

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CV004711-910

GEORGE C. VENTERS and wife)
NICKYE Y. VENTERS; GREG)
LINCOLN PIERCE and wife AMY J.)
PIERCE; JOHN SOLIC and wife)
SAMANTHA SOLIC;)

Plaintiffs,)

v.)

CITY OF RALEIGH, a body politic)
and corporate; 908 WILLIAMSON,)
LLC, a North Carolina limited)
liability company; RDU)
CONSULTING, PLLC, a North)
Carolina limited liability company;)
and CONCEPT 8, LLC, a North)
Carolina limited liability company;)

Defendants.)

**DEFENDANT CITY OF RALEIGH'S
MOTION TO DISMISS
(N.C.R. CIV. P. 12(b)(1) and 12(b)(6))**

NOW COMES Defendant, City of Raleigh (the "City") by and through undersigned counsel, pursuant to North Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6) and respectfully moves this court to dismiss Plaintiffs' Complaint and Request for Declaratory Judgment Relief and Mandatory Injunction (the "Complaint").

The Complaint challenges: 1) several text changes to the Raleigh Unified Development Ordinance (the "UDO") adopted by the Raleigh City Council and referred to in the Complaint as "Missing Middle 1.0," "Missing Middle 2.0" and the "Omnibus Ordinance" (collectively "the Challenged Ordinances"); and 2) the approval of a preliminary subdivision for the property at 908 Williamson Drive in the City under the provisions of Missing Middle 1.0 (the "Townhouse

Subdivision”). The Complaint sets forth four Claims for Relief, all of which are unfounded and unsupported by existing North Carolina law and should be dismissed.

FIRST MOTION TO DISMISS
(Lack of Subject Matter Jurisdiction - N.C.R. Civ. P. 12(b)(1))

Plaintiffs’ claims against the Challenged Ordinances should be dismissed pursuant to N.C.R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction for the following reasons and as stated below:

- a. Plaintiffs do not have standing to maintain this action or any of the Claims for Relief set forth therein;
- b. Plaintiffs have failed to exhaust their administrative remedies and cannot challenge the approval of the Townhouse Subdivision through this civil action; and
- c. The challenge to the Omnibus Ordinance should be dismissed as moot because the cited text change TC-3-22 was superseded and replaced by a subsequent text change, TC-6-22, which has not been challenged in the Complaint.

SECOND MOTION TO DISMISS
(Failure to State a Claim Upon Which Relief Can Be Granted - N.C. R. Civ. P. 12(b)(6))

Plaintiffs’ claims against the Challenged Ordinances should be dismissed for failure to state a claim upon which relief can be granted, pursuant to N.C.R. Civ. P. 12(b)(6) for, inter alia, the following reasons and as stated below:

- a. The Challenged Ordinances comply in all respects with controlling North Carolina law, including the provisions of N.C. Gen. Stat. Chapter 160D and the appellate case law;
- b. The Complaint must be dismissed because the City lawfully adopted the Challenged Ordinances and followed all required procedures as a matter of law;

- c. The City lawfully adopted the Challenged Ordinances as text changes to the UDO and there is no existing law or reasonable interpretation of existing law that could support the argument that the Challenged Ordinances are map amendments and in fact, the North Carolina General Statutes and case law provide the exact opposite. The Pennsylvania case cited by the Plaintiffs does not and could not control and there is a complete absence of a justiciable issue of either law or fact that could support this legal theory;
- d. Even assuming arguendo that the Challenged Ordinances were map amendments (which the City disputes), the First and Second Claims for Relief must still be dismissed because they are barred by the statute of limitations applicable to map amendments. N.C. Gen. Stat. § 160D-1405(a) states: “A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under this Chapter or other applicable law . . . accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.” The Complaint was filed on March 9, 2023, which was more than 60 days after each of the Challenged Ordinances was adopted. Plaintiffs cannot claim the Challenged Ordinances were map amendments and then seek to use a longer and different statute of limitations to apply to such claims and there is no existing law or reasonable interpretation of existing law that could support such a conclusion; and
- e. The Fourth Claim for Relief requests only a remedy and contains no substantive claim. Because the First, Second and Third claims should be dismissed, this claim fails as well.

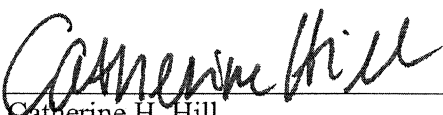
WHEREFORE, based on the foregoing, the City respectfully requests that Plaintiffs' Complaint be dismissed in its entirety.

RESPECTFULLY SUBMITTED this the 8th day of May 2023.

**CITY OF RALEIGH
CITY ATTORNEY'S OFFICE**

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Defendant City of Raleigh's Motion to Dismiss* has been duly served by depositing a copy of the same in the United States mail, first-class, postage prepaid, addressed to the following:

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This the 8th day of May, 2023.


Robin L. Tatum