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FEB 18 2020

WARREN COUNTY
CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT FOR WARREN COUNTY

DAVID A. DOWNES,)
)
 Plaintiff,)
)
 v.)
)
 THE TOWN COUNCIL OF THE TOWN OF)
 FRONT ROYAL, VIRGINIA,)
)
 Defendant.)

Case No.: CL19000173-00

DEMURRER

COMES NOW Defendant, The Town Council of the Town of Front Royal, Virginia, by counsel, and in and for its Demurrer to the Complaint for Declaratory Judgment and Petition for Writ of Certiorari states, as follows:

1. The Amended Complaint fails to state a claim upon which relief can be granted because plaintiff fail to allege facts that support the contention that the decision of Council to deny plaintiff's request to amend the Town Code 175-127.3 to exempt the requirement of off street parking requirements for the Subject Property as found under Town Code 148-870(A)(17) was arbitrary, capricious, or unreasonable, but rather alleges only that he disagrees with the decision that Council made with respect to his request.

2. The Amended Complaint fails to state a claim for which relief can be granted to the extent that it alleges that Council's decision was arbitrary and capricious. Council's denial of the request to amend the Town Code 175-

127.3 to exempt the requirement of off street parking requirements for the Subject Property as found under Town Code 148-870(A)(17) was a legislative action, review of which is subject to the "fairly debatable" standard. The Amended Complaint does not allege sufficient facts on its face to overcome the fairly debatable standard, and the legislative record itself demonstrates that Council's action was fairly debatable.

WHEREFORE, the foregoing considered, defendant, The Town Council of the Town of Front Royal, Virginia, by counsel, respectfully requests that the court sustain its Demurrer and dismiss this case with prejudice.

**THE TOWN COUNCIL OF THE TOWN OF
FRONT ROYAL, VIRGINIA
By Counsel**

BANCROFT, MCGAVIN, HORVATH & JUDKINS, P.C.
9990 Fairfax Boulevard, Suite 400
Fairfax, Virginia 22030
(703) 385-1000 Telephone
(703) 385-1555 Facsimile
hbardot@bhmjlw.com



Heather K. Bardot, Esquire
Virginia State Bar No. 37269
Nicole L. Antolic, Esquire
Virginia State Bar No. 93038
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Demurrer was mailed, postage prepaid, on this 18th day of February, 2020 to:

David A. Downes
14 Chester Street
Front Royal, Virginia 22630
Plaintiff, *pro se*



Heather K. Bardot