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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-576

No. COA21-712

Filed 16 August 2022

Mecklenburg County, No. 20 CVS 13103

STEVEN R. MOZELEY, Plaintiff,

v.

CITY OF CHARLOTTE, North Carolina, a municipal corporation, MERITAGE HOMES OF THE CAROLINAS, INC., MCIVER L. VANN, JR., BARBARA M. VANN, ROBERT W. CATHEY, REBECCA A. CATHEY, THOMAS G. ROBINSON, TAMARA C. ROBINSON, ALEXANDRIA L. V. SUPINO, MICHAEL S. SUPINO, TIMOTHY R. RAMSEY, PHYLLIS B. RAMSEY, and FRANCIS E. MCDONALD, Defendants.

Appeal by Plaintiff from order entered 17 May 2021 by Judge Daniel A. Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 27 April 2022.

Knox, Brotherton, Knox & Godfrey, by Allen C. Brotherton, for Plaintiff-Appellant.

Thomas E. Powers III for Defendant-Appellee City of Charlotte.

The Law Office of John T. Benjamin, Jr., P.A., by John T. Benjamin, Jr., and Jake R. Garris, for Defendant-Appellee Meritage Homes of the Carolinas, Inc.

Alexander Ricks PLLC, by Roy H. Michaux, Jr., for Defendants-Appellees McIver L. Vann, Jr., Barbara M. Vann, Robert W. Cathey, Rebecca A. Cathey, Thomas G. Robinson, Tamara C. Robinson, Alexandria L. V. Supino, Michael S. Supino, Timothy R. Ramsey, Phyllis B. Ramsey, and Francis E. McDonald.

GRIFFIN, Judge.

¶ 1 Plaintiff Steven R. Mozeley appeals from the trial court's order granting Rule 12(b)(6) motions to dismiss and 12(c) motions for judgment on the pleadings filed by Defendants City of Charlotte, Meritage Homes of the Carolinas, Inc., and multiple homeowners (the "Homeowners"). Plaintiff's complaint presents six claims arising from the Charlotte City Council's use of online video platform WebEx to conduct its public meetings and cast votes regarding Defendants' rezoning application. Plaintiff contends that his complaint sufficiently alleged each of his six claims for relief. We disagree, and affirm.

I. Factual and Procedural Background

¶ 2 Plaintiff owns a single-family residence situated on a fifteen-acre plot of land in Charlotte. Adjacent to and abutting Plaintiff's land is an eighty-acre plot of vacant land (the "Property") owned by the Homeowners. Prior to October 2019, Plaintiff's land and the Property had an "R-3" zoning classification, meaning that the land could be used only for single-family residences with no more than three units per acre of land.

¶ 3 On 24 October 2019, Meritage filed a rezoning application (the "Application") with the City of Charlotte on behalf of itself and each of the individual Homeowners,

requesting the City to rezone the Property to have an "MX-2(INNOV)," mixed-use zoning classification. Under R-3 zoning, the Property could contain a maximum of 240 single-family individual residences. A change from R-3 to MX-2(INNOV) zoning would allow the Homeowners, through Meritage, to construct up to 280 single-family, attached townhome units on the Property.

¶ 4 On 15 June 2020, the Charlotte City Council held a public hearing on Meritage's application online through the WebEx video platform. The City Council initially scheduled a final vote on the Application for 20 July 2020. Plaintiff obtained a temporary restraining order delaying the Council's vote, but the trial court denied Plaintiff's subsequent motion for a preliminary injunction and dismissed the case as moot. On 10 August 2020, the City Council conducted its final vote on the Application, once again via an online WebEx meeting. The City Council approved the Application.

¶ 5 On 24 September 2020, Plaintiff filed a new complaint seeking, through six claims, a declaratory judgment that the City Council's vote and decision to allow rezoning of the Property was void *ab initio* due to the Council's failure to follow its procedural guidelines regarding electronic meetings. Over the following months, Defendants separately filed multiple answers, motions to dismiss, and motions for judgment on the pleadings as to each of Plaintiff's claims. Defendants together filed an amended joint motion for judgment on the pleadings.

¶ 6 On 5 May 2021, the trial court held a hearing on Defendants' motions to dismiss and joint motion for judgment on the pleadings. On 17 May 2021, the trial court entered a written order partially granting Defendants' motions to dismiss and fully granting their joint motion for judgment on the pleadings. Plaintiff timely appeals.

II. Analysis

¶ 7 Plaintiff argues that each of his six claims was improperly dismissed at the pre-trial stage as a result of motions to dismiss under Rules 12(b)(6) and 12(c) of the North Carolina Rules of Civil Procedure. Meritage and the City of Charlotte each filed Rule 12(b)(6) motions to dismiss Plaintiff's complaint, then subsequently joined the Rule 12(c) amended joint motion for judgment on the pleadings before the trial court ruled on their earlier Rule 12(b)(6) motions. In a single order, the trial court granted partial dismissal under Rule 12(b)(6), but granted full dismissal of all claims against all Defendants under Rule 12(c).

¶ 8 A Rule 12(b)(6) motion to dismiss assesses the viability of the plaintiff's claims viewing only the complaint, while a Rule 12(c) motion allows the court to consider all pleadings filed. *Compare* N.C. R. Civ. P. 12(b)(6) (allowing answering party to defend a complaint with a motion to dismiss for "[f]ailure to state a claim upon which relief can be granted"), *with* N.C. R. Civ. P. 12(c) (stating parties may move for judgment based upon pleadings once all pleadings are closed). Practically, a complaint that

survives dismissal at the 12(b)(6) stage may still fail to present a compensable claim once all pleadings are considered at the 12(c) stage. Here, the trial court's most impactful decision with respect to all six claims was its dismissal through Rule 12(c), considering the broadest amount of information at a later step of litigation. We will therefore address the dismissal of each of Plaintiff's six claims at the 12(c) stage.

¶ 9 "This Court reviews a trial court's grant of a motion for judgment on the pleadings *de novo*." *Carpenter v. Carpenter*, 189 N.C. App. 755, 757, 659 S.E.2d 762, 764 (2008) (citation omitted). In a Rule 12(c) motion for judgment on the pleadings, the movant "must show that no material issue of facts exists and that he is clearly entitled to judgment." *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974) (citation omitted). "In considering a motion for judgment on the pleadings, a trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party." *Newman v. Stepp*, 376 N.C. 300, 305, 852 S.E.2d 104, 108 (2020) (citation and internal marks omitted), *reh'g denied*, 376 N.C. 673, 852 S.E.2d 629 (2021). "All well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false." *Id.*

¶ 10 When resolving a Rule 12(c) motion, the court may consider information contained within the pleadings, as well as all documents attached to the non-movant's pleadings. *Fox v. Fox*, ___ N.C. App. ___, 2022-NCCOA-334, ¶ 15 (citing *Krawiec v.*

Manly, 370 N.C. 602, 606, 811 S.E.2d 542, 546 (2018)). "[A] document attached to the moving party's pleading may not be considered in connection with a Rule 12(c) motion unless the non-moving party has made admissions regarding the document." *Weaver v. Saint Joseph of the Pines, Inc.*, 187 N.C. App. 198, 205, 652 S.E.2d 701, 708 (2007). If the non-moving party makes representations regarding documents in its pleadings, but does not attach those documents to its pleadings, the non-moving party may not prevent the moving party from presenting those documents for the court's consideration under a Rule 12(c) motion. *Reese v. Charlotte-Mecklenburg Bd. of Educ.*, 196 N.C. App. 539, 550, 676 S.E.2d 481, 489 (2009).

1. Violation of City Code

¶ 11 In his first claim for relief, Plaintiff alleged that the City violated its own rules of procedure by inappropriately conducting a public hearing and final vote on the Application by electronic means.[1] For the reasons explained below, we conclude that Plaintiff's claim fails as a matter of law because the electronic meeting was authorized at all relevant times by state law.

¶ 12 As a general rule, municipalities are entities created by their state government with the authority to take only actions that are expressly granted, fairly implied

[1] In his brief on appeal, Plaintiff quotes paragraph 34 of his complaint, which alleged that the City violated its code by allowing an inappropriate amendment to Defendants' Application. Plaintiff then discusses the City's electronic meeting requirements at length, but does not make any argument or cite to any case law concerning the Application amendment. This issue is therefore waived on appeal. N.C. R. App. P. 28(a)(6).

within express grants, or essential to the execution of express grants. *Kennerly v. Town of Dallas*, 215 N.C. 532, 2 S.E.2d 538, 539 (1939); *Bagwell v. Town of Brevard*, 267 N.C. 604, 608, 148 S.E.2d 635, 638 (1966) ("All acts beyond the scope of the powers granted to a municipality are void." (citation and internal quotation marks omitted)). "'[M]unicipal by-laws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws the by-laws and ordinances must give way.'" *State v. Williams*, 283 N.C. 550, 552, 196 S.E.2d 756, 757 (1973) (citation omitted).

¶ 13 Plaintiff's complaint alleged:

> 36. On April 8, 2019, Charlotte City Council revised its Rules of Procedure ("the April 2019 Rules"), attached hereto as Exhibit B.
>
> 37. Section 28 of the April 2019 Rules addresses the use of telephonic and electronic attendance of City Council members at Council meetings in an emergency situation and provides that such <u>electronic attendance may be used only for the limited purpose of continuing a meeting or "to take action on matters that cannot be delayed." No action is permitted by electronic attendance on matters that can be delayed.</u>
>
> 38. The April 2019 Rules were in effect at the time of the Public Hearing and the Vote.
>
> 39. <u>The Public Hearing and the Vote were not "matter(s) that could not be delayed</u>"; in fact, from March 1, 2020 until the Public Hearing, the City delayed many public hearings and votes regarding rezoning petitions.

> 40. Conducting the Public Hearing via remote videoconference technology violated the April 2019 Rules.
>
> 41. Conducting the Vote via remote videoconference technology violated the April 2019 Rules.

(Emphasis added).

¶ 14 On 8 April 2019, the City passed the following ordinance regarding electronic attendance of meetings by City Council members:

> 28. Telephonic and electronic attendance at meetings.
>
> (a) Committee meetings. Council members may attend committee meetings by telephone or other electronic means when they are unable, by reason of illness or injury, to attend in person. . . .
>
> (b) Council meetings. Council members may attend Council meetings by telephone or other electronic means for emergency meetings. In addition, Council members may attend regular and special meetings by telephone or other electronic means where:
>
> (i) necessary to reach a quorum;
>
> (ii) attendance is precluded due to weather, civil unrest, emergency, etc.; and
>
> (iii) the meeting needs to be continued . . . or to take action on matters that cannot be delayed.

Charlotte City Council Rules of Procedure ¶ 28 (2019) (hereinafter, "City Council Rules").

¶ 15 Effective 4 May 2020, the North Carolina Legislature passed the following

statute authorizing remote, electronic meetings by public bodies during states of emergency:

> (a) Remote Meetings. -- *Notwithstanding any other provision of law*, upon issuance of a declaration of emergency under G.S. 166A-19.20, any public body within the emergency area may conduct remote meetings in accordance with this section and Article 33C of Chapter 143 of the General Statutes throughout the duration of that declaration of emergency. Compliance with this statute establishes a presumption that a remote meeting is open to the public.

N.C. Gen. Stat. § 166A-19.24(a) (2021) (emphasis added). Declarations of emergency include such declarations made by the Governor of North Carolina. N.C. Gen. Stat. § 166A-19.20(a) (2021).

¶ 16 Plaintiff contends that the proceedings of the City's 15 June 2020 public hearing (the "Public Hearing") and 10 August 2020 council meeting (the "Vote"), in which the Application was discussed and/or voted upon, are void for failure to adhere to the electronic meeting provision found in City Council Rule 28. Particularly, Plaintiff insists that these meetings were regular in nature and did not concern matters that could not be delayed to a later date, as required by City Council Rule 28(b)(iii). Notably, though, Plaintiff does not plead in his complaint or argue on appeal that the requirement in Rule 28(b)(ii) that "attendance [was] precluded due to . . . emergency" was not satisfied for either meeting.

¶ 17 In March 2020, Governor Roy Cooper declared a state of emergency in North

Carolina in response to the COVID-19 pandemic. *See* Exec. Order No. 116, 34 N.C. Reg. 1744 (March 10, 2020). Each meeting challenged by Plaintiff took place during the state of emergency declared by the Governor, and was therefore authorized to take place electronically by N.C. Gen. Stat. § 166A-19.24(a). In this instance, where City Council Rule 28 conflicts with the authorization granted by Section 166A-19.24, the state statute controls. *Williams*, 283 N.C. at 552, 196 S.E.2d at 757.

¶ 18 We note that Section 28 of the City's ordinance applies only to the attendance of "Council members" at committee and council meetings. To the extent that Plaintiff challenges the appropriateness of the City Council's electronic participation in the Public Hearing or the public's electronic participation in either meeting through this claim, Plaintiff failed to cite any authority in support. Nonetheless, Plaintiff's claim also fails as a matter of law with respect to the attendance of the City Council members at the Vote because electronic attendance was authorized at all relevant times by N.C. Gen. Stat. § 166A-19.24(a).[2]

2. Violation of N.C. Gen. Stat. § 143-318

[2] We note that Defendants contend, alternatively, that the underlying trial court proceedings are null and void because Plaintiff failed to include all necessary parties to this action. Defendants correctly contend that the Governor of North Carolina and the North Carolina Legislature are necessary parties to actions challenging state statutes. However, our Governor and Legislature are not necessary parties to this action because Plaintiff has not challenged the constitutionality of N.C. Gen. Stat. § 166A-19.24. While the existence of N.C. Gen. Stat. § 166A-19.24 is the reason this Court is unable to agree with Plaintiff's claims as a matter of law, Plaintiff challenges only the City's compliance with its own ordinances and other statutory law.

¶ 19 Plaintiff's second claim also challenges the City's use of electronic meetings and must fail as a matter of law. Plaintiff contends that the City's electronic meetings were not sufficiently open in compliance with North Carolina's "open meetings statute," N.C. Gen. Stat. § 143-318.10.

¶ 20 "Whether a violation of the Open Meetings Law occurred is a question of law." *Knight v. Higgs*, 189 N.C. App. 696, 700, 659 S.E.2d 742, 746 (2008). N.C. Gen. Stat. § 143-318.10 states that "each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting." N.C. Gen. Stat. § 143-318.10(a) (2021). Section 143-318.10 further specifies that "[r]emote meetings conducted in accordance with G.S. 166A-19.24[, the remote meetings statute discussed above,] shall comply with this subsection even if all members of the public body are participating remotely." *Id.* Likewise, Section 166A-19.24 confirms that "[c]ompliance with this statute establishes a presumption that a remote meeting is open to the public." N.C. Gen. Stat. § 166A-19.24(a).

¶ 21 Plaintiff's complaint asserts that the City's electronic meetings did not allow the public to attend or provide a substantial amount of public demonstration:

> 24. Unlike a true public hearing, the remote videoconference technology did not allow the public to attend and did not allow City Councilmembers to see or have information as to the number of person viewing online or otherwise provide a mechanism for Plaintiff and others opposed to the [Application] to make City Councilmembers aware of the size, scope, and intensity of their opposition.

> 25. During the [10 August 2020] Public Hearing, all persons opposed to the [Application] were only allowed a total of ten (10) minutes to present concerns and objections, with it being left to those in opposition to somehow divide and share the allotted time.
>
> . . .
>
> 43. While [N.C. Gen. Stat.] § 166A-19.24 enables municipalities to conduct remote videoconference meetings during declarations of emergency (subject to their own local ordinances), it also provides that any remote videoconference meetings must comply with [the open meetings law, N.C. Gen. Stat. § 143-318.10].
>
> . . .
>
> 45. The Public Hearing and the Vote were not open to the public.
>
> 46. Plaintiff and similarly-situated community members were not allowed to attend the Public Hearing or the Vote.
>
> 47. The Public Hearing and the Vote violated N.C. Gen. Stat. § 143-318.10, and as a result, Plaintiff is entitled to a declaratory judgment that the Rezoning enacted August 10, 2020 is invalid and void *ab initio*.

¶ 22 Plaintiff's claim alleges that the City's remote meetings "did not allow the public to attend," "were not open to the public," and "Plaintiff and similarly-situated community members were not allowed to attend the Public Hearing or the Vote." In direct contradiction to this allegation, Plaintiff's complaint also asserts that members of the public who were opposed to the Application "were only allowed a total of ten

(10) minutes to present concerns and objections" during their attendance at the Public Hearing. Plaintiff pleads facts that necessarily defeat his claim. *Jackson v. Bumgardner*, 318 N.C. 172, 175, 347 S.E.2d 743, 745 (1986) (stating pretrial dismissal is appropriate "when some fact disclosed in the complaint necessarily defeats plaintiff's claim" (citation omitted)). In order to read Plaintiff's contentions in harmony with one another, it must be assumed that Plaintiff contends the remote meetings "did not allow the public to attend" in-person—despite his own acknowledgement of Section 166A-19.24, allowing for remote meetings, within this claim. Taking all factual allegations in Plaintiff's complaint as true, Plaintiff has failed to plead a compensable claim.

¶ 23 Though Plaintiff does refer to the remote meetings law in this claim, he does not advance any meritorious argument that the City's remote meetings were not conducted in compliance with Section 166A-19.24. Contrary to paragraph 25 of Plaintiff's complaint, compliance with Section 166A-19.24 does not require the City Council to be able to "see or have information as to the number of person[s] viewing online" or to be "aware of the size, scope, and intensity of their opposition." We therefore hold that, as a matter of law, Plaintiff failed to plead a compensable claim for violation of the open meetings statute.

3. Illegal Spot Zoning

¶ 24 Plaintiff next contends that the City's decision to grant the Application and

rezone the Property constitutes illegal spot zoning. We disagree, as the undisputed facts show no impermissible spot zoning occurred.

¶ 25 "A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, . . . so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called 'spot zoning.'" *Blades v. City of Raleigh*, 280 N.C. 531, 549, 187 S.E.2d 35, 45 (1972). "[T]he practice [of spot zoning] is not invalid per se but, rather, [] it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor." *Chrismon v. Guilford Cnty.*, 322 N.C. 611, 627, 370 S.E.2d 579, 589 (1988) (citation and internal quotation marks omitted). "[I]n any spot zoning case in North Carolina courts, two questions must be addressed by the finder of fact: (1) did the zoning activity in the case constitute spot zoning as our courts have defined that term; and (2) if so, did the zoning authority make a clear showing of a reasonable basis for the zoning." *Id.*

¶ 26 Plaintiff's complaint alleges that Meritage was the sole owner of the Property and that neighboring parcels are uniformly zoned:

> 48. Plaintiff is informed and believes Meritage has a contractual right to ownership of the entirety of the [Property], and has acted during the Rezoning process as the sole stakeholder and real party in interest.
>
> . . .

> 50. A shown on the pertinent maps, attached hereto as Exhibits C and D, the [Property] is completely surrounded for acres in every direction by parcels that are uniformly zoned single-family residential.
>
> 51. The Rezoning relieves the [Property] from restrictions imposed on the rest of the area.
>
> 52. The Rezoning constitutes illegal spot zoning, and as a result, Plaintiff is entitled to a declaratory judgment that the Rezoning in invalid and void *ab initio*.

¶ 27 Plaintiff argues "there is no distinction between the equitable interest vested with Meritage by its contract to purchase and the legal interest created by the execution and recording of a deed transferring the rezoned property." To support this rule of law, Plaintiff cites to a case in which this Court held that the transfer of equitable interest in property by and through an installment land sale contract was sufficient to trigger a due-on-sale clause, even though legal title would not be formally transferred by deed until all installments were paid. *See In re Foreclosure of a Deed of Tr. Given by Taylor*, 60 N.C. App. 134, 139, 298 S.E.2d 163, 166 (1982). The Court so held as a matter of policy to prevent the seller's use of an installment land sale contract to avoid paying all sums due under the burdening due-on-sale clause. *Id.* at 139, 298 S.E.2d at 166 ("The transaction here was a transparent subterfuge designed to circumvent . . . [and] nullify application of [the] petitioner's due-on-sale clause[.]"). We are unpersuaded that this rule of law applies in the present case.

¶ 28 Plaintiff states in paragraph 4 of his complaint that "[the Homeowners] are

owners of various contiguous real property parcels (the [Property]), totaling approximately 80 acres[.]" Plaintiff does not and cannot argue that the Homeowners are not the record owners of the Property, nor that Meritage is the single owner of the Property. Therefore, Plaintiff fails to plead even the first essential element of a claim for illegal spot zoning.

¶ 29 Further, Plaintiff appended two maps to his complaint as exhibits, arguing that the maps showed that all neighboring properties for "acres in every direction" were uniformly zoned. Our review of the maps reveals multiple zoning regulations applied to neighboring property within a two-mile radius of the Property. *See Musi v. Town of Shallotte*, 200 N.C. App. 379, 384, 684 S.E.2d 892, 896 (2009) (stating "[t]here is no precise definition of the area to be analyzed to determine whether a rezoned property is surrounded by a 'much larger area' of uniform zoning" but reviewing an area somewhat larger than a one-mile radius from the rezoned property). The maps appended to Plaintiff's complaint naturally defeat the claim made therein. Lastly, in any event, Plaintiff also wholly fails to plead that the City Council's decision to grant the Application was made without a clear showing of a reasonable basis for the rezoning. Plaintiff's third claim also fails as a matter of law.

4. Arbitrary and Capricious Decisions

¶ 30 Plaintiff further contends that the City did not act in "good faith throughout the Rezoning process" and instead "acted in an arbitrary and capricious manner"

irreflective of proper decision-making. Because the recorded minutes from the City Council's Vote show its decision was based upon reasonable consideration of the Application, we disagree.

¶ 31 The City of Charlotte is authorized by our General Assembly to prescribe zoning regulations so long as they are made "in accordance with a comprehensive plan" and "designed to promote the public health, safety, and general welfare." N.C. Gen. Stat. § 160D-701 (2021). A city's adoption of zoning regulations is not to be overturned by this Court on appeal unless it is clear that the regulations were made arbitrarily and without reason:

> There is a presumption that a zoning ordinance, adopted pursuant to the prescribed procedures, is valid and the mere fact that it depreciates the value of the complainant's property is not enough to establish its invalidity. When the most that can be said against such ordinances is that whether it (sic) was an unreasonable, arbitrary or unequal exercise of power is fairly debatable the courts will not interfere. Under such circumstances the courts may not substitute their judgment for that of the legislative body of the municipality as to the wisdom of the legislation. It is not required that an amendment to the zoning ordinance in question accomplish or contribute specifically to the accomplishment of all of the purposes specified in the enabling act. It is sufficient that the legislative body of the city had reasonable ground upon which to conclude that one or more of those purposes would be accomplished or aided by the amending ordinance. When the action of the legislative body is reviewed by the courts, the latter are not free to substitute their opinion for that of the legislative body so long as there is some plausible basis for the conclusion reached by that body.

Zopfi v. City of Wilmington, 273 N.C. 430, 436–37, 160 S.E.2d 325, 332 (1968) (internal citations and quotations marks omitted). We therefore review only to determine whether the City Council followed its own procedures and acted reasonably when making its decision.

¶ 32 Despite his particular focus on the City's imperative to adhere to its own rules of procedure in his first claim, Plaintiff does not refer in his fourth claim to the City's standards for deciding whether to approve rezoning requests. The City's zoning ordinance procedures dictate that, in reviewing a petition to rezone property, the City Council must consider "[w]hether the proposed reclassification is consistent with the purposes, goals, objectives, and policies of the adopted 'Generalized Land Plan' and any amendment to that plan through an adopted district or area plan covering the subject property." Charlotte, N.C., Zoning Ordinance § 6.1111(2) (2021).

¶ 33 Plaintiff's fourth claim asserts that the City Council withheld information from Plaintiff in bad faith while consistently sharing information with Meritage, "favor[ing] Meritage throughout the rezoning process and predetermin[ing] the outcome." Plaintiff's claim also contends the City Council's decision to approve the Application was made "in an arbitrary and capricious manner" because the terms of the rezoning and the intended development project requested in the Application are incompatible with and in opposition to "previously adopted land plans," "the stated

purposes of mixed-use innovative zoning classification," "the capacity and/or safety of the area," and "the City's critical water infrastructure." Plaintiff's claim does not allege, however, that the City Council did not adhere to its own standards of review for rezoning petitions.

¶ 34 Following the Vote, the City Council recorded minutes[3] commemorating and giving effect to its decision to grant the Application. The minutes include the following Consistency Statement, adopted in support of the Application:

> [The Application] is found to be consistent with the Northwest District Plan (1990), based on the information from the final staff analysis and the public hearing and because the plan recommends residential uses at up to four dwelling units per acre. Therefore, we find this [Application] to be reasonable and in the public interest based on information from the final staff analysis and the public hearing and because this petition proposes 280 single family attached dwelling units, as 3.47 units per acre, which is consistent with the recommended density of the Northwest District Plan (1990) of up to 4 dwelling units per acre. Surrounding retail, church, school, and parks uses will provide support services for the proposed attached residential area. The [Application] commits to incorporate design standards that stay true to the desired residential character of the area, such as minimizing the visual impact of garage doors, and using a combination of construction materials. The [Application] proposes to incorporate street connectivity in the construction of the

[3] We consider the City Council's minutes because they are legal source documents reflecting proceedings directly and repeatedly referenced within Plaintiff's complaint. Plaintiff cannot prevent this Court's consideration of these legal documents by choosing not to attach them to his own complaint. *See Reese*, 196 N.C. App. at 550, 676 S.E.2d at 489. Defendants presented the minutes to the trial court for consideration as an exhibit attached to their answer, and brought the Consistency Statement adopted therein to the trial court's attention during the hearing on this matter.

> site by including multiple entrances and exits into the development, and by dedicating right of ways to C-DOT for future residential and collector roads. The [Application] commits increasing future residents' quality of life by dedicating a 100-foot SWIM buffer and a minimum of 2 acres of site area to Mecklenburg County for future greenway use and for a future neighborhood park, as modified.

¶ 35 The Consistency Statement shows that the City Council considered whether the Application's requested rezoning was consistent with the "purposes, goals, objectives, and policies" of the Northwest District Plan in compliance with zoning ordinance section 6.1111(2). Contrary to Plaintiff's complaint, the Consistency Statement shows that the City Council properly considered the Application, directly speaks to "previously adopted land plans," and discusses at length the desirable aspects of Meritage's development plans as outlined in the Application. Because Plaintiff has failed to demonstrate reversible error, this Court will not disturb the City Council's rezoning decision on appeal.

5. Violation of Right to Due Process

¶ 36 Plaintiff's fifth claim presents two alleged violations of Plaintiff's due process rights: (1) that Plaintiff was subjected to the City's extraterritorial jurisdiction without the ability to be heard; and (2) that the City Council's remote hearings did not provide a proper opportunity to be heard. Plaintiff's due process arguments essentially reiterate the arguments advanced in his first two claims.

¶ 37 The United States Constitution and the North Carolina Constitution each affords its citizens protection from acts by state officials that infringe on constitutional rights without due process of law. U.S. Const. amend. V, XIV; N.C. Const. art. I, § 19. A compensable claim for violation of a constitutional right by state officials must plead: (1) a state actor violated the plaintiff's constitutional rights; (2) a substantively "colorable" constitutional claim that merits redress; and (3) the plaintiff has no adequate state remedy to redress the grievance. *Deminski on behalf of C.E.D. v. State Bd. of Educ.*, 377 N.C. 406, 2021-NCSC-58, ¶¶ 15–18.

¶ 38 Plaintiff's complaint asserts his fifth claim as follows:

> 57. The extension of the City's power over the extraterritorial jurisdiction left Plaintiff subject to control by a governing body for which he had no ability to vote.
>
> 58. Plaintiff and other community members opposed to the [Application] were unable to meaningfully participate in the political process . . . .
>
> 59. The videoconference Public Hearing was not a reasonable alternative to live group attendance.
>
> 60. The Public Hearing was inadequate for Plaintiff and others to express their concerns, objections, and disapproval of the [Application].
>
> 61. The City's failure to allow meaningful and adequate participation in the Public Hearing . . . violated Plaintiff's procedural and substantive due process rights . . . .

¶ 39 With respect to paragraph 57, Plaintiff fails to meaningfully plead how the

City's use of extraterritorial jurisdiction amounts to a violation of his due process rights. Our Supreme Court has recognized that, without additional protections, the "extension of extraterritorial jurisdictional authority deprives the residents of the extraterritorial area of meaningful representation and the right to vote for local government representatives who shape policies affecting their property interests." *Town of Boone v. State*, 369 N.C. 126, 136, 794 S.E.2d 710, 717 (2016). Nonetheless, the grant of extraterritorial jurisdiction is a common method by which legislatures across the nation dictate terms of governance for areas bordering their municipal centers. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 72 (1978). North Carolina cities have authority to exercise extraterritorial jurisdiction as long as they provide some means of representation for extraterritorial citizens and exercise exterritorial jurisdiction reasonably. *See* N.C. Gen. Stat. § 160D-202 (2021); *Macon Cnty. v. Town of Highlands*, 187 N.C. App. 752, 758, 654 S.E.2d 17, 21 (2007) (holding the plaintiff failed to present a meritorious claim for the defendant municipality's improper exercise of extraterritorial jurisdiction because the plaintiff could not show the municipality's "method was unreasonable, nor has he demonstrated that a city cannot provide its own means of proportional representation").

¶ 40 Plaintiff does not plead that the City exceeds its right to exercise extraterritorial jurisdiction, or that it has done so inappropriately. Mere exercise of exterritorial jurisdiction alone does not constitute infringement on a constitutional

right. Plaintiff's bare assertion is insufficient to plead a colorable claim for unconstitutional exercise of extraterritorial jurisdiction.

¶ 41 With respect to the remaining arguments within this claim, "[t]o assert a direct constitutional claim against the [City Council] for violation of his procedural due process rights, a plaintiff must allege that no adequate state remedy exists to provide relief for the injury." *Copper ex rel. Copper v. Denlinger*, 363 N.C. 784, 788, 688 S.E.2d 426, 428 (2010) (citations omitted). Plaintiff again claims that the remote nature of the City's meetings was improper in this case, and therein belies the exclusivity of his constitutional claim. Plaintiff's first and second claims arise under state law and, if meritorious, would present adequate remedies for the City Council's alleged failure to conduct proper, open public proceedings. *See* N.C. Gen. Stat. § 143-318.16A (2021) (creating a private cause of action to set aside actions of public bodies made as a result of insufficiently open proceedings). Despite the constitutional nature of Plaintiff's fifth claim, he does not directly challenge the constitutionality of the City's authorization to conduct remote proceedings found in Section 166A-19.24. Plaintiff has failed to plead a valid constitutional claim.

6. Violation of Statutory Procedural Requirements

¶ 42 Lastly, Plaintiff's sixth claim alleges that the City failed to provide proper notice in compliance with statutory procedural laws. Though the City Council had a statutory duty to provide written notice of meetings other than regularly scheduled

meetings, N.C. Gen. Stat. § 143-318.12 (2021), Plaintiff's sixth claim also fails because the undisputed facts show that Plaintiff had sufficient notice of the City Council's remote meetings.

¶ 43 Plaintiff's sixth and final claim for relief states:

> 62. The City failed to comply with various statutory procedural requirements including, but not limited to:
>
> a. Providing the requisite notice of the Public Hearing;
>
> b. Providing the requisite notice of the Vote;
>
> c. Compliance with the extra-territorial jurisdiction enabling statute prior to and/or after adoption of the City's extra-territorial jurisdiction ordinance.

¶ 44 Plaintiff's vague assertion that the City failed to comply with "various statutory requirements" fails to allege a violation of statute to which the City is subject. In regard to the City's compliance with notice requirements, it is clear from the parties' pleadings that, to the extent that he was entitled to receive notice, Plaintiff had sufficient notice of the Public Hearing and the Vote. Plaintiff, or a representative of Plaintiff, attended and presented arguments in opposition to the Application at the Public Hearing. Plaintiff states in paragraph 27 of his complaint that, on the day the Vote was originally scheduled to take place, Plaintiff filed a motion requesting an injunction preventing the City Council from conducting the final vote that day. Plaintiff's challenge to the City's extraterritorial jurisdiction once

again fails for the reason discussed in Part II.5, above.

III. Conclusion

¶ 45 For the foregoing reasons, we affirm the trial court's order dismissing each of Plaintiff's claims.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).