUIRED NOTICES

80. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

81. Prior to July 1, 2024, Virginia law provided: "The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published **once a week for two successive weeks** in some newspaper published or having general circulation in the locality, **with the first notice appearing no more than 14 days before the intended adoption**; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views. The local planning commission and governing body may hold a joint public hearing after public notice as set forth in this subsection. If a joint hearing is held, then public notice as set forth in this subsection need be given only by the governing body. As used in this subsection, "two successive weeks" means that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publication. In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required." Va. Code § 15.2-2204(A) (former) (emphasis added).

82. Since July 1, 2024, Virginia law provides: "The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been **published twice** in some newspaper published or having general circulation in the locality, **with the first notice appearing no more than 28 days before and the second notice appearing no less than seven days before the date of the meeting**

referenced in the notice; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views. The local planning commission and governing body may hold a joint public hearing after public notice as set forth in this subsection. If a joint hearing is held, then public notice as set forth in this subsection need be given only by the governing body." Va. Code § 15.2-2204(A) (emphasis added).

83. In other words, prior to July 1, 2024, notice was required to be published twice, once in each of the two weeks preceding the meeting, whereas since July 1, 2024, notice must be published twice in the 28 to seven days preceding the meeting.

84. The notice requirements of Virginia Code § 15.2-2204(A) are mandatory and failure to provide requisite notices renders an ordinance *ultra vires* and void *ab initio*. *See City Council of the City of Alexandria v. Potomac Greens Assoc.*, 245 Va. 371, 378, 429 S.E.2d 225, 228 (1993).

85. Virginia Code § 15.2-2204(A) requires that such notice be published for and in advance of every hearing concerning a proposed amendment of the zoning ordinance.

86. The intent of Virginia Code § 15.2-2204(A) is to "generate informed public participation by providing citizens with information about the content of the proposed amendments and the forum for debate concerning those amendment." *Glazebrook v. Bd. of Supervisors*, 266 Va. 550, 555, 587 S.E.2d 589, 592 (2003).

87. Notice of the meeting of the Planning Commission on July 8, 2024, was published on July 1, 2024, and July 8, 2024. Such notices thus failed to comply with Virginia Code § 15.2-2204(A), as amended, which was in effect not only at the time of this meeting, but at the time such notices were published.

88. The Planning Commission meeting of July 8, 2024, was not a continuation of the Planning Commission on June 10, 2024, because the Medmont Rezoning application had been amended between those meetings; in other words, the same application was not before the Planning Commission at its meetings of June 10, 2024, and July 8, 2024, respectively.

89. Even if the meeting of the Planning Commission on July 8, 2024, was continued from the meeting of the Planning Commission on June 10, 2024, Virginia Code § 15.2-2214 provides that no further advertisement of the continued meeting is needed if and only if the Planning Commission, by its chairman or vice-chairman, "finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting." No such finding was made at the Planning Commission meeting on June 10, 2024; rather, Applicant merely requested a continuance.

90. In addition, the second notices for the Planning Commission meetings of June 10, 2024, and July 8, 2024, were published on the same days as the respective meetings, thereby frustrating the intent of Virginia Code § 15.2-2204(A) as explained by the Supreme Court of Virginia in *Glazebrook v. Bd. of Supervisors*, *supra*.

91. The failure to timely publish such statutorily required written notices, as described above, rendered the Medmont Rezoning *ultra vires* and void *ab initio*.

COUNT TWO – ACTING IN EXCESS OF AUTHORITY DELEGATED BY THE GENERAL ASSEMBLY PURSUANT TO VIRGINIA CODE § 15.2-2286

92. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

93. Virginia law permits governing bodies to enact zoning ordinances to provide for mixed use developments or planned unit developments. *See* Va. Code § 15.2-2286(A)(9).

94. Virginia law defines a mixed use development as "property that incorporates two or more different uses, and may include a variety of housing types, within a single development." Va. Code § 15.2-2201.

95. Virginia law defines a planned unit development as "a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis." Va. Code § 15.2-2201.

96. The purpose of the MXPUD zoning district is "to encourage the orderly development of mixed residential/commercial sites and to encourage innovative development patterns that create a desirable environment, particularly for lots which contain a number of constraints to conventional development." Roanoke, Virginia Code of Ordinances § 36.2-324(a).

97. One distinguishing feature of the MXPUD zoning district is that dimensional regulations are, by and large, specified in the development plan (submitted by the applicant) rather than mandated by municipal law. *See* Roanoke, Virginia Code of Ordinances § 36.2-328.

98. In approving the Medmont Rezoning, Council approved the rezoning of the Medmont Parcels from R-12 to MXPUD.

99. Yet, the purpose of the Medmont Rezoning is to construct 24 townhome units, which meets neither the definition of a mixed use development nor a planned unit development.

100. Likewise, the Medmont Project does not satisfy the purpose of the MXPUD district as stated in the Roanoke, Virginia Code of Ordinances.

101. In determining the legislative powers of local governing bodies, Virginia follows Dillon's Rule of strict construction, which provides that municipal corporations possess and can

exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable. *See Richmond v. Confrere Club of Richmond, Inc.*, 239 Va. 77, 79, 387 S.E.2d 471 (1990).

102. In rezoning the Medmont Parcels to MXPUD, Council acted in excess of the powers expressly granted to it by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable.

103. Consequently, Council's approval of the Medmont Rezoning was *ultra vires* and void.

COUNT THREE – ARBITRARY, CAPRICIOUS, AND UNREASONABLE DECISION BY RELIANCE ON ERRONEOUS CONCLUSIONS AND SUMMARIZATIONS BY STAFF

104. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

105. In approving the Medmont Rezoning, Council did not exercise independent judgment but instead relied upon the report of staff, which contained material omissions and generalities, including those described in ¶¶ 55–61.

106. Council's approval of the Medmont Rezoning despite its reliance on erroneous conclusions and summarizations of staff was arbitrary and capricious, unreasonable, and thus in violation of law.

COUNT FOUR – ARBITRARY, CAPRICIOUS, AND UNREASONABLE DECISION AS INCONSISTENT WITH VIRGINIA CODE § 15.2-2283

107. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

108. Virginia Code § 15.2-2283 provides, "Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further

accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas and working waterfront development areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard; and (xii) to provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42

U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255."

109. In approving the Medmont Rezoning, Council failed to give reasonable consideration to the purposes enumerated in Virginia Code § 15.2-2283, including safety from fire, congestion in public streets, facilitating adequate fire protection, protecting against overcrowding of land, and providing for protection of the natural environment including the preservation of forestal land.

110. Council's approval of the Medmont Rezoning despite failing to reasonably consider what it must under Virginia Code § 15.2-2283 was arbitrary and capricious, unreasonable, and thus in violation of law.

COUNT FIVE– ARBITRARY, CAPRICIOUS, AND UNREASONABLE DECISION AS INCONSISTENT WITH ROANOKE CITY CHARTER § 62

111. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

112. Pursuant to Roanoke City Charter § 62, zoning ordinances "shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city."

113. The provisions of the Roanoke City Charter are mandatory, and Council is bound to follow them.

114. In approving the Medmont Rezoning, Council failed to design the ordinance in accordance with and/or give reasonable consideration to the factors required under Roanoke City Charter § 62, including the comprehensive plan, safety from fire, congestion in streets, protecting against overcrowding of land, and avoiding undue concentration of population.

115. Council's approval of the Medmont Rezoning despite failing to comply with Roanoke City Charter § 62 was arbitrary and capricious, unreasonable, and thus in violation of law.

COUNT SIX – ARBITRARY, CAPRICIOUS, AND UNREASONABLE DECISION AS INCONSISTENT WITH VIRGINIA CODE § 15.2-2284

116. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

117. Virginia Code § 15.2-2284 provides, "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."

118. In approving the Medmont Rezoning, Council failed to give reasonable consideration to the purposes enumerated in Virginia Code § 15.2-2284, including the conservation of properties and their values, existing use and character of the property, the comprehensive plan, the conservation of natural resources, and preservation of forestal land.

119. Council's approval of the Medmont Rezoning despite failing to reasonably consider what it must under Virginia Code § 15.2-2284 was arbitrary and capricious, unreasonable, and thus in violation of law.

REQUEST FOR INJUNCTIVE RELIEF

120. Plaintiffs incorporate by reference herein the preceding paragraphs of this Complaint.

121. Pursuant to Virginia Code § 8.01-620, *et seq.*, this Court may enjoin Defendants from developing the Medmont Parcels as permitted by the Medmont Rezoning during the pendency of this action and thereafter.

122. If the Medmont Project is allowed to proceed, Plaintiffs will be irreparably harmed in that development of the Medmont Project will create a nuisance to Plaintiffs; diminish Plaintiffs' ability to quiet enjoyment of their properties; result in increased housing density and traffic congestion; unnecessarily expose Plaintiffs to increased risk of liability; and reduce the value of Plaintiffs' properties.

123. Plaintiffs have presented several reasons why the Medmont Rezoning was void *ab initio* and arbitrary and capricious, and therefore are likely to succeed on the merits of this action.

124. The public interest will be served by enjoining development of the Medmont Parcels as permitted by the Medmont Rezoning because the Medmont Rezoning is itself not in the public interest. Furthermore, the public has an interest in development occurring only as

permitted by applicable law, and since the Medmont Rezoning was void *ab initio*, applicable law will not permit the Medmont Project.

125. Therefore, pursuant to Virginia Code § 8.01-620, *et seq.*, this Court should enjoin Defendants from developing the Medmont Parcels as permitted by the Medmont Rezoning during the pendency of this action and thereafter.

WHEREFORE, Plaintiffs pray that this Court:

(a) Declare the Medmont Rezoning to be void, unreasonable, arbitrary, capricious, and contrary to law;

(b) Enjoin Defendants from developing the Medmont Parcels as permitted by the Medmont Rezoning during the pendency of this action;

(c) Permanently enjoy Defendants (and their successors, heirs, and assigns) from developing the Medmont Parcels as permitted by the Medmont Rezoning; and

(d) Award such other relief as justice may require.

PURSUANT TO VIRGINIA CODE § 8.01-188, TRIAL BY JURY DEMANDED ON ALL ISSUES SO TRIABLE

Respectfully submitted,

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DAVID GEORGE HARRISON
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