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Records Nos. 5280, 5281, 5282

In the Supreme Court of Appeals of Virginia at Richmond

CONTINENTAL BAKING COMPANY
v.
CITY OF CHARLOTTESVILLE, ET AL.

ALICE S. MERRIMAN, ET AL.
v.
CITY OF CHARLOTTESVILLE, ET AL.

THOMAS L. MOONEY, ET AL.
v.
CITY OF CHARLOTTESVILLE, ET AL.

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed. §6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5280

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 23rd day of November, 1960.

CONTINENTAL BAKING COMPANY, Plaintiff in error,

against #5280

CITY OF CHARLOTTESVILLE, ET AL.,
Defendants in error.

From the Circuit Court of Albemarle County

Upon the petition of Continental Baking Company a writ of error and *supersedeas* is awarded it from an order entered by the Circuit Court of Albemarle County on the 13th day of October, 1960, in a certain proceeding then therein depending wherein City of Charlottesville was plaintiff and County of Albemarle was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5281

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 23rd day of November, 1960.

ALICE S. MERRIMAN, ET AL., Plaintiffs in error,

against #5281

CITY OF CHARLOTTESVILLE, ET AL.,
Defendants in error.

From the Circuit Court of Albemarle County

Upon the petition of Alice S. Merriman and 1242 other residents and taxpayers of Albemarle County, Virginia, a writ of error and *supersedeas* is awarded them from an order entered by the Circuit Court of Albemarle County on the 13th day of October, 1960, in a certain proceeding then therein depending wherein City of Charlottesville was plaintiff and County of Albemarle was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5282

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 23rd day of November, 1960.

THOMAS L. MOONEY, ET AL., Plaintiffs in error,

against #5282

CITY OF CHARLOTTESVILLE, ET AL., Defendants in error.

From the Circuit Court of Albemarle County

Upon the petition of Thomas L. Mooney and 203 others whose names appear on Exhibit "A" attached to and made a part of the said petition, a writ of error and *supersedeas* is awarded them from an order entered by the Circuit Court of Albemarle County on the 13th day of October, 1960, in a certain proceeding then therein depending wherein the City of Charlottesville was plaintiff and County of Albemarle was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY, JUNE 22, 1960

This day came again the parties by their attorneys, pursuant to the order of this court, fixing this date for pretrial conference as contemplated by law. And it appearing to the court that the petitioner, City, has complied with all of the statutory requirements for the proper institution of this proceeding, the court doth so find and order.

And the court proceeding to outline a program for the future conduct of this case doth direct that each party do propound to the other on or before July 22, 1960, such interrogatories as it may desire, and that each party to which such interrogatories are propounded shall proceed to answer the same and file such answer on or before August 22, 1960; and as to all such interrogatories so propounded which the answering party thinks are inadmissible or irrelevant or improper said answering party shall have the opportunity to make objection to this court at the second pretrial conference scheduled as set forth below.

The court doth further direct that all petitions to intervene in this proceeding be filed on or before July 22, 1960, and that all pleadings and amendments to pleadings to be filed by any party shall be filed on or before August 22, 1960.

And the court is of opinion and doth direct that basic statistical data with respect to property values be compiled as of January 1, 1960; and the court doth direct that the City do on or before June 29, 1960 make available to the County and its technical advisers at the office of the City planning engineer in the City of Charlottesville all maps, the population chart, and statements showing composition and organization of city departments, and shall file on or before September 1, 1960, all other exhibits which it to introduce in evidence in the trial of this case. And the court doth further direct that the defendant, County, do file on or before October 1, 1960, all exhibits that it proposes to introduce in evidence upon the trial of this case, and make available to the City at the office of Dulaney & Robinson in the City of Charlottesville the census forms prepared by the County, as the same are from time to time completed, for examination and reproduction by the City.

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And the court doth fix October 7, 1960, at 10:00 a.m., as a date for the further pretrial conference between the parties for the consideration of such questions as may properly come

before the court; and the court doth fix the week of October 31 through November 4, 1960, for the trial of the issue of necessity and expediency of annexation.

To the action of the court in requiring the County to file all of its exhibits prior to November 1, 1960, counsel for the County excepts upon the ground that the time limit imposed deprives the County of adequate opportunity to prepare and present its defense.

s/ LYTTELTON WADDELL
s/ ROBERT T. ARMISTEAD
s/ DANIEL WEYMOUTH
Judges.

June 22, 1960

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PETITION TO INTERVENE OF ALICE S. MERRIMAN AND 1242 OTHERS.

Come now the undersigned and respectfully represent as follows:

1. They are residents and taxpayers of Albemarle County residing outside of the areas proposed to be annexed by the City of Charlottesville in this proceeding who are affected by this proceeding.

2. They deny that annexation upon the terms and conditions set forth in the City's ordinance is either necessary or expedient, considering the best interests of the County and the City, the best interests, services to be rendered and needs of the area proposed to be annexed and the best interests of the remaining portion of the County.

3. The boundary lines of the area proposed to be annexed, as set forth in the annexation ordinance, have been drawn in an arbitrary and inequitable manner so as to secure the maximum benefits to the City and impose the maximum burdens on the remainder of the County which will have serious adverse effects upon the undersigned as residents and taxpayers of Albemarle County.

page 25 } Wherefore, pursuant to Section 15-152.6 of the Code of Virginia, the undersigned pray that an

order be entered authorizing the filing of this petition and making them parties to this proceeding, with the right to be represented by counsel; that they be granted leave to file an answer and such other pleadings as they may be advised are proper; and that if any annexation is granted that the boundary lines of the area to be annexed be redrawn in an equitable manner so as to minimize the resulting burdens on that portion of Albemarle County remaining after annexation.

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By Counsel:

PAXSON, MARSHALL & SMITH
Attorneys for Petitioners
Court Square
Charlottesville, Virginia

By JOHN B. HENNINGS

* * * * *

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(back)

Filed this 22 day of July, 1960.

EVA W. MAUPIN, Clerk.

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PETITION TO INTERVENE OF THOMAS L. MOONEY AND 203 OTHERS

Your petitioners, by counsel, respectfully represent as follows:

1. They are qualified voters or free holders in the City of Charlottesville, Virginia.
2. They deny that annexation of any of the territory of Albemarle County is either necessary or expedient, considering the best interests of the County, the City and particularly the people of the City.
3. That the undersigned are persons affected within the language of Code Section 15-152.6.

WHEREFORE, the undersigned pray that an order be entered authorizing the filing of this petition and making them parties defendant to this proceeding; that they be granted leave to file an answer and such other pleadings as they may be advised are proper, and that annexation of any of the territory of Albemarle County be denied.

* * * * *

(On Cover)

Filed this 22 day of July, 1960.

EVA W. MAUPIN, Clerk.

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MOTION
THOMAS L. MOONEY AND 203 OTHERS.

To the Honorable Lyttelton Waddell, the Honorable Daniel Weymouth, and the Honorable Robert T. Armistead, Judges of the Annexation Court:

Your intervenors, Thomas L. Mooney, et al., whose names appear on a petition to intervene heretofore filed by counsel, move this Honorable Court, or the resident Judge thereof, for leave to file this their motion and respectfully represent unto the Court:

That on the 22nd day of June, 1960, your intervenors as qualified voters or freeholders in the City of Charlottesville, Virginia, and as persons affected within the language of

Section 15-152.6 of the Code of Virginia of 1950, as amended, filed a petition to intervene in these proceedings;

That said petition to intervene was filed within the time prescribed by order of this annexation court entered herein on the 22nd day of July, 1960;

Wherefore, your intervenors move this annexation court, or the resident judge thereof, that an order be entered in these proceedings making them parties defendant; that they may be granted thirty (30) days from the entry of the order for which motion is made to propound interrogatories directed to the other parties hereto and that each party to which such interrogatories are propounded shall proceed to answer the same on or before sixty (60) days from the entry of the order for which motion is made; that they be granted to file an answer, other pleadings and amendments to pleadings within sixty (60) days of the entry of the order for which motion is made; that the City be directed to make available within one week from the entry of the order for which motion is made to your intervenors, their technical advisors and their attorneys at the office of the City Planning Engineer in the City of Charlottesville, with all maps, population charts and statement showing composition and organization of City Departments; and that your intervenors be allowed sixty (60) days from the entry of the order for which motion is made to file all Exhibits they propose to file in the trial of this case; that the County of Albemarle be directed to make available to your intervenors, their technical advisors and their attorneys at the office of Dulany and Robinson in the City of Charlottesville, Virginia, the census forms prepared for the County, as the same are from time to time completed, for examination and reproduction.

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And your intervenors move the Court that if on the filing of this motion, the said annexation court not be sitting, that the resident judge cause the convening of said court to hear this motion and enter the said order for which motion is made, or that said resident judge cause the entry of the order for which motion is made to the end that these proceedings be not delayed.

THOMAS L. MOONEY, et al., whose names appear on the petition to intervene heretofore filed
By Counsel.

E. C. WINGFIELD
E. C. Wingfield, Counsel
102 County Office Building
Charlottesville, Virginia

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(On Cover)

Filed this 22 day of Aug., 1960.

EVA W. MAUPIN, Clerk.

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MOTION OF ALICE S. MERRIMAN
AND 1242 OTHERS

To the Hon. Lyttelton Waddell, the Hon. Daniel Weymouth and the Hon. Robert T. Armistead, Judges of said Court:

Your petitioners, Alice S. Merriman, and others, whose names appear on a petition to intervene filed in this cause on July 22, 1960, respectfully represent as follows:

1. That they are residents and taxpayers in Albemarle County, Virginia, outside of the areas of said County proposed to be annexed by the City of Charlottesville in this proceeding.

2. That on July 22, 1960, through counsel, said petitioners filed in this cause a petition to intervene pursuant to the Code of Virginia of 1950 as amended.

WHEREFORE, your petitioners, by counsel, move this Court, or the resident Judge thereof, for the entry of an order making said petitioners parties to this proceeding; granting said petitioners thirty (30) days from the entry of such order to propound interrogatories to other parties to this proceeding, and directing such parties to answer the same page 48 } within thirty (30) days after receiving such interrogatories; granting said petitioners sixty (60) days from the entry of such order to file further pleadings and amendments; directing the City of Charlottesville to make available to said petitioners, their technical advisers and attorneys, all maps, charts and statements showing the composition and organization of City Departments; granting these petitioners sixty (60) days from the entry of such order to file such exhibits as they propose to file in the trial of this cause; directing the County of Albemarle to make available to your

petitioners, their technical advisers and attorneys, the census forms prepared for the County, as the same are from time to time completed, for examination and reproduction by these petitioners.

Your petitioners further move that if at the time of the filing of this motion the said Annexation Court not be sitting, the resident Judge cause the convening of said Court to consider such motion or to cause the entry of an order granting the requests embodied in this motion to eliminate any delay in these proceedings.

ALICE S. MERRIMAN, et al.,
whose names appear on a petition to intervene filed in this cause on July 22, 1960.
By Counsel.

PAXSON, MARSHALL AND SMITH
Court Square
Charlottesville, Virginia

By: JOHN B. HENNINGS.

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(On Cover)

Filed this 22 day of Aug., 1960.

EVA W. MAUPIN, Clerk.

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MOTION OF CONTINENTAL BAKING COMPANY.

To the Hon Lyttelton Waddell, the Hon. Daniel Weymouth and the Hon. Robert T. Armistead, Judges of said Court:

Your petitioner, CONTINENTAL BAKING COMPANY (Morton Frozen Foods Division), whose name appears on a petition to intervene filed in this cause on July 22, 1960, respectfully represents as follows:

1. That on July 22, 1960, through counsel, your petitioner filed in this cause a petition to intervene pursuant to the Code of Virginia of 1950, as amended.

2. That your petitioner is the owner (in part) and lessee (in part) of a large industrial plant located near Crozet, in Albemarle County, Virginia, and as such is one of the largest employers in the said County.

3. That your petitioner is one of the largest taxpayers in the said County, paying directly or through its lessor nearly one percent of all the real and personal property taxes levied in the said County each year.

4. That under these circumstances your petitioner is a person affected by these proceedings, as defined in Section 15-152.6 of the Code of Virginia and as such is entitled to be made a party defendant to the case and to be represented by counsel.

5. That your petitioner's interests are not entirely identical with those of the other petitioners on the petition to which its name was subscribed, and, for that reason, it desires that its petition be severd from the petition of the other petitioners on the petition to which its name was subscribed, so that it may be separately represented in these proceedings.

page 51 } WHEREFORE, your petitioner, by counsel, moves this Court, or the resident Judge thereof, for the entry of an order severing the petition of your petitioner, making your petitioner a party defendant to this proceeding; granting said petitioner thirty (30) days from the entry of such order to propound interrogatories to other parties to this proceeding, and directing such parties to answer the same within thirty (30) days after receiving such interrogatories; granting said petitioner sixty (60) days from the entry of such order to file further pleadings and amendments; directing the City of Charlottesville to make available to said petitioner, its technical advisers and attorneys, all maps, charts and statements showing the composition and organization of City Departments; granting this petitioner sixty (60) days from the entry of such order to file such exhibits as it proposes to file in the trial of this cause; directing the County of Albemarle to make available to your petitioner, its technical advisers and attorneys, the census forms prepared for the County, as the same are from time to time completed, for examination and reproduction by this petitioner.

Your petitioner further moves that if at the time of the filing of this motion the said Annexation Court not be sitting, the resident Judge cause the convening of said Court to consider such motion or to cause the entry of an order granting the requests embodied in this motion to eliminate any delay in these proceedings.

CONTINENTAL BAKING COMPANY
(Morton Frozen Foods Division)
By Counsel

PAXSON, MARSHALL AND SMITH
Court Square
Charlottesville, Virginia

By: JOHN B. HEMMINGS

ROBERT M. MUSSELMAN
Robert M. Musselman
413 Seventh Street, N. E.
Charlottesville, Virginia

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IN THE CIRCUIT COURT OF ALBEMARLE COUNTY, OCT. 13, 1960.

ORDER
THOMAS L. MOONEY AND 203 OTHERS.

This 7th day of October, 1960, came Thomas L. Mooney, et als., by Counsel, the City of Charlottesville, by Counsel, the County of Albemarle, by Counsel, and other petitioners to intervene by Counsel, and the said Thomas L. Mooney, et als. tendered their written motion, heretofore filed on August 22, 1960, asking that they be made parties defendant to these proceedings, and for other relief, which motion was argued by Counsel, and was not opposed by any other party.

It appearing to the Court that the said Thomas L. Mooney, et als. are not residents or freeholders of the area proposed to be annexed, but are rather residents of the City of Charlottesville, the Court doth ADJUDGE and ORDER that these

petitioners are not "parties affected" by these proceedings having no special interest beyond those of *those of* other citizens of the City, and their motion is accordingly DENIED, to which order the said petitioners duly excepted on the grounds stated in their motion, and

The said petitioners thereupon indicated to the Court their intention to appeal to the Supreme Court of Appeals from this final order denying their petition to be made parties defendant and moved the Court to stay these proceedings pending a ruling on this appeal, and

The Court being otherwise advised, the said motion to stay these proceedings pending action on an appeal by Thomas L. Mooney, et als. was DENIED, to which order these petitioners duly noted their exception.

Enter —

s/ LYTTELTON WADDELL
s/ ROBERT T. ARMISTEAD
s/ DANIEL WEYMOUTH
Judges

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IN THE CIRCUIT COURT OF ALBEMARLE COUNTY, OCT. 13, 1960

ORDER
CONTINENTAL BAKING COMPANY

This 7th day of October, 1960, came Continental Baking Company, by Counsel, the City of Charlottesville, by Counsel, the County of Albemarle, by Counsel, and other petitioners to intervene by Counsel, and the said Continental Baking Company tendered its written motion, heretofore filed on August 22, 1960, asking that its petition be severed from that of other petitioners, that it be made a party defendant to these proceedings, and for other relief, which motion was argued by Counsel, and was not opposed by any other party.

It appearing to the Court that the said Continental Baking Company is not a resident or freeholder of the area proposed

to be annexed and its place of business is not located in the said area, the Court doth ADJUDGE and ORDER that Continental Baking Company is not a "party affected" by these proceedings, having no special interest beyond those of other citizens of the County outside the area proposed to be annexed, and its motion is accordingly DENIED, to which order the said Continental Baking Company duly excepted on the grounds stated in its motion, and

The said Continental Baking Company thereupon indicated to the Court its intention to appeal to the Supreme Court of Appeals from this final order denying its petition to be made a party defendant and moved the Court to stay these proceedings pending a ruling on this appeal.

The Court being otherwise advised, the said motion to stay these proceedings pending action on an appeal by Continental Baking Company was DENIED, to which order Continental Baking Company duly noted its exception.

Enter:

s/ *LYTTLETON* WADDELL
s/ DANIEL WEYMOUTH
s/ ROBERT T. ARMISTEAD
Judges

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* * * * *

ORDER.
ALICE S. MERRIMAN AND 1242 OTHERS

This 7th day of October, 1960, came Alice S. Merriman and others, by Counsel, the City of Charlottesville, by Counsel, the Couty of Albemarle, by Counsel, and other petitioners to intervene, by Counsel, and the said Alice S. Merriman and others tendered their written motion, heretofore filed on August 22, 1960, asking that they be made parties defendant to these proceedings, and for other relief, which motion was argued by Counsel, and was not opposed by any other party.

It appearing to the Court that the said Alice S. Merriman and others are not residents or freeholders of the area proposed to be annexed but are residents and taxpayers of the area of Albemarle County outside the area to be annexed, the Court doth ADJUDGE and ORDER that Alice S. Merriman

and others are not "parties affected" by these proceedings and that they have no special interests different from any other residents and taxpayers of that area outside the area proposed to be annexed, and their motion is accordingly DENIED, to which order the said petitioners duly excepted on the grounds stated in their motion, and

The said petitioners thereupon indicated to the Court their intention to appeal to the Supreme Court of Appeals from this final order denying their petition to be made parties defendant and moved the Court to stay these proceedings pending a ruling on this appeal.

page 56 } The Court being otherwise advised, the said motion to stay these proceedings pending action on an appeal by Alice S. Merriman and others said petitioners was DENIED, to which order Counsel for said Alice S. Merriman and other said petitioners duly noted their exception.

I ask for this:

JOHN B. HEMMINGS
Counsel for Alice S. Merriman and others, Petitioners.

Enter—
s/ LYTTELTON WADDELL
s/ ROBERT T. ARMISTEAD
s/ DANIEL WEYMOUTH
Judges

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR. BY CONTINENTAL BAKING COMPANY

To the Clerk of the aforesaid Court:

Counsel for Continental Baking Company, petitioning intervenor in the above styled action, files this its notice of appeal from a final order entered in this case in the Clerk's Office of the Circuit Court of Albemarle County on

October 13, 1960, which order denied its petition to intervene and be made a party defendant to the case, and makes this its assignments of error to the order aforesaid, as follows:

(1) That the Court erred in denying its said petition.

(2) That the Court erred in holding that your petitioner was not a person affected by the proceedings.

(3) That the Court erred in holding that your petitioner had no special interest beyond that of other citizens of the County outside the area proposed to be annexed.

(4) That the Court erred in holding that it was necessary to have a special interest beyond that of other citizens of the County outside the area proposed to be annexed in order to be a "party affected".

(5) That the Court erred in denying a stay of the said proceedings pending action on an appeal from the said order.

CONTINENTAL BAKING COMPANY
By Counsel

JOHN B. HEMMINGS
Court Square
Charlottesville, Va.

ROBERT M. MUSSELMAN
412 Seventh Street, N. E.
Charlottesville, Va.

Attorneys for Continental Baking Company

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR BY ALICE S. MERRIMAN AND OTHERS.

To the Clerk of the aforesaid Court:

Alice S. Merriman and others, each being individually listed on a petition to intervene in the above-styled annexation proceedings, file this, their notice of appeal, from a final order

entered herein in the Clerk's Office of the Circuit Court of Albemarle County on October 13, 1960, denying these petitioners the right to intervene and be made parties defendant in these proceedings, and make these, their assignments of error, to the aforesaid order, to wit:

(1) That the Court erred in denying the petition of Alice S. Merriman and others who petitioned as residents and taxpayers in Albemarle County living outside the area proposed to be annexed;

(2) That the Court erred in deciding that said petitioners were not "persons affected" by these proceedings;

(3) That the Court erred in holding that your petitioners had no special interests beyond those interests of other residents and taxpayers of Albemarle County outside the area proposed to be annexed in these proceedings.

(4) That the Court erred in holding that it was necessary for said petitioners to have a special interest beyond that of other residents and taxpayers of Albemarle County outside the area proposed to be annexed in order to be "parties affected";

(5) That the Court erred in denying a stay of these proceedings pending action on an appeal from the aforesaid order.

ALICE MERRIMAN AND OTHERS

JOHN B. HEMMINGS
By Counsel

JOHN B. HEMMINGS
Court Square
Charlottesville, Virginia

Attorney for Alice S. Merriman and others.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR BY THOMAS L. MOONEY, ET AL.

To the Clerk of the aforesaid Court:

Counsel for Thomas L. Mooney, et al, whose names appear on a petition for intervening heretofore filed, files this their notice of appeal from a final order entered in this case in the Clerk's Office of the Circuit Court of Albemarle County on October 13, 1960, which order denied their petition to intervene and be made a party defendant to the case, and makes this their assignments of error to the aforesaid, as follows:

(1) That the Court erred in denying their said petition.
(2) That the Court erred in holding that your petitioners were not persons affected by the proceedings.
(3) That the Court erred in holding that your petitioners have no special interest beyond that of other citizens of the City of Charlottesville.
(4) That the Court erred in holding that it was necessary to have a special interest beyond that of other citizens of the City of Charlottesville in order to be a "party affected".
(5) That the Court erred in denying a stay of the said proceedings pending action on an appeal from the said order.

THOMAS L. MOONEY, ET AL.
By Counsel

E. C. WINGFIELD
County Office Building
Charlottesville, Virginia

* * * * *

10/7/60
page 3 } Judge Waddell: Gentlemen, it seems to me the first thing to do is consider the petitions to intervene.

With respect to the petitions by persons residing in and owning land in the annexed territory who have filed their petitions within the time, and I don't think there are any such who have failed to file within the time, I do not think there is any question about those. They have a right to come in, and an order to that effect will be entered.

The next question is with respect to persons who are neither residents nor voters nor freeholders in the proposed annexed territory, and there are several petitions of that kind, including two petitions, I think, by persons who are freeholders in the county, not in the proposed annexed territory. and one or more by persons who are residents of the City of Charlottesville.

I think that the Court is of the opinion that there is no question with respect to the petition by Gohana, who has a special interest, but we have doubt with respect to the right of every citizen of the City of Charlottesville and every citizen of the county to come into this annexation proceeding. We will be glad to hear you on that at this point.

* * * * *

10/7/60
page 4 } Mr. Hemmings: I represent people in the area outside of the area to be annexed, a group there.

Judge Waddell: All right, sir. Mr. Aaron, who is the group you represent?

Mr. Aaron: A busines within the area to be annexed.

Judge Waddell: No question about that. All right. Mr. Wingfield, you represent some residents of the City, I believe?

Mr. Wingfield: We filed our petition on the day previously referred to and I believe left a copy of an order with you. Since that time, I also represent a number of others, a list of whose names I have who would like to become parties if they would be permitted to be parties. I can give that list to the reporter or I can give it to you now, sir. It is our understanding that they do have a vital interest for the reasons that are set forth, that they figure that their taxes will be affected, that they are a part of a group that will be vitally affected if the territory is annexed or the limits of the City of Charlottesville are extended.

I do not bring any authorities to show you, sir, but since they are interested, I didn't think it would be necessary.

10/7/60 Judge Waddell: Do you have any authority?
page 5 } Mr. Wingfield: No, sir.

Judge Armistead: Are these people residents of the County outside of the area?

Mr. Wingfield: No, sir, they are residents of the City. They live within the City, residents of the City, freeholders and taxpayers.

Judge Waddell: And the sole ground on which they want to come in is that their taxes will be increased?

Mr. Wingfield: And that their interests will be affected. They feel that they are part of a group, part of a city, and they will be affected by taxes and probably in other manners.

Judge Waddell: What other manners?

Mr. Wingfield: Judge, that the City does not provide already necessities that they feel that they are entitled to, sir. For instance, it is the position of some of those that the City does not have a courthouse, it does not have a courtroom, it doesn't have a clerk's office, and they feel that until the City has furnished one to take care of the City requirements that the City Government should be not allowed to take in additional people who would suffer as a result of the City Government not already having provided them with what they consider necessities.

10/7/60 page 6 } As this Court knows, and the other judges may not, in the little clerk's office that we have City records cannot be properly cared for, they are not protected by any vault, no protection against fire. In addition to that, I think we can show you, sir, that there is no room, even though the law requires, that certain records around the Municipal Court be sent up, that the clerk does not have any facilities to take care of them, and at present he is using the attic for some absolutely required court records to be kept, the attic of a county building.

I say that we do not have a courtroom. Our City Judge also has to hold court either in the County Supervisors'—

Judge Waddell: Isn't that expressly provided for in the City Charter?

Mr. Wingfield: But the City hasn't done it, sir.

Judge Waddell: Joint use of the court?

Mr. Wingfield: I don't think so, sir. If it is, I don't know it, sir. I haven't seen it, sir.

Judge Waddell: Have you read the Charter?

Mr. Wingfield: I have read it, not looking for that.

Judge Waddell: You will find it is in there.

10/7/60 page 7 } Mr. Wingfield: About the clerk's office, too, sir?

Judge Waddell: Yes, sir.

Mr. Wingfield: And there are other clients that I represent within the City, sir, who feel that they own property on the streets, whose neighbors are furnished with gas, they are furnished with water—

Judge Waddell: I think we understand your position, Mr. Wingfield. I would like to hear from—

Judge Armistead: Mr. Wingfield, let me ask you one thing. The people that you represent, will any of them be affected any differently than any other citizen of Charlottesville or do they all fall in the same category as the rest of the citizens?

Mr. Wingfield: There are some particular ones that I mentioned. There are some that feel aggrieved because their neighbor next door to them gets water and gas and the City will not furnish it to them unless they go a block away and put in a larger pipe at their own expense. So there are some individuals that do feel that they are aggrieved, that the City hasn't taken care of them in that respect, sir.

Judge Waddell: All right.

Mr. Hemmings: May it please the Court, I represent approximately 1243 residents in the area outside of the area to be annexed, residents and taxpayers of the County.

10/7/60 page 8 } We feel that we are entitled to come in under the provision in the statute which provides that persons, other persons affected may intervene. We believe that we are definitely affected, certainly aside from the fact that the tax structure will be affected. We feel that the whole governmental structure in the County will be affected and we present 1243 people who are very definitely interested in the governmental structure of this county, very definitely interested in what happens to this County, and we feel that we should be permitted to come in to express our interest and to find out exactly what is going to happen here.

Of course, we realize, too, that there is a County Government to look after the interests, but we don't feel that the interests are exactly the same. These people are primarily interested in what happens, what is going to remain there, what sort of a County Government we are going to have, what the financial structure is going to be. This, as the Court well knows, is one of the better *un* counties in the state, we think, and we would like to see that it continues to be one of the better run counties in the state. This very definitely affects each of these individuals who has asked to intervene in this case.

10/7/60 page 9 } Judge Waddell: I will ask you the same question Judge Armistead asked. Are they affected any differently from any other residents of the County?

Mr. Hemmings: Only to the extent possibly that they are apparently more interested in what does happen to the County and want to come in to that extent. Probably not.

Judge Armistead: All right.

Mr. Musselman: Mr. Hemmings and I also jointly represent Continental Baking Company, may it please the Court, who is on the list of original parties who he is representing, and ask that their status be received and treated separately on the ground that they are one of the five or six largest taxpayers in the County, that they pay alone nearly one percent of the total County property taxes, one of the largest employers in the County, and in that connection are anxious to have an opportunity to participate in these hearings as a party that is inevitably seriously affected by the results both directly and through all of the people that they employ, all people that they are necessarily connected with.

I ask that they be considered as a separate defendant rather than as one of the list of 1243 which was originally filed by him as a group. It is on that basis that we feel that Continental Baking Company is entitled to be considered
10/7/60 not to be bound by what sort of defense the County
page 10 } may choose to make, but to be free to bring in anything that they are concerned with as to how this matter may affect it.

It may be that on some issues they will be in full agreement with the position taken by attorneys for the County, but they feel that under the statute they are entitled to be considered as a party affected or a party interested in these proceedings to be entitled to make what defense they choose to and not be bound by what the Board of Supervisors may wish to make on its own behalf, sir.

Judge Armistead: Does this company operate any business in the area proposed to be annexed?

Mr. Musselman: Not in the area proposed to be annexed, no, sir.

Judge Waddell: Gentlemen, it is the opinion of the Court that the statute is fairly plain in this matter. It expressly provides that persons owning property in and voters in the area may come in. Now if the Legislature had wanted to say that anybody else in the County could come in, they would have said so; and it seems clear to us that when it says in the second clause, "person affected by the proceedings," it means a person in some special way affected rather than every citizen of the City and the County affected.

10/7/60 Therefore, those petitions in which there is no
page 11 } showing that the person is specially affected will be denied.

Mr. Musselman: May we except in behalf of the Continental Baking Company, and would request an opportunity to have the matter reviewed at this point, since I take it that denial would be a final order as to us?

Judge Waddell: Reviewed in what way?

Mr. Musselman: By application for a writ of error.

Judge Waddell: You don't even know that there will be any annexation yet.

Mr. Musselman: But the denial of our right to intervene is, I believe, a final order as to us, is it not, sir?

Judge Waddell: I expect so, yes, sir. If you have the right, you have the right. If not, you don't.

Mr. Musselman: I take it that if we plan to carry the matter up, it has to be carried up at this time; and since our right is to carry it up would be lost if the proceedings went on without—

Judge Waddell: Do you mean that you ask us to suspend the proceedings until you can have that decided?

Mr. Musselman: Yes, sir. Anything else is inevitably a complete denial of our right to be heard, sir.

10/7/60 page 12 } Judge Waddell: No, sir. If the Court of Appeals says that you have a right to be heard, they will reverse the case, I presume, if we should grant annexation.

Mr. Musselman: I had understood that annexation cases were somewhat different in the usual run in that they were not sent back for retrial.

Judge Waddell: I think that is probably true. I thought about that with respect to denial of the petitions to intervene. But the Court is not inclined to suspend the proceeding.

Mr. Musselman: To that also, may I note an exception, sir.

Mr. Hemmings: I would like to ask also, if I may, that the proceedings be suspended.

Judge Waddell: There will be the same ruling.

Mr. Hemmings: Except to that, if I may, please.

Mr. Wingfield: In behalf of those I represent in the City, I would like to make the same motion and except to the same rulings, sir.

Judge Waddell: It will be the same ruling on that motion.

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A Copy—Teste:

H. G. TURNER, Clerk.

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