

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY

JOSEPH R. FERGUSON, JR.,
Plaintiff,

v.

Case No. _____

COUNTY OF ISLE OF WIGHT,
VIRGINIA, a political subdivision of the
Commonwealth of Virginia

Serve: Mark C. Popovich, Esq., County Attorney
17090 Monument Circle
Isle of Wight, Virginia 23397

and

ROBERT B. WATKINS, individually and in his
official capacity as Codes Enforcement Officer
for the County of Isle of Wight, Virginia

Serve: Robert B. Watkins
17140 Monument Circle, Suite 201
Isle of Wight, Virginia 23397

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Joseph R. Ferguson, Jr., by and through the undersigned counsel, Fred D. Taylor, Esq., and submits his Complaint against the named Defendants.

Plaintiff alleges and avers as follows:

NATURE OF THE CASE

1. The instant case involves the construction, interpretation and application of local land use ordinances to interfere with the use of property by its owner. The Plaintiff, Joseph R. Ferguson, Jr., seeks a declaration from this Court that his use of his 86-acre rural farm property for occasional, noncommercial camping activities does not violate provisions of

the Code of Ordinances of the Defendant County of Isle of Wight and that threats by the Defendant County and its Code Enforcement Officer, Defendant Robert B. Watkins, to prosecute Plaintiff for engaging in such activity are improper.

2. The Plaintiff hereby avers and alleges that the Defendants' assertions that Plaintiff's occasional camping on his farm violate County ordinances forbidding the operation of commercial "campgrounds" and forbidding the use of a recreational vehicle (RV) as a "residence" are unsupported by any reasonable interpretation of those ordinances. Thus, Plaintiff requests a declaration that his occasional camping is not a violation of the County's ordinances and he is not subject to prosecution by the Defendants for doing so.

PARTIES

3. The Plaintiff, Joseph R. Ferguson, Jr., is an adult resident of the County of Isle of Wight, Virginia, and the owner of real property within that County.

4. The Defendant County of Isle of Wight, Virginia, (hereinafter "the County") is a locality and political subdivision of the Commonwealth of Virginia. The County is subject to this action and may be sued under Va. Code § 15.2-1404.

5. The Defendant Robert B. Watkins (hereinafter "Watkins") is the duly appointed Codes Enforcement Officer for the County of Isle of Wight. Upon information and belief Defendant Watkins is the County officer/agent responsible for determining if conditions on land comply with or violate the ordinances of the Defendant County and for referring matters to the Commonwealth Attorney and/or County Attorney for legal action due to noncompliance with County Ordinances.

JURISDICTION

6. This Court has jurisdiction over this action, which seeks a declaratory judgment and ancillary relief, pursuant to Va. Code §§ 8.01-184 and 17.1-513.

FACTS

7. The Plaintiff is the owner of an 86-acre tract of real property located wholly within the geographical boundaries of the Defendant County. The Plaintiff's primary residence is located on the property and the address for this residence is 12014 Dews Plantation Road, Ivor, Virginia.

8. The Plaintiff's property is located within a district designated as Rural Agricultural Conservation (RAC) by the zoning ordinances adopted by the Defendant County, specifically Isle of Wight County Code of Ordinances (hereinafter "County Code"), Appendix B §§ 4-20001 et seq. The Plaintiff's property is also used for agricultural and forestry purposes and is primarily wooded.

9. The Plaintiff is an avid outdoorsman and engages in hunting upon his property during legal hunting seasons. The Plaintiff also allows friends to use his property for hunting during legal hunting seasons.

10. In the summer of 2011, the Plaintiff allowed a friend to bring the friend's Outback RV Trailer onto the Plaintiff's property to facilitate the friend's hunting upon the Plaintiff's property. The RV trailer was situated approximately 170 feet from the public road abutting the Plaintiff's property, Dews Plantation Road. At the corner of the property where the RV trailer was situated there were preexisting available water, sewer and electricity connections and the trailer was attached to these utilities.

11. The Plaintiff's friend, who is disabled, would stay in the RV trailer on occasional weekends during hunting season and hunt on the Plaintiff's land. The friend stayed in his RV trailer instead of the Plaintiff's home in order to avoid disruption of the Plaintiff's home connected with the comings and goings associated with hunting, and in particular the early hours and mess associated with hunting.

12. After the friend set up the RV on the Plaintiff's property, the friend stayed in the trailer approximately four (4) times for a single night prior to deer hunting months of November and December. In preparation for hunting on the Plaintiff's property, the friend installed tree stands, cut paths and trails, cleared brush and hooked the RV up to the utility lines.

13. In October 2011, the Plaintiff received a letter dated October 6, 2011 from Defendant Watkins titled "NOTICE OF VIOLATION." The letter indicated that an inspection had been conducted at the Plaintiff's property on September 9, 2011 in response to a complaint, and the Outback RV Trailer was observed on the property. The letter asserted that the presence of the trailer violated ordinances of the Defendant County because (1) the trailer did not have current inspection, registration and county motor vehicle stickers, and (2) recreational vehicles shall not be used as living quarters, County Code, Appendix B, § 5-200L(2).

14. After receiving the letter, the Plaintiff contacted Defendant Watkins and indicated he would seek to obtain current tags for the trailer and asked Watkins to provide additional guidance regarding the County Code provisions allegedly violated by the presence of the trailer.

15. On October 21, 2011, Defendant Watkins conducted a follow-up inspection of the Plaintiff's property.

16. On October 25, 2011, the Plaintiff contacted Defendant Watkins and informed him that current registration tags for the trailer had been obtained and that the Plaintiff had retained an attorney to assist him with the issue relating to the occupancy of the trailer. Defendant Watkins responded by informing the Plaintiff an inspection had been conducted four days earlier and acknowledging that he had been contacted by the Plaintiff's attorney.

17. On November 2, 2011, the Plaintiff received a letter dated October 31, 2011 from Defendant Watkins titled "EXTENSION NOTICE / SECOND LETTER." The letter referred to the inspection of October 21, 2011 and noted that progress had been made in complying with the County Code. Defendant Watkins also wrote as follows: "*However you are still in violation of the Isle of Wight County Code. In accordance with the Isle of Wight County Code RV trailers can not be used for living quarters. Also, the County Attorney's Office considers this RV trailer use to be an unauthorized campground.*" Defendant Watkins further wrote that the Plaintiff was being allowed until November 20, 2011 to take action necessary to correct the violations.

18. On November 21, 2011, the Plaintiff's attorney contacted the County's Director of Planning, Beverly H. Walkup, by e-mail and asked that she provide specifics concerning the County Code provisions at issue in the Plaintiff's case.

19. Director Walkup responded by e-mail that same day and cited County Code, Appendix B, § 3-6000, defining the term "Campground," § 5-1001(A) prohibiting the use of a recreational vehicle as a "temporary or permanent residence," and § 5-2000(L), which provide that recreational vehicles "shall not be used as living quarters, and may only be otherwise occupied in accordance with district regulations." Director Walkup also wrote that she had

been advised that an inspection had been done that morning and the Plaintiff had disconnected all utilities “and has therefore abated the violation.”

20. The Plaintiff had disconnected utilities from the trailer because of fear that he would be prosecuted for County Code violations, which can result in a fine of up to \$1000 and a jail sentence of up to thirty (30) days, or both. County Code § 1-7.

21. Thereafter, the Plaintiff inquired of the Defendant County what steps were necessary to allow him to set up the RV trailer on his property so that he or his friends could make occasional use of the trailer in connection with hunting on the property. Director Walkup informed the Plaintiff that he would need a Conditional Use Permit for operation of a “Campground” on his property and that the application fee alone would be \$ 1350.

22. On September 20, 2012, the Plaintiff appeared before the Board of Supervisors of the County of Isle of Wight to bring attention to the application of the County Code against him by Defendant Watkins and Director Walkup and to complain that the application of the County ordinances against him prevented him from making normal and unobjectionable use of his rural, wooded property for camping, whether in an RV or in a tent. The Board took no action in response to the Plaintiff’s request for action to alleviate the situation he found himself in.

23. In October 2012, the Plaintiff sought additional legal advice concerning the Defendants’ actions against him.

24. In a letter dated February 7, 2013, The Rutherford Institute, a civil liberties organization, sent a letter on behalf of the Plaintiff to Mark C. Popovich, County Attorney for the Defendant County. The letter contended that the application of the County Code provisions cited by Defendant Watkins and Director Walkup was improper and that the Plaintiff should

not be threatened with prosecution for engaging in or allowing occasional camping on his property.

25. The February 7 letter pointed out that the County Code's regulation of "Campgrounds" applies only to the operation of a campground as a commercial enterprise and on property that is "primarily used for recreational purposes," and that the Plaintiff's activities and property did not qualify in either aspect.

26. The February 7 letter also asserted that restrictions on the use of the RV trailer imposed by the County Code did not apply to the rare use of the trailer by a friend in connection with hunting at the Plaintiff's property because (1) the trailer was not being used as a "residence" and (2) the incidental use of the trailer was allowable as an accessory use under the County Code provisions.

27. Although the February 7 letter requested a reply and the letter was received in the office of the County Attorney on February 11, 2013, no reply was received from any official of the Defendant County by either by The Rutherford Institute or the Plaintiff.

CLAIM FOR RELIEF

28. There presently exists an actual controversy between the Plaintiff and the Defendants on whether the Plaintiff may use his property in the manner set forth in ¶¶ 7-12 above such that a declaratory judgment may be entered pursuant to Va. Code §§ 8.01-184 et seq., declaring and establishing the rights and authority of the parties in relation to the Plaintiff's use of his property.

29. The Plaintiff's locating or allowing to be located an RV trailer on his property for rare and infrequent overnight occupation by himself or invitees in connection with hunting on his property does not constitute use of the property as a "Campground" for purposes of

applicable laws and ordinances and the Plaintiff is not required to obtain a permit from the Defendant in order to use his property in this manner.

30. The rare and infrequent occupation of an RV trailer on the Plaintiff's property does not constitute use of the RV as a "temporary or permanent residence" within the meaning of applicable laws and ordinances, and in particular is not prohibited by County Code, Appendix B, § 5-1001(A).

31. The rare and infrequent occupation of an RV trailer on the Plaintiff's property is not prohibited by County Code, Appendix B, § 5-1001(A), as such use is allowable as an accessory use under County Code, Appendix B, § 5-1004.

32. To the extent any laws or ordinances applicable to the Plaintiff's property restricts or prohibits the Plaintiff's use of his property as set forth herein, such laws or ordinances as applied to the Plaintiff and his property are arbitrary, capricious, do not promote the public health, safety and welfare, and unreasonably restrict the Plaintiff's legitimate use of his property.

WHEREFORE, the Plaintiff requests that this Court enter a judgment pursuant to Va. Code §§ 8.01-184 et seq., declaring that the laws and ordinances applicable to the Plaintiff and his 86-acre tract of real property located at 12014 Dews Plantation Road, Ivor, County of Isle of Wight, Virginia, do not prohibit the Plaintiff from locating an RV trailer on that property and allowing its overnight occupation in connection with hunting activities on that property, and/or that any such prohibitions on this use of the property by the Plaintiff is arbitrary and unreasonable as applied to the Plaintiff and his property.

Respectfully Submitted,

JOSEPH R. FERGUSON, JR.



BY COUNSEL

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