

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

**IN RE: JUNE 12, 2018 DECISION OF THE BOARD OF ZONING
APPEALS OF THE CITY OF STAUNTON, VIRGINIA**

**CITY OF STAUNTON, VIRGINIA, et al.,
Petitioners**

v.

Case No.: CL18000404-00

**DEBRA CHILTON-BELLONI,
Respondent**

**PETITIONERS' RESPONSE TO RESPONDENT'S MOTION AND NOTICE OF
CONTINUANCE
PURSUANT TO VIRGINIA CODE § 30-5**

Petitioners, City of Staunton, Virginia, a municipal corporation, City Council of the City of Staunton, Virginia and Rodney Rhodes, Zoning Administrator of and for the City of Staunton, Virginia file this response and state as follows:

1. Petitioners filed a Petition for Writ of Certiorari on July 3, 2018, challenging the decision of the Board of Zoning Appeals of the City of Staunton (BZA) to grant to the Respondent a variance from the zoning laws of the City of Staunton.
2. Based on information obtained from the online Judicial Information System, the Respondent was served by posting on July 10, 2018.
3. As of August 6, 2018, no responsive pleading had been filed on behalf of Respondent and, under Rule 3:8, the Respondent was in default.
4. On August 7, 2018, rather than moving for default judgment, Petitioners' counsel courteously contacted Respondent's counsel to inquire whether Respondent intended to file responsive pleadings.

5. On August 7, 2018, Petitioners' counsel received no response to its courtesy inquiry about responsive pleadings but received a Freedom of Information Act Request regarding Petitioners' counsel legal fees, although a request for such information was just made in December, 2017. A copy of the recent FOIA request is attached as Exhibit 1.

6. The current motion is the third time that Respondent's counsel has filed a Motion and Notice of Continuance Pursuant to Virginia Code § 30-5 in these proceedings.

7. Upon information and belief, the General Assembly is currently in special session; however, the Senate has not convened and no business has been conducted since June 11, 2018, according to the daily minutes of the Senate of Virginia, a copy of which is annexed and incorporated as Exhibit 2.

8. The Respondent and her co-counsel, who is a member of the General Assembly, fully participated in the extended proceedings before the BZA on June 12, 2018, the day after the last day when the General Assembly conducted any business, but apparently was still in session under the Respondent's reasoning.

9. The Respondent is represented by two attorneys in the same law firm, and the other attorney does not assert he is a member of the General Assembly. The Petitioners are perplexed why co-counsel would and could not be part of simply scheduling further proceedings, even if the General Assembly were conducting business, which it in reality and truth has not done since June 11, 2018.

9. Certiorari proceedings are intended to be reasonably prompt and are essentially decided on the record made before the BZA. Consistent with the Court's July 11, 2018 Order, the record was assembled and filed with the Court in an expeditious manner so that proceedings

would not be delayed.

10. The Petitioners assert that the latest motion is yet another example of a pattern of protracted delay by the Respondent and serves to frustrate and impede even further the enforcement of the zoning laws of the City of Staunton and also escalates the costs.

12. Petitioners understand the Court is constrained by the representations contained in the Motion and the applicable statute but are, for the record, compelled to respond to the Motion.

City of Staunton, Virginia, et al.
By Counsel

Nelson, McPherson, Summers & Santos, L.C.

By: 

Victor M. Santos (VSB# 16233)
John C. Wirth (VSB# 37334)
P.O. Box 1287
Staunton, VA 24402-1287
(540) 885-0346 Telephone
(540) 885-2039 Facsimile

CERTIFICATE:

I certify that a true and correct copy of the foregoing Response was faxed and mailed this 9th day of August, 2018 to:

Mark D. Obenshain, Esq.
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801


Victor M. Santos

Filed in the Clerk's Office Of the
Circuit Court of the City of Staunton
Date: 8-9-18
Time: 4:25
Teste: Cam Clerk

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OBENSHAIN
— LAW GROUP —

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August 7, 2018

Via Email and First Class Mail

City of Staunton, Virginia
c/o Victor M. Santos, Esquire
John C. Wirth, Esquire
Nelson, McPherson, Summers & Santos, L.C.
P.O. Box 1298
Staunton, VA 24401
santos@nmssl.com
johnwirth@nmssl.com

Re: Freedom of Information Act Request

Dear Victor and John:

Pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), I respectfully request that the City of Staunton produce copies of the following records:

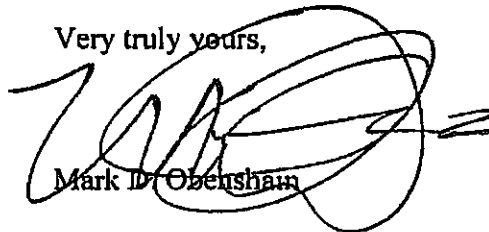
All legal bills incurred from October 1, 2017 through the present in connection with any and all matters adverse to Debra Chilton-Belloni.

I would like to request that all charges for supplying the records I have requested be estimated in advance if they will exceed \$200. I am happy to pay the fees before you continue to process my request.

Thank you for your assistance in this matter. Please let me know if you have any questions or need additional information in order to process this request.

With best regards,

Very truly yours,



Mark D. Obenshain

MDO/kw



2018 SPECIAL SESSION I

Minute Book
2018 Special Session I
Senate of Virginia
JUSTIN E. FAIRFAX, PRESIDENT OF THE SENATE
SUSAN CLARKE SCHAAR, CLERK
Monday, June 11, 2018

Called to order at 9:45 a.m. by acting President pro tempore Emmett W. Hanger, Jr.

Prayer offered in silence

ROLL CALL OF MEMBERS: Five Senators Present

Motions of Senator Ruff dispensed with the reading of the Journal (5-Y 0-N)

On motion of Senator McDougle, the Senate adjourned at 9:48 a.m. pursuant to HJ 5002

Filed In the Clerk's Office Of the
Circuit Court of the City of Staunton
Date: 8-9-18
Time: 4:25
Teste: CRM CLK