

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG

E.D. COLE BUILDING, L.L.C.            )  
and    )  
LOCAL HOLDINGS, L.L.C.,            )  
  Petitioners,            )  
v.    )  
  )  
COUNCIL OF THE CITY                )  
OF FREDERICKSBURG,                )  
And                                        )  
CITY OF FREDERICKSBURG            )  
  Defendants.            )

Case No.: CL19-951

**FILED**

DEC 27 2019

FREDERICKSBURG  
CIRCUIT COURT

**ANSWER**

The City Council of the City of Fredericksburg (the “Council”) , and the City of Fredericksburg (the “City”),<sup>1</sup> Defendants, by counsel, in answer to the Petition at Law for Declaratory Judgment (the “Petition”) filed in this case, state as follows:

The introductory paragraph of the Petition purports to describe the nature of this action and states various conclusions of law, and as such no response is required. Defendants deny, however, that the Resolution that the Council enacted on November 12, 2019, “Granting a Certificate of Appropriateness for the Relocation of the Slave Auction Block to the Fredericksburg Area Museum,” is accurately described as a “purported” Resolution.

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<sup>1</sup> The parties have tendered to this Court an agreed Order adding the City of Fredericksburg as a defendant in this action.

1. Paragraph 1 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, Defendants deny that § 8.01-184 of the Code of Virginia confers jurisdiction on this or any Court.

2. Defendants admit that this action was initiated within 30 days after the final decision that is challenged in this action. Defendants deny that such decision is accurately described as an “intended” final decision. The remainder of Paragraph 2 states conclusions of law, and as such no response is required. To the extent that a response may be appropriate, Defendants deny that either § 15.2-2306(A)(3) of the Code of Virginia or Fredericksburg City Code § 72-23.1(F)(2) confers jurisdiction on this or any Court.

3. Paragraph 3 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, Defendants admit that venue of this action is proper in this Court.

4. Defendants admit, based on a review of online records of the State Corporation Commission, that Petitioner E.D. Cole Building, L.L.C. (“Cole”), is a *de jure* limited liability company, organized under the laws of the Commonwealth of Virginia on September 3, 2008, with a registered office at 401 Chatham Square Office Park, Fredericksburg, Virginia 22405. Defendants are without sufficient information on which to base either an admission or a denial that Cole’s primary place of business is at the same location. Defendants admit, based on a review of the City’s land records, that Cole owns real estate located at 402 William Street, Fredericksburg, VA 22401; that a building at that address is sometimes referred to as the “Cole Building”; that the Kybecca Restaurant is located in that building; and that the building is located across the street from the “Slave Auction Block.” The remaining allegations of Paragraph 4 are denied.

5. Defendants admit, based on a review of online records of the State Corporation Commission, that Petitioner Local Holdings, L.L.C. (“Local”), is a *de jure* limited liability company, organized under the laws of the Commonwealth of Virginia on February 4, 2015. Defendants are without sufficient information on which to base either an admission or a denial that Local’s primary place of business is at the stated location. Defendants admit that a “sandwich shop business” known as “The Butcher’s Table” and a butcher shop vending business known as “Olde Towne Butcher” are located at 401 William Street, Fredericksburg, Virginia, in an historic building known as the “Planter’s Hotel,” which is located near the current location of the Slave Auction Block and which was built in the 1840s. The remaining allegations of Paragraph 5 are denied.

6. Admitted.

7. Defendants admit that the Slave Auction Block has stood in the public right of way at the northwest corner of the intersection of Charles Street and William Street since approximately 1846, and that it has ordered the removal of the Slave Auction Block from that location to the Fredericksburg City Museum, located approximately one block from its current location. The remaining allegations of Paragraph 7 are denied.

8. Defendants admit that the Council passed Resolution 19-100, “Granting a Certificate of Appropriateness for the Relocation of the Slave Auction Block to the Fredericksburg Area Museum,” on November 12, 2019, by a 6-1 vote. The remaining allegations of Paragraph 8 are denied.

9. Denied.

10. Admitted.

11. Admitted.

12. Admitted.

13. Defendants admit the factual allegations of Paragraph 13. The argumentative characterizations in that Paragraph do not require a response and therefore they are neither admitted nor denied.

14. Defendants admit the factual allegations of Paragraph 14. The argumentative characterizations in that Paragraph do not require a response and therefore they are neither admitted nor denied.

15. Admitted.

16. Defendants are without sufficient information on which to base either an admission or a denial of the allegations regarding Petitioners' counsel's state of mind.

The heading preceding Paragraph 17 is denied.

17. Paragraph 17 states a conclusion of law, and as such no response is required.

18. Paragraph 18 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, Defendants admit that an accurate copy of § 15.2-2306 of the Code of Virginia is attached to the Petition as Exhibit D.

19. Paragraph 19 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, Defendants admit that Paragraph 19 accurately quotes a portion of § 15.2-2306(A)(2) of the Code of Virginia.

20. Paragraph 20 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, Defendants admit that Fredericksburg City Code § 72-23.1(F)(2) is relevant to the issues presented by the Petition and that Paragraph 20 accurately quotes a portion of § 15.2-2306 of the Code of Virginia.

21. Paragraph 21 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, it is denied.

22. Admitted.

23. Defendants admit the factual allegations of Paragraph 23. Paragraph 23 also states conclusions of law, to which no responses are required. Defendants state, however, that a more accurate statement of law is that the Council enacted (rather than promulgated) § 72-23.1 of the City Code. Defendants further state that the term “ramified provisions” is vague or ambiguous and its meaning is uncertain, and therefore that portion of Paragraph 23 is neither admitted nor denied.

24. Paragraph 24 states a conclusion of law, and as such no response is required. To the extent that a response may be appropriate, it is denied.

25. Denied. Defendants admit, however, that on June 11, 2019, the Council approved a motion to remove the Slave Auction Block, by a vote of 6 to 1, and requested the City Manager to bring a plan to the Council, no later than July 9, 2019, to execute the removal by the end of the calendar year, as shown in the official meeting minutes, the relevant portion of which is attached hereto as **Exhibits 1 and 3**.

26. Denied. Defendants admit, however, that on July 9, 2019, the City Manager returned to Council with a relocation plan for the Slave Auction Block, including an application to the Architectural Review Board (the “ARB”) for a certificate of appropriateness, as directed on June 11, 2019; that a true copy of the relocation plan is attached hereto as **Exhibit 2**; that Council voted to approve the relocation plan, as shown in the official meeting minutes attached hereto as **Exhibit 3**; and that the City Manager, on behalf of the City, filed the application to the ARB for a certificate of appropriateness as shown in Exhibit F to the Petition.

27. Denied.

28. Denied. Defendants state affirmatively that the ARB held four meetings on the City Manager's application, on August 12, September 9, September 23, and October 14, 2019, as shown by the official minutes of the ARB which are attached hereto as **Exhibit 4**. On October 14, 2019, a motion to deny the certificate of appropriateness failed by a vote of two in favor, one opposed, three abstaining, and one member disqualified under the Conflict of Interests Act.

29. Defendants admit the allegations of Paragraph 29 to the extent that they relate to the existence of Exhibit G to the Petition, which speaks for itself. All remaining allegations of Paragraph 29 are denied.

30. Denied.

31. Denied. Defendants state affirmatively that the Council adopted Resolution 19-100 at its regular meeting on November 12, 2019, and that it did so pursuant to an appeal filed by the Fredericksburg City Manager on behalf of the City on November 7, 2019. A proposed Resolution, which is substantively identical to the Resolution that was adopted by the Council, is attached to the Petition as Exhibit H.

32. Denied.

33. Paragraph 33 states conclusions of law, and as such no response is required.

34. Paragraph 34 states conclusions of law, and as such no response is required.

Defendants admit, however, that a legal principle generally referred to as the "Dillon Rule" is a recognized principle of Virginia law.

35. Paragraph 35 states Petitioner's legal arguments, and as such no response is required in an Answer. To the extent that a response may be appropriate, Paragraph 35 is denied.

36. All allegations not otherwise expressly admitted or denied herein are hereby denied.

37. Defendants deny that Petitioners Cole and Local have standing to bring this action.

38. Defendants deny that Petitioners are entitled to any relief of any form in this action.

WHEREFORE, having fully answered Petitioner's Petition at Law for Declaratory Judgment, the Defendants City Council of the City of Fredericksburg and City of Fredericksburg, by counsel, respectfully request that this case be dismissed.

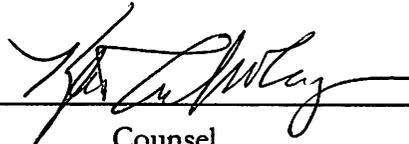
Respectfully submitted,

CITY COUNCIL OF THE  
CITY OF FREDERICKSBURG

And

CITY OF FREDERICKSBURG

By: \_\_\_\_\_



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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing Answer were hand delivered to counsel for Plaintiffs, named below, on this 27 day of December, 2019.

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