

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION

MARK MULLINS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 1:19cv17  
 )  
 TOWN OF RICHLANDS, et al., )  
 )  
 Defendants. )

ANSWER TO AMENDED COMPLAINT

The Town of Richlands, Virginia, Timothy Taylor, Frank Dorton, Jerry Gilbert, and Randy Smith (collectively the Defendants), for their answer to the Amended Complaint, state as follows:

1. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1.
2. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2.
3. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3.
4. Responding to the allegations in paragraph 4, the Defendants deny the allegations and demand strict proof thereof.

5. Responding to the allegations in paragraph 5, the Defendants deny the allegations and demand strict proof thereof.

6. Responding to the allegations in paragraph 6, the Defendants state affirmatively that these allegations constitute legal conclusions to which no response is required. To the extent any response is required, the Defendants deny that Mullins is entitled to any relief in this litigation.

7. Responding to the allegations in paragraphs 7, 8, 9, and 10, the Defendants state affirmatively that these allegations constitute legal conclusions to which no response is required. To the extent any response is required, the Defendants acknowledge that this Court has jurisdiction, that venue is proper in the Western District of Virginia, Abingdon Division, that this Court has the statutory authority set forth in the United States Code, and that this action is brought pursuant to 42 U.S.C. § 1983. All remaining allegations inconsistent with these acknowledgements are denied.

8. Responding to the allegations in paragraph 11, the Defendants are without sufficient knowledge or information to form a belief as to the truth of these allegations.

9. Responding to the allegations in paragraph 12, the Defendants admit that the Town of Richlands is a municipal corporation chartered under the laws of the Commonwealth of Virginia, that it has that form of government provided for in its charter, by-laws and the Richlands Town Code, and that it has those powers and attributes enumerated therein as well as those provided in the Code of Virginia and by

the Virginia General Assembly. Defendants deny all remaining allegations inconsistent with these admissions.

10. Responding to the allegations in paragraph 13, the Defendants admit that Taylor is the Town Manager and an ex officio, non-voting member of the Town Planning Commission. The Defendants deny all remaining allegations. The Defendants affirmatively deny that Taylor is a proper party or that he may be sued in an individual or official capacity.

11. Responding to the allegations in paragraph 14, the Defendants admit that Frank Dorton is a former Chief of Police. The Defendants affirmatively deny that Dorton is a proper party or that he may be sued in an individual capacity.

12. Responding to the allegations in paragraph 14, the Defendants admit that Jerry Gilbert is the Chief of Police. The Defendants affirmatively deny that Gilbert is a proper party or that he may be sued in an individual capacity.

13. Responding to the allegations in paragraph 14, the Defendants admit that Randy Smith was the Chairman of the Planning Commission. The Defendants affirmatively deny that Smith is a proper party or that he may be sued in an individual capacity.

14. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17.

15. Responding to the allegations in paragraphs 18, 19, 20, 21, 22, 23, 24, and 25, the Defendants are without sufficient knowledge or information to form a belief as to the truth of these allegations.

16. Responding to the allegations in paragraph 26, the Defendants admit that the Town of Richlands' Code requires businesses to obtain a business license and a zoning permit to operate within the Town of Richlands. Responding to the remaining allegations in paragraph 26, these constitute legal conclusion to which no response is required. To the extent any further response is required, the Defendants admit that the provisions in the Code sections cited speak for themselves.

17. Responding to the allegations in paragraph 27, the Defendants state affirmatively that the business license application speaks for itself. To the extent this admission is inconsistent with the allegations in paragraph 27, those allegations are denied.

18. Responding to the allegations in paragraphs 28, 29, 30, 31, 32, 33, 34, and 35, the Defendants state affirmatively that the terms and provisions of the ordinances cited speak for themselves. To the extent the allegations are inconsistent with the ordinances cited, the allegations are denied.

19. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 36.

20. Responding to the allegations in paragraph 37, the Defendants admit that the business license application submitted speaks for itself. All allegations inconsistent with this admission are denied.

21. The Defendants deny the allegations in paragraph 38.

22. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 39.

23. The Defendants deny the allegations in paragraphs 40 and 41.

24. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 42, 43, and 44, therefore those allegations are denied and the Defendants demand strict proof thereof.

25. Responding to the allegations in paragraphs 45 and 46, the Defendants state affirmatively that the minutes of the meetings of the Town Council referred to speak for themselves. To the extent the allegations are inconsistent with the meeting minutes referenced, those allegations are denied. The Defendants deny all remaining allegations in paragraphs 45 and 46.

26. Responding to the allegations in paragraph 47, the Defendants admit that Mullins submitted an additional application and request for a zoning permit, but are without sufficient knowledge or information to form a belief as to the truth of the allegations regarding the date on which this occurred. The Defendants deny all remaining allegations in paragraph 47 and demand strict proof thereof.

27. Responding to the allegations in paragraph 48, the Defendants admit that Mullins submitted an additional application and request for a zoning permit, but state affirmatively that the date alleged is incorrect. All remaining allegations inconsistent with these admissions are denied.

28. The Defendants admit the allegations in paragraph 49.

29. Responding to the allegations in paragraph 50, the Defendants admit that the Planning Commission held a meeting on the date alleged. The Defendants further admit that the minutes of that meeting speak for themselves. To the extent these admissions are inconsistent with the allegations in paragraph 50, those allegations are denied.

30. Responding to the allegations in paragraph 51, the Defendants admit that at the joint Planning Commission and Town Council meeting on February 13, 2018, public comments were received, and that the Town heard from VanDyke and other persons. The Defendants deny the remaining allegations in paragraph 51.

31. Responding to the allegations in paragraphs 52 and 53, the Defendants admit that statements were made, and that the meeting minutes reflect what was said during the meeting. To the extent these admissions are inconsistent with the allegations in paragraphs 52 and 53, the allegations are denied.

32. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 54.

33. The Defendants deny the allegations in paragraph 55.

34. Responding to the allegations in paragraph 56, the Defendants state affirmatively that the minutes of the meetings speak for themselves. To the extent this admission is inconsistent with the allegations in paragraph 56, those allegations are denied.

35. Responding to the allegations in paragraph 57, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations.

36. Responding to the allegations in paragraph 58, the Defendants admit that the meeting minutes speak for themselves. To the extent this admission is inconsistent with the allegations in paragraph 58, those allegations are denied.

37. The Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 59 and 60.

38. Responding to the allegations in paragraph 61, the Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations whether Mullins and VanDyke reached out to the Town Attorney and what they asked the Town Attorney. The Defendants deny all remaining allegations in paragraph 61 inconsistent with this response.

39. Responding to the allegations in paragraphs 62 and 63, the Defendants are without sufficient knowledge or information to form a belief as to the truth of those allegations and therefore they are denied.

40. Responding to the allegations in paragraph 64, the Defendants state that this allegation is a legal conclusion to which no response is required.

41. Responding to the allegations in paragraph 65, the Defendants adopt by reference their responses to the preceding paragraphs.

42. The Defendants deny the allegations in paragraphs 66, 67, 68, 69, 70, 71, 72, 73 and 74, and demand strict proof thereof.

43. Responding to the allegations in paragraph 75, the Defendants adopt by reference their responses to the preceding paragraphs.

44. The Defendants deny the allegations in paragraphs 76, 77 and 78 and demand strict proof thereof.

45. Responding to the allegations in paragraph 79, the Defendants adopt by reference their responses to the preceding paragraphs.

46. The Defendants deny the allegations in paragraphs 80, 81, 82 and 83, and demand strict proof thereof.

47. Responding to the allegations in paragraph 84, the Defendants adopt by reference their responses to the preceding paragraphs.

48. The Defendants deny the allegations in paragraphs 85, 86 and 87, and demand strict proof thereof.

49. Responding to the allegations in paragraph 88, the Defendants adopt by reference their responses to the preceding paragraphs.



50. The Defendants deny the allegations in paragraphs 89 and 90, and demand strict proof thereof.

51. Responding to the allegations in paragraph 91, the Defendants adopt by reference their responses to the preceding paragraphs.

52. The Defendants deny the allegations in paragraphs 92 and 93, and demand strict proof thereof.

53. Responding to the allegations in paragraph 94, the Defendants adopt by reference their responses to the preceding paragraphs.

54. The Defendants deny the allegations in paragraphs 95 and 96 and demand strict proof thereof.

55. The Defendants deny all allegations not specifically admitted.

56. The Defendants deny being liable or indebted to the plaintiff in any amount or manner and deny that the plaintiff is entitled to the relief requested or any relief whatsoever.

#### FIRST DEFENSE

57. The Complaint fails to state a cause of action and fails to state a claim upon which relief can be granted in each and every count for each and every claim.

#### SECOND DEFENSE

58. The individual Defendants may not be sued in an individual capacity pursuant to 42 U.S.C. § 1983.

## THIRD DEFENSE

59. The Defendants deny violating the plaintiff's constitutional rights and statutory rights, and the Town of Richlands may not be held vicariously liable under 42 U.S.C. § 1983.

## FOURTH DEFENSE

60. The Defendants acted reasonably and in good faith at all times relevant hereto, and therefore plaintiff is barred from recovery against the Defendants.

## FIFTH DEFENSE

61. The Defendants are entitled to immunity and qualified immunity, and the claims are otherwise barred because the plaintiff does not possess a First Amendment Claim, and Equal Protection Claim or a statutory claim.

## SIXTH DEFENSE

62. Plaintiff failed to mitigate his damages.

## SEVENTH DEFENSE

63. Plaintiff is not entitled to recover the damages or remedies sought under the facts or theories set forth in his Complaint.

## EIGHTH DEFENSE

64. Plaintiff's claims against the Defendants are barred because plaintiff's alleged injuries were not reasonably foreseeable to the Defendants, and any action or inaction on the Defendants' part was not the proximate cause or was not the cause in fact of plaintiff's alleged injuries.

## NINTH DEFENSE

65. Plaintiff's claims are barred by the doctrines of waiver, estoppel and unclean hands.

## TENTH DEFENSE

66. The Defendants reserve the right to assert any and all defenses which they may be afforded, and further reserve the right to amend their answer if they be so advised.

WHEREFORE, the Defendants move the Court to dismiss the Complaint and for their costs expended.

TOWN OF RICHLANDS, VIRGINIA  
TIMOTHY TAYLOR  
FRANK DORTON  
JERRY GILBERT  
RANDY SMITH

By Counsel

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By /s/ W. Bradford Stallard  
W. Bradford Stallard

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ W. Bradford Stallard

W. Bradford Stallard