

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 13934

VERIFIED
ANSWER TO COMPLAINT
AND AFFIRMATIVE DEFENSES
BY THE COUNTY OF WATAUGA

The County of Watauga respectfully moves the Court to dismiss this action pursuant to Rules 12 (b)1 and 12(b)6 of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In support of this motion, the County of Watauga respectfully asserts that the Plaintiff lacks standing to bring this action, and the allegations contained in the Complaint, even if true, fail to state a claim upon which relief can be granted.

The County of Watauga respectfully asserts as an Affirmative Defense that the Complaint of the Plaintiff should be dismissed in as much as the Town of Boone is not an aggrieved party and as such lacks standing to challenge the constitutionality of Session Law 2014-33.

AFFIRMATIVE DEFENSE -- POLITICAL QUESTION

The County of Watauga respectfully asserts as an Affirmative Defense that the reallocation of authority over Planning and Regulation of Development in the former extraterritorial jurisdiction from the Town of Boone to the County of Watauga pursuant to N.C. Gen. Stat. §153A-320 constitutes a legitimate exercise of legislative authority and constitutes a non-justiciable issue in that the allocation of power between county and municipal governments is a political question properly within the purview of the legislative branch of government.

NOW COMES the County of Watauga, pursuant to Rule 7 and Rule 24 of the North Carolina Rules of Civil Procedure, and responds to the verified Complaint of the Plaintiff as follows:

1. The allegations contained in Paragraph One of the Complaint are admitted.
2. The allegations contained in Paragraph Two of the Complaint are admitted.
3. As to the allegations set forth in Paragraph Three of the Complaint, the allegations contain conclusions of law to which no response is required. To the extent a response is required, it is admitted that the Plaintiff challenges the constitutionality of Session Law 2014-33 as passed by the North Carolina General Assembly, and as attached to Plaintiff's Complaint as Exhibit A, and that the Superior Court division is the proper forum for the consideration of this matter. The remainder of the allegations contained in Paragraph Three of the Complaint are denied.
4. The allegations contained in Paragraph Four of the Complaint are denied. It is affirmatively alleged that pursuant to N.C. Gen. Stat. §1-81.1(a1), venue for a facial challenge to the validity of an act of the General Assembly lies exclusively with a three-judge panel of the Wake County Superior Court.

5. The allegations contained in Paragraph Five of the Complaint are denied. It is affirmatively alleged that N.C. Gen. Stat. §1-81.1 (a1) is a valid exercise of the authority of the State.

6. As to the allegations contained in Paragraph Six of the Complaint, the allegations contain conclusions of law to which no response is required. It is admitted that an Order of the Honorable C. Philip Ginn transferred this matter to be heard by a three-judge panel in accordance with N.C. Gen. Stat. §1-81.1(a1).

7. As to the allegations contained in Paragraph Seven of the Complaint, it is admitted that Article II, Section 24 of the North Carolina Constitution prohibits certain local, private, or special legislation as specifically set forth in that section of the State Constitution.

8. As to the allegations contained in Paragraph Eight of the Complaint, the contents of Article II, Section 24 of the North Carolina Constitution speaks for itself.

9. As to the allegations contained in Paragraph Nine of the Complaint, the contents of Article II, Section 24 of the North Carolina Constitution speaks for itself.

10. As to the allegations contained in Paragraph Ten of the Complaint, it is admitted that the language contained therein is among the reasons set forth by the North Carolina Supreme Court for the purpose of Article II, Section 24.

11. As to the allegations contained in Paragraph Eleven of the Complaint, the contents of the previous enactments of the North Carolina Constitution speak for themselves.

12. As to the allegations contained in Paragraph Twelve of the Complaint, the contents of the previous enactments of the North Carolina Constitution speak for

themselves.

13. As to the allegations contained in Paragraph Thirteen of the Complaint, the allegations form a legal conclusion to which no response is required. To the extent a response is required, the allegations are admitted upon information and belief.

14. As to the allegations contained in Paragraph Fourteen of the Complaint, the allegations form a legal conclusion to which no response is required. To the extent a response is required, the allegations contained in Paragraph Fourteen are denied as written.

15. As to the allegations contained in Paragraph Fifteen of the Complaint, the case law on Article I, Section 32 of the North Carolina Constitution speaks for itself. It is affirmatively alleged that legislation duly passed by the North Carolina General Assembly is presumed to be a valid exercise of its authority.

16. As to the allegations contained in Paragraph Sixteen of the Complaint, it is admitted that the North Carolina General Assembly first authorized municipalities to exercise certain powers in areas outside their municipal boundaries under certain circumstances.

17. As to the allegations contained in Paragraph Seventeen of the Complaint, Article 19 of Chapter 160A of the General Statutes speaks for itself. It is denied that Article 19 of Chapter 160A is authority relating to the health, sanitation and abatement of nuisances as described in Article II, Section 24 of the North Carolina Constitution. It is affirmatively alleged that Article 19 of Chapter 160A of the General Statutes addresses Planning and Regulation of Development generally, including but not limited to Subdivision Regulation, Zoning, Historic Districts, Development Agreements,

Wireless Telecommunications Facilities, Acquisition of Open Space, Building Inspections, Minimum Housing Standards, and Community Appearance Standards.

18. As to the allegations contained in Paragraph Eighteen of the Complaint, Article 19 of Chapter 160A of the General Statutes speaks for itself. It is affirmatively alleged that Article 19 of Chapter 160A addresses Planning and Regulation of Development generally.

19. As to the allegations contained in Paragraph Nineteen of the Complaint, it is admitted that Article 19 of Chapter 160A of the General Statutes includes the authority as set forth in Paragraph Nineteen of the Complaint.

20. As to the allegations contained in Paragraph Twenty of the Complaint, it is admitted that Article 19 of Chapter 160A of the General Statutes includes the authority as set forth in Paragraph Twenty of the Complaint.

21. As to the allegations contained in Paragraph Twenty-One of the Complaint, N.C. Gen. Stat. §160A-360 speaks for itself. It is affirmatively alleged that approximately thirty-eight percent (38%) of municipalities in North Carolina do not exercise any extra-territorial jurisdiction authority.

22. As to the allegations contained in Paragraph Twenty-Two of the Complaint, it is admitted that the Town of Boone previously had enacted an Ordinance to regulate Planning and Regulation of Development within an extraterritorial jurisdiction pursuant to Article 19 of Chapter 160A of the General Statutes. It is further admitted that the extraterritorial jurisdiction of the Town of Boone contains many different types of terrains, including but not limited to mountain slopes. The remainder of the allegations contained in Paragraph Twenty-Two of the Complaint are denied.

23. The allegations contained in Paragraph Twenty-Three of the Complaint are admitted.

24. The allegations contained in Paragraph Twenty-Four of the Complaint are denied.

25. The allegations contained in Paragraph Twenty-Five of the Complaint are admitted. It is affirmatively alleged that Session Law 2014-33 passed the State Senate with bipartisan support on June 11, 2014 by a vote of 34 voting in favor and 15 voting against.

26. The allegations contained in Paragraph Twenty-Six of the Complaint are admitted.

27. As to the allegations contained in Paragraph Twenty-Seven of the Complaint, it is admitted that the House Committee on Government heard testimony on June 23, 2014 regarding Senate Bill 865 from members of the public, including, upon information and belief, the Mayor of Boone. It is also admitted upon information and belief that a motion to report the bill favorably for consideration by the full House did not pass by a vote of 12-15. It is affirmatively alleged that no action was taken to report the bill unfavorably, and the committee adjourned for the day with no further action.

28. As to the allegations contained in Paragraph Twenty-Eight of the Complaint, it is admitted that the House Committee on Government resumed consideration of Senate Bill 865 the following day, June 24, 2014. It is admitted upon information and belief that no additional speakers from the Town of Boone were heard. It is denied that no significant discussion or debate was held on this bill. It is affirmatively alleged upon information and belief that Representative Jordan and Senator Soucek, the

representatives elected to represent Watauga County and the area affected by this bill, were present and addressed the Committee. It is admitted that the House Committee on Government issued a favorable report on Senate Bill 865 by a vote of 18 in favor and 16 opposed. It is affirmatively alleged that additional debate on this bill was held on the floor of the House on June 24, 2014 and June 25, 2014, which included a motion to amend the text of the bill. The Motion was tabled, and the House voted in favor of the bill by a vote of 65 in favor and 47 opposed. The remainder of the allegations contained in Paragraph 28 of the Complaint are denied upon information and belief.

29. The allegations contained in Paragraph Twenty-Nine of the Complaint are admitted.

30. As to the allegations contained in Paragraph Thirty of the Complaint, the contents of Session Law 2014-33 speak for itself. It is denied that the authority to establish an extra-territorial jurisdiction is made available to all cities and towns throughout the State. In Watauga County itself, Section 4.1 of the Charter for the Town of Beech Mountain states "The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes."

31. As to the allegations contained in Paragraph Thirty-One of the Complaint, it is admitted upon information and belief that approximately 200 municipalities of the 552 established by the General Assembly presently exercise extraterritorial jurisdiction as defined by Article 19 of Chapter 160A of the General Statutes. The remainder of Paragraph Thirty-One of the Complaint is denied as written.

32. As to the allegations contained in Paragraph Thirty-Two of the Complaint, Session Law 2014-33 speaks for itself. It is affirmatively alleged that the action of the

General Assembly in limiting the authority of the Town of Boone to regulate development outside its territorial jurisdiction was made for rational and legitimate reasons which include:

(a) restoring jurisdiction over the affected area to the regulation of Watauga County as provided for in N. C. Gen. Stat. §153A-320;

(b) removing unnecessary and burdensome regulations from the citizens and residents of the former extra-territorial jurisdiction;

(c) restoring the right of the citizens to vote for representatives who affect their property rights instead of a town council for whom they cannot vote;

(d) promoting economic development in an area outside the corporate limits of the Town of Boone;

(e) insuring accountability of Planning and Development staff to be entrusted to the governmental body elected by the citizens of the area to be regulated;

(f) removing regulations imposed upon the extra-territorial jurisdiction which were not applied within the corporate limits of town in the same manner;

(g) acknowledging that the Town of Boone did not intend to expand into the areas regulated in its extra-territorial jurisdiction, and that control of this area by the Town of Boone was not warranted;

(h) recognizing that the Town of Boone did not provide adequate representation to the citizens of its former extra-territorial jurisdiction, and actively worked to stifle and prevent the Watauga County Board of Commissioners from being able to appoint representatives to the Town Planning Board and the Town Board of Adjustments as provided by statute; and

(i) improving and enhancing property values for the citizens that live and own property in the extra-territorial jurisdiction.

33. The allegations contained in Paragraph Thirty-Three of the Complaint are denied.

34. As to the allegations contained in Paragraph Thirty-Four of the Complaint, it is admitted upon information and belief that the Town of Boone has spent money and time to enforce its regulations imposed upon the citizens and residents of the former extraterritorial jurisdiction.

35. As to the allegations contained in Paragraph Thirty-Five of the Complaint, it is admitted that the Planning and Regulation of Development as allowed in Article 19 of Chapter 160A of the General Statutes can facilitate the orderly growth of development within a municipality. It is affirmatively alleged that all powers granted to a municipality under Article 19 of the Chapter 160A of the General Statutes are equally vested with the County which governs the areas outside the municipality pursuant to N.C. Gen. Stat. 153A-320. The remainder of the allegations contained in Paragraph Thirty-Five of the Complaint are denied.

36. As to the allegations contained in Paragraph Thirty-Six of the Complaint, it is affirmatively alleged that the reasoning behind why a municipality or county exercises its authority under Article 19 of Chapter 160A or Article 18 of Chapter 153A are political questions which are not properly before the Court. It is further alleged that the Watauga County Board of Commissioners has the same authority to regulate concerns of negative impacts related to development as defined by Article 19 of Chapter 160A. The remainder of the allegations contained in Paragraph Thirty-Six of the Complaint are

denied as written.

37. As to the allegations contained in Paragraph Thirty-Seven of the Complaint, Session Law 2014-33 speaks for itself. The remainder of the allegations contained in Paragraph Thirty-Seven of the Complaint are denied.

38. As to the allegations contained in Paragraph Thirty-Eight of the Complaint, Watauga County has the authority, if it's governing body chooses to enact them, to impose any of the same ordinances and restrictions which were properly imposed by the Town of Boone. It is affirmatively alleged that the decision whether to impose such planning and regulation of development under Article 19 of Chapter 160A of the General Statutes is a political decision, and not properly subject to judicial review.

39. The allegations contained in Paragraph Thirty-Nine of the Complaint are denied. It is affirmatively alleged that the level of regulation of development is a political question not properly subject to judicial review.

40. The allegations contained in Paragraph Forty of the Complaint are denied. It is affirmatively alleged that Watauga County is vested with such authority to impose regulations as necessary to protect both its citizens and residents in Watauga County and the Town of Boone.

41. The allegations contained in Paragraph Forty-One of the Complaint are denied. It is specifically denied that development in Watauga County is "unregulated."

42. The allegations contained in Paragraph Forty-Two of the Complaint are denied.

43. The allegations contained in Paragraph Forty-Three of the Complaint form a legal conclusion to which no response is required. To the extent a response is required,

the allegations contained in Paragraph Forty-Three of the Complaint are denied.

44. The County of Watauga hereby realleges and incorporates by reference all affirmative defenses and responses set forth above as if set forth fully herein.

45. The allegations contained in Paragraph Forty-Five of the Complaint form a legal conclusion to which no response is required. To the extent a response is required, it is admitted that the Act is a local act as defined at law. The remainder of the allegations contained in Paragraph Forty-Five are denied.

46. The allegations contained in Paragraph Forty-Six of the Complaint are denied.

47. The allegations contained in Paragraph Forty-Seven of the Complaint are denied.

48. The allegations contained in Paragraph Forty-Eight of the Complaint are denied.

49. The County of Watauga hereby realleges and incorporates by reference all affirmative defenses and responses set forth above as if set forth fully herein.

50. As to the allegations contained in Paragraph Fifty of the Complaint, Session Law 2014-33 speaks for itself. To the extent the allegations contained in Paragraph Fifty of the Complaint state allegations to the contrary, they are denied.

51. The allegations contained in Paragraph Fifty-One of the Complaint are denied.

52. The allegations contained in Paragraph Fifty-Two of the Complaint are denied. It is affirmatively alleged that the citizens of the Town of Boone and the former extraterritorial jurisdiction retain access to the same statutory regulations imposed by

Article 19 of Chapter 160A through their duly elected representatives on the Watauga County Commission. It is affirmatively alleged that the true complaint of the Town of Boone is its loss of control over the citizens and residents of their former extra-territorial jurisdiction, none of whom enjoy the right to vote for or against the members of the Town Council or Mayor of Boone and their policies. It is further alleged that the merits of the land regulations previously imposed upon its former extra-territorial jurisdiction are matters which are political decisions, the merits of which are best left to the legislative branch and by extension, the Board of Commissioners of Watauga County.

53. The allegations contained in Paragraph Fifty-Three of the Complaint are denied.

54. The allegations contained in Paragraph Fifty-Four of the Complaint are denied.

55. As to the allegations contained in Paragraph Fifty-Five of the Complaint, the legislative history, committee testimony, and legislative debate on the bill speaks for itself. It is affirmatively alleged that the purposes for the passage of the bill include the reasons set forth above in Paragraph Thirty-Two of this Answer. The remainder of the allegations contained in Paragraph Fifty-Five of the Complaint are denied.

56. The allegations contained in Paragraph Fifty-Six of the Complaint constitute political rhetoric to which no response is required. To the extent a response is required, it is specifically denied that the "political machinery" was "manipulated" "to achieve private ends." It is affirmatively alleged that Session Law 2014-33 was a carefully considered and debated legislative decision which is within the political discretion of the legislature to enact. The remainder of the allegations contained in Paragraph Fifty-

Seven are denied.

57. The allegations contained in Paragraph Fifty-Seven of the Complaint are denied.

58. Any and all allegations contained in the Complaint not otherwise specifically admitted are hereby denied.

WHEREFORE, the County of Watauga prays of the Court as follows:

1. For an Order Denying the motion for a preliminary injunction and Denying the motion for a permanent injunction of Session Law 2014-33;
2. For the Complaint of the Plaintiff to be dismissed with prejudice;
3. For the Plaintiff to have and recover nothing from the Defendant;
4. For the costs of this action to be taxed to the Plaintiff;
5. For such other relief as the Court deems just, wise, and appropriate.

Respectfully submitted this the ____ day of November, 2014.

Stacy C. Eggers, IV
Eggers, Eggers, Eggers, & Eggers, PLLC
Post Office Box 248
Boone, NC 28607
(828) 264-3601
four@eggers-law.com
N.C. State. Bar No. 27802

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 13934

V.

and

COUNTY OF WATAUGA,
Defendant-Intervener.

VERIFICATION

Nathan A. Miller, being first duly sworn, deposes and says as follows:

My name is Nathan A. Miller. I am an attorney at law, duly licensed to practice law in the State of North Carolina, and have continuously engaged in the practice of law in this state since 2006.

I am the duly elected Chairman of the Watauga County Board of Commissioners, and have served in that capacity continuously since December 6, 2010. The Watauga County Board of Commissioners, acting as the duly elected representatives of the citizens and residents of Watauga County, as well as on its own behalf as an affected property owner, has authorized the Motion to Intervene and the filing on an Answer in support of The State of North Carolina in opposition to the action sought by the Town of Boone.

I have read the foregoing Answer and Affirmative Defenses, and I have knowledge of the allegations set forth in the Complaint and this Answer and Affirmative Defenses based upon my own personal knowledge. The Affirmative Defenses, responses, and affirmative allegations set forth in the attached Verified Answer to Complaint and Affirmative Defenses by the County of Watauga are true to the best of my knowledge, except for those allegations set forth upon information and belief, and to those responses and affirmative allegations I believe them to be true.

This the _____ day of November, 2014.

Nathan A. Miller,
Chairman, Watauga County Board of Commissioners

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 13934

I, _____, Notary Public, do hereby certify that NATHAN A. MILLER personally appeared before me this day and acknowledged the due execution of the foregoing Verification to the Verified Answer to Complaint and Affirmative Defenses by Watauga County for the purposes set forth therein.

Witness my hand and notarial seal, this the _____ day of November, 2014.

_____(SEAL)
Notary Public

My commission expires _____