

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

GOLD LEAF LAND TRUST;)	CIVIL ACTION NO. 3:01CV00047
and RIVER HEIGHTS ASSOCIATES)	
LIMITED PARTNERSHIP,)	
)	
Plaintiffs,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
BOARD OF SUPERVISORS OF)	
ALBEMARLE COUNTY,)	
VIRGINIA,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

Before the court are the defendant's May 3, 2001 "Motion to Dismiss" and the plaintiffs' November 9, 2001 "Motion to Amend and Remand to State Court." Upon removal from state court, this matter was referred to United States Magistrate Judge B. Waugh Crigler for proposed findings of fact, conclusions of law, and a recommended disposition. See 28 U.S.C. §§ 636(b)(1)(B)(West 1993 & Supp. 2001). At a hearing on the motion to dismiss, held July 18, 2001, the Magistrate Judge raised *sua sponte* the issue of whether the court had subject matter jurisdiction over this case. After the parties briefed the issue, the Magistrate Judge issued his Report and Recommendation wherein he recommended that the court remand the action to the Circuit Court of Albemarle County. The defendants filed timely objections to the report. Subsequent to the issuance of the Magistrate Judge's report, the plaintiffs filed a motion to amend the complaint and to remand to state court. For the reasons stated below, the court shall grant the plaintiffs' motion to amend the complaint and to remand and deny the defendants' motion to dismiss as moot.

I. Background

As the parties came before the court on the defendant's motion to dismiss, the court accepts as true the well-pleaded allegations contained in the complaint.¹ *Edwards v. City of Goldsboro*, 178 F.3d 231, 237 n.1 (4th Cir. 1999). The complaint in this case is the "Petition for Approval of Site Plan," filed April 5, 2001, in the Circuit Court of Albemarle County. The plaintiffs, a Virginia land trust and a limited partnership organized under Virginia law, are fee simple owners of a tract of land in Albemarle County for which a site plan detailing proposed development had been prepared. The defendant, the Board of Supervisors of Albemarle County, Virginia, (hereinafter "the Board"), is the governing body of Albemarle County under which the Department of Planning & Community Development and the Planning Commission are charged with the review of applications for site plan approval. The Board reserves the right to review any administrative appeal by applicants from adverse decisions by the Planning Commission.

On September 21, 2000, the plaintiffs filed a request with the Department of Planning for approval of a preliminary site plan. The plaintiffs intended to use the land for construction of a Home Depot store. The property consists of approximately 15.9 acres, zoned HC (Highway Commercial) and EC (Entrance Corridor), and is located on the east side of Route 29 North, about one-half mile north of the Rio Road intersection.

On November 28, 2000, after review and comments made by the County Site Plan

¹The defendants objected to the manner in which the factual background of the case was set forth in the Report and Recommendation, as the Magistrate Judge did not include a qualifying statement that the allegations in the complaint were to be taken as true for purposes of considering the motion to dismiss. The court sustains the objection, and includes such a statement in this Opinion.

Review Committee, the Planning Commission took up the site plan for consideration, including the plaintiffs' application for approval of a "critical slope waiver." Under county zoning provisions, a critical slope waiver is required to permit fill and construction activity in areas containing slopes in excess of 25 percent. The Planning Department and other relevant County staff evaluated the proposed waiver and determined that the application met relevant criteria for the granting of a critical slope waiver in the case. Despite this recommendation, the Planning commission voted to deny the waiver and disapprove the site plan. The Planning Commission provided the following reasons: (1) the project would disturb critical slopes; (2) the site plan did not identify the name and location of all water courses and other bodies of water; (3) proposed grading to 5-foot contours was shown inaccurately around the retaining walls; and (4) the site plan did not show the location and dimensions of proposed fences. (Petition for Approval of Site Plan at ¶ 10.)

The plaintiffs filed an appeal of the denial of the plan and waiver. On January 3, 2001, upon hearing of the appeal, the Board took no final action; rather, it issued five directives to the Planning Department staff and to plaintiffs concerning how to revise the site plan to permit its approval. None of the directives mentioned the critical slope waiver. In response to these directives, the Planning Department staff developed a further set of conditions, some 27 separate matters, that it recommended in order to obtain approval of the site plan. The plaintiffs allege that several of these matters exceeded the scope of the Board's directives and were beyond any reasonable interpretation of requirements found in the zoning provisions. Nevertheless, the plaintiffs resubmitted the site plan and indicated they were willing to comply substantially with 25 of the 27 conditions. The two remaining conditions did not relate to critical slope waiver.

On February 7, 2001, the Board held a public hearing on the appeal. The first order of

business was a motion to approve the critical slopes as a prerequisite to consideration of the site plan. The motion failed on a 3-3 tie vote. On February 15, 2001, the Board published its Resolution of its decision from the February 7 hearing, and disapproved the site plan. The plaintiffs allege that contrary to applicable law, the report did not specify the actions that they could take to obtain approval of the site plan, and made no findings on particular criteria that the site plan failed to satisfy. The plaintiffs contend that the site plan was disapproved solely because of the denial of the critical slope waivers as there were no other “unmet conditions” upon which to disapprove the plan.

The plaintiffs assert that neither the Planning Commission nor the Board had ever previously denied an application for a critical slope waiver. According to the plaintiffs, in 1996, such a waiver had been granted for the same property for the development of a shopping center. The plaintiffs claim that the Board disapproved the site plan for no reason having to do with its compliance with valid requirements of the Albemarle County ordinances.

This action was filed on April 5, 2001 in the Circuit Court of Albemarle County alleging wrongful disapproval of a preliminary site plan actionable under Virginia Code §15.2-2260 and a deprivation of rights to equal protection and due process under 42 U.S.C. §1983. Plaintiffs seek an order approving the site plan, as well as damages for violations of their rights, costs and attorneys’ fees. On May 3, 2001, the defendant removed the action to the United States District Court for the Western District of Virginia based on federal question jurisdiction under 28 U.S.C.

§1331, and filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

This action was referred to the Magistrate Judge B. Waugh Crigler on May 11, 2001. At a hearing on the defendant’s motion to dismiss, the Magistrate Judge raised *sua sponte* the

issue of whether subject matter jurisdiction was proper in this case. In their subsequent briefs on the issue, both parties argued that the court should assert jurisdiction over the case. The Magistrate Judge issued his Report and Recommendation on September 17, 2001, in which he recommended remanding the case to the Circuit Court of Albemarle County on the grounds of lack of ripeness or abstention. The defendant filed objections to the report.

Since the issuance of the Report and Recommendation, the plaintiffs have changed their view that the district court is a proper forum and filed a motion to amend their complaint and remand. They seek leave to amend their complaint to eliminate the §1983 claim which, they assert, would necessarily result in the case being remanded to state court. While arguing that they would be substantially prejudiced if this motion were granted, the defendant seeks, in as much as the court decides to dismiss the federal claim, that it does so with prejudice.

II. Subject Matter Jurisdiction

The Magistrate Judge raised *sua sponte* the issue of whether the court had subject matter jurisdiction in this case. In his Report and Recommendation, Magistrate Judge Crigler found a lack of subject matter jurisdiction as the plaintiffs failed to put forth a substantial federal claim because the “underlying process afforded by state law has not been allowed to run its course.” (Report and Recommendation, at 9.) “Questions concerning subject-matter jurisdiction may be raised at any time by either party or *sua sponte* by [the] court.” *See Plyler v. Moore*, 129 F.3d 728, 732 (4th Cir. 1997). A court is “duty-bound to clarify [its] subject matter jurisdiction because questions of subject matter jurisdiction concern the court's very power to hear the case.” *Quinn v. Haynes*, 234 F.3d 837, 842 (4th Cir. 2000)(internal quotations and citations omitted). Accordingly, the court begins with an inquiry into whether this action was properly removed.

A civil action filed in state court may be removed to a federal district court in as much as the district court has original jurisdiction over the action. 28 U.S.C. §1441(a). In this case, the defendant filed a notice of removal which invoked federal question jurisdiction pursuant to 28 U.S.C. §1331. The federal question in this case appears in Count II of the complaint in which the plaintiffs allege that the defendant's actions deprived them of due process and equal protection of law pursuant to 28 U.S.C. §1983. Jurisdiction is conferred through 28 U.S.C. §1343(a)(3).²

In the Report and Recommendation, the Magistrate Judge looked to Virginia law which provides that:

If a commission or other agent disapproves a preliminary plan and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within sixty days of the written disapproval by the commission or other agent.

VA. CODE ANN. §15.2-22.60(E). The Magistrate Judge interpreted the availability of an appeal to state court to be an adequate post-deprivation procedure. Thus, relying on *Parratt v. Taylor*, 451 U.S. 527 (1981) *overruled on other grounds Daniels v. Williams*, 474 U.S. 327 (1986), the Magistrate Judge found that removal of the case to federal court meant that state remedies had not been exhausted and therefore, that the §1983 claim was not ripe.

²28 U.S.C. §1343(a)(3) states:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

...

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Parratt involved a §1983 suit by a state prison inmate against prison officials to recover the value of hobby kits which were lost when normal procedures for handling the mail were not followed. The Supreme Court held that the petitioner had failed to allege a violation of due process because state law provided an adequate remedy for the deprivation of property. *See id.* at 543; *see also Plumer v. State of Maryland*, 915 F.2d 927, 929 (4th Cir. 1990). Courts interpreting *Parratt* have limited its scope to application in procedural due process cases where pre-deprivation procedures were impracticable. *See, e.g., Plumer*, 915 F.2d at 929 (noting *Parratt* is restricted “to cases where it truly is impossible for the state to provide predeprivation procedural due process before a person unpredictably is deprived of his liberty or property through the unauthorized conduct of a state actor”); *Lamb Foundation v. North Wales Borough, et al.*, 2001 WL 1468401 *12 (E.D. Pa. Nov. 16, 2001)(stating that “*Parratt* stands for the proposition that when a random and unauthorized act of a governmental official causes a deprivation of property there is no deprivation of due process under Section 1983 when the state provides an adequate post-deprivation remedy of which the plaintiff has not availed himself”); *see also Al-Mustafa Irshad v. Spann*, 543 F.Supp. 922, 926 (E.D.Va. 1982)(“The *Parratt* analysis, therefore, applies only to state-law tort claims brought into federal court on procedural due process grounds.”)

Here, the essence of the plaintiffs’ complaint is that local government officials improperly withheld approval of the plaintiffs’ site plan. The claim requires a court to examine the pre-deprivation process and determine whether that process was exercised in an arbitrary and capricious manner. This is a different inquiry than that of *Parratt* which “‘comes into play’ only in the situation where ‘postdeprivation tort remedies are all the process that is due, simply because they are the only remedies the State could be expected to provide.’” *Plumer*, 915 F.2d

at 930 (quoting *Zinerman v. Burch*, 494 U.S. 113, 985 (1990)) . Thus, the plaintiffs’ claim is not controlled by *Parratt*. Furthermore, the Virginia code section cited above does not require a state court to hear this type of claim. Finding no bar to the assertion of subject matter jurisdiction over the plaintiffs’ §1983 claim, the court holds that the action was properly removed.³ Accordingly, the court rejects the Magistrate Judge’s Report and Recommendation in as much as it recommends remand based on lack of subject matter jurisdiction.

Having found that the court can hear the case, it is another question entirely as to whether the court should hear the case. The court shares the Magistrate Judge’s concern that this case involves a uniquely state law issue which the General Assembly never fathomed would be scrutinized in a federal forum. (Report and Recommendation, at 9.) This concern raises the question of whether the district court should abstain from hearing the case and remand it to the state court. The Magistrate Judge recommended abstention in as much as the court rejected the recommendation to find no subject matter jurisdiction. The court’s decision on the plaintiffs’ motion to amend and remand moots the recommendation of the Magistrate Judge regarding abstention, however, the court, for the purpose of thoroughness, briefly addresses the issue.

In *Burford v. Sun Oil Co.*, the Supreme Court held that a district court, sitting in equity, may decline to exercise its jurisdiction to demonstrate “proper regard for the rightful independence of state governments in carrying out their domestic policy.” 319 U.S. 315, 318 (1943)(internal quotations and citation omitted). Under the *Burford* abstention, a federal court should abstain from exercising jurisdiction when it can avoid “interfering with a complex state

³ Count I, a state law wrongful disapproval claim, was removed pursuant to the doctrine of supplemental jurisdiction codified in 28 U.S.C. §1367(a). *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (holding that a federal court has jurisdiction over both federal and state law claims where they “derive from a common nucleus of operative fact”). This is not disputed by the parties or the Magistrate Judge.

regulatory scheme concerning important matters of state policy for which impartial and fair administrative determinations subject to expeditious and adequate judicial review are afforded.” *Browning-Ferris, Inc. v. Baltimore County*, 774 F.2d 77, 79 (4th Cir. 1985). The Fourth Circuit favors application of this type of abstention particularly in cases involving the interpretation and application of state and local land use laws. *See e.g. Caleb Stowe Associates, Ltd. v. County of Albemarle, VA.*, 724 F.2d 1079, 1080 (4th Cir. 1984) (holding abstention proper where “all of the plaintiffs’ state and federal claims necessarily depend upon the construction of state land use law concerning the scope of authority of local planning bodies and Boards of Supervisors, the proper interpretation of state and local land use law and county zoning practices and procedure”); *see also Fralin & Waldron, Inc., v. City of Martinsville*, 493 F.2d 481, 482 (4th Cir. 1974) (holding that state courts should have the initial opportunity to pass upon issues related to proper scope of local administrative discretion in local land use laws).

The court finds that the facts of this case fit squarely into the *Caleb Stowe* line of cases. Here, as in *Caleb Stowe*, the “very narrow inquiry” required of the court involves a determination of the lawfulness of the board’s denial of the site plan and critical slope waiver. *See* 724 F.2d at 1080. The court is being asked to determine the “proper scope” of local administrative discretion which is a task better suited and more properly handled by state courts. *See* 493 F.2d at 482.

The defendant argues that the court should reach the merits of the plaintiffs’ §1983 claim and dismiss it with prejudice as was done in *Gardner v. City of Baltimore Mayor and City Council, et al.*, 969 F.2d 63 (4th Cir. 1992). In *Gardner*, a developer and property owners claimed they were denied substantive due process when city officials failed to approve residential

development proposals. The Fourth Circuit affirmed summary judgment in favor of the city officials, finding that because the land use regulations granted discretion to city officials regarding proposal approvals, the appellants had no protected property interest on which to base their due process claim. *Id.* at 69.

The *Gardner* court's decision to address the merits on appeal, rather than follow the *Caleb Stowe* approach, where the Fourth Circuit ordered a local land-use case remanded on abstention grounds after a bench trial had taken place, speaks to an efficient use of judicial resources. *See Caleb Stowe*, 724 F.2d at 1080 (“[T]he parties failure to urge abstention on appeal does not prevent us from applying it at our own instance.”) It does not, however, in this court's view, create a mandate to district courts to reject abstention in local land-use cases.

Indeed, firm support in favor of abstention can be found in the language of the *Gardner* opinion. In particular, the *Gardner* court noted that “[r]esolving the routine land-use disputes that inevitably and constantly arise among developers, local residents, and municipal officials is simply not the business of the federal courts.” 969 F.2d 63, 67 (4th Cir. 1992). The Fourth Circuit further remarked that the resolution of such decisions “properly rest[s] with the community that is ultimately -- and intimately -- affected.” *See id.* at 68.

Concurring with this reasoning, the court believes that resolution of the issues in this case more properly rests with the state court. However, in light of the plaintiffs' motion to amend and remand, the court need not base its remand on abstention grounds.

III. Motion to Amend

The plaintiffs seek to amend their complaint to remove the §1983 claim and to clarify certain facts relating to their standing to bring this action. Rule 15(a) of the Federal Rules of

Civil Procedure provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). Given the stage of these proceedings, the plaintiffs may amend their complaint only by leave of court. Generally, such leave is liberally given. See *Ward Elecs. Serv., Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987)(citing *Foman v. Davis*, 371 U.S. 178 (1962)). However, a motion to amend may be denied if the court finds "any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant ... undue prejudice to the opposing party by virtue of allowance of amendment, [or] futility of the amendment...." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The defendant contends that Rule 15(a) may not be invoked in order to deprive a court of jurisdiction over a removed action. The defendant also asserts that they would be substantially prejudiced were the court to grant plaintiffs' motion.

A defendant opposing a motion to amend comes up against the well-known principle that the plaintiff is "the master of the claim." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); see also *Custer v. Sweeney*, 89 F.3d 1156, 1165 (4th Cir. 1996). Here, the defendant asserts that this principle cannot prevail in cases where a plaintiff uses Rule 15(a) to amend a complaint in order to divest a federal court of jurisdiction. The defendant further maintains that case law firmly supports this view. See, e.g., *Lyster v. First Nationwide Bank Financial*, 829 F.Supp. 1163, 1165 (N.D.Cal. 1993); *Jacks v. Torrington Co.*, 256 F. Supp. 282, 287 (D.S.C.

1966); *Best v. American Nat. Growers Corp.*, 197 F.Supp. 170 (D.S.C. 1961). The court, however, is not persuaded that these cases warrant a finding for the defendant.

The *Torrington* and *Best* cases stand for the unremarkable proposition that if a case was properly removed, a subsequent amendment of the complaint does not compel a remand. See 256 F.Supp. at 284 and 829 F.Supp. at 1165; see also *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 293-294 (1938). The *Lyster* court does support the defendant's position with its finding that "the first amended complaint may not be used to defeat the removal of plaintiff's case to federal court." 829 F.Supp. 1165. As such, the court in *Lyster* relied on the plaintiff's first complaint filed in state court, and not the amended complaint filed after removal, in finding that it lacked original jurisdiction over the case.

The court notes that *Lyster* represents one of "two opposing rules or directions" adopted by those courts which have addressed this issue. See *Payne and Payne v. Parkchester North Condominiums, et al.*, 134 F.Supp. 2d 582, 584 (S.D.N.Y. 2001) (listing the various cases for and against granting remand after plaintiff amends a complaint and ultimately supporting the same position as in *Lyster*). On the other side are those courts that favor allowing plaintiffs to "set the tone of their case by alleging what they choose," even if it results in a remand of the case. See, e.g., *McGann v. Mungo*, 578 F.Supp. 1413, 1415 (D.S.C. 1982); see also *Chow v. Hirsch*, 1999 WL 144873, *5 (N.D.Cal. Feb. 22, 1999) (granting the plaintiff's motion to amend and to remand finding that the plaintiff made a "strategic decision" to dismiss her ERISA claims and concentrate on her state law claims); *State of Tennessee v. A Parcel of Real Property*, 937 F.Supp. 1296, 1303 (W.D.Tenn. 1996) (allowing plaintiff to withdraw RICO claim to return to state forum because "plaintiff is allowed to determine what claims it brings against defendants"); *Kimsey v. Snap-On Tools*, 752 F.Supp. 693 (W.D.N.C. 1990) (same). The court

notes that the Fourth Circuit has not taken a side in the debate.

This court finds that the *McGann* line of cases represents the sounder policy. A plaintiff should be permitted to set the tone of his case. Thus, here, as in *Chow*, the plaintiffs are making a strategic decision to withdraw the federal claim in order to return to the state forum to adjudicate the remaining claim. The plaintiffs essentially concede that the court would likely abstain from hearing the case, and propose that a move to state court now would avoid potential duplicative costs and effort in two forums.⁴ The defendant argues that they would be unduly prejudiced by an amendment of the complaint and remand due to the substantial legal expenses already incurred in the case. However, the work already completed on this case in federal court can be applied in state court. The discovery material and briefs are equally applicable to the state court proceedings. The dispositive motions to be filed in state court are in substance the same as those filed in this court. Thus, the court is not persuaded that the prejudice that will result to the defendant is so substantial that it warrants a denial of the motion to amend.

Therefore, finding support in current case law to allow the plaintiffs to amend their complaint and finding that the defendant has not made a showing of substantial prejudice, the court shall grant the plaintiffs' motion to amend the complaint.

IV. Motion to Remand

The plaintiffs maintain that the amended complaint eliminates the federal claim thereby

⁴Were the court to abstain and remand the case, it would have to enter a stay to await the conclusion of state proceedings rather than dismissing the action entirely, as the plaintiffs sought damages in addition to equitable relief. See *Front Royal and Warren County Industrial Park Corp. v. Town of Front Royal, Va.*, 135 F.3d 275, 282 (4th Cir. 1998) (noting that the Supreme Court declared in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), that dismissal based on abstention "is appropriate only where the relief sought is equitable or otherwise discretionary," otherwise a court should retain jurisdiction pending completion of state proceedings).

divesting the court of jurisdiction, and allowing the court to remand pursuant to Section 1447(c) for lack of subject matter jurisdiction. 28 U.S.C. §1447(c) provides in pertinent part:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

28 U.S.C. §1447(c). The defendant, meanwhile, opposes the motion to remand claiming they would be prejudiced and noting that the motion was not filed within thirty days after the filing of the notice of removal as required under 18 U.S.C. §1447(c).⁵

The court finds that Section 1447(c) is not applicable in this case as neither a procedural defect in removal nor a lack of subject matter jurisdiction is at issue. *See Hinson v. Norwest Financial South Carolina, Inc.*, 239 F.3d 611, 616 (4th Cir. 2001) (explaining that the inquiry is whether the court lacked subject matter jurisdiction at the time of removal); *see also Jamison v. Wiley*, 14 F.3d, 222, 232 (4th Cir. 1994) (“[A] discretionary remand of state-law claims that are properly within the federal removal jurisdiction is not a remand on a §1447(c) ground”) Thus, removal is not *per se* defeated by the filing of an amended complaint which deletes the federal claim. *See Hook v. Morrison Milling Co.*, 38 F.3d 776 (5th Cir. 1994) (“[A] post-removal amendment to a petition that deletes all federal claims, leaving only pendent state claims, *does not* divest the district court of its properly triggered subject matter jurisdiction.” (emphasis in original)); *State of Tennessee v. A Parcel of Real Property*, 937 F.Supp. at 1303. Instead, a court must determine whether to decline to exercise supplemental jurisdiction over the remaining pendent state claim. *See* 239 F.3d at 616. Under 28 U.S.C. §1367(c), a court may

⁵ Although not relevant for this case, the court notes that the thirty day deadline does not apply for remands based on lack of subject matter jurisdiction as the statutory language provides for remand “at any time before final judgment.”

decline to exercise such jurisdiction where:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. §1367.

Section 1367 is silent with regard to how a court declines supplemental jurisdiction. See *Hinson*, 239 F.3d at 616. However, the Supreme Court, in *Carnegie-Mellon University v. Cohill*, concluded that when federal claims drop out of a case, a district court can retain a pendent state-law claim, dismiss it or, if it was removed, remand it to state court. See 484 U.S. 343, 357 (1988); see also 239 F.3d at 616 (finding that *Carnegie-Mellon* “continues to inform the proper interpretation of §1367” although it was decided before the codification of the doctrine of pendent jurisdiction).

In *Carnegie-Mellon*, the Supreme Court rejected a categorical prohibition on the remand of cases involving pendent state-law claims finding that such a blanket rule was not justified “regardless of whether the plaintiff has attempted to manipulate the forum and regardless of the other circumstances in the case.” 484 U.S. at 357 (finding that such discretion “best serves the principles of economy, convenience, fairness and comity which underlie the pendent jurisdiction doctrine”); see also *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (quoting *Carnegie-Mellon*, 484 U.S. at 350, in holding that “[t]he doctrine of supplemental jurisdiction ‘thus is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values.’”) Instead, a

district court is advised to take possible manipulative behavior into account “in determining whether the balance of factors to be considered under the pendent jurisdiction doctrine support a remand in the case.” 484 U.S. at 357.

By granting the plaintiffs’ motion to amend, the court has dismissed all claims over which it had original jurisdiction, thus leaving a pendent state law claim before the court. This case, therefore, falls under 28 U.S.C. §1367(c)(3). The claim also deals with an issue, the application of local land-use regulations, deemed by the Fourth Circuit to be uniquely suited to adjudication in a state forum. See *Caleb Stowe*, 724 F.2d 1080. Thus, Section 1367(c)(1) also provides a basis on which this court could decline to exercise supplemental jurisdiction. Having found that this statutory section is applicable to the case, the court must now determine whether the “balance of factors,” discussed in *Carnegie-Mellon*, supports a remand.

The Fourth Circuit’s view that local land-use regulations and their application are issues which properly belong in state courts represents a clearly articulated policy which takes into consideration concerns of comity and judicial economy. As the Court of Appeals stated in *Fralin & Waldron*, “the courts of Virginia have extensive experience with such matters [involving municipal zoning ordinances], and we believe that they should have the initial opportunity to pass upon them.” 493 F.2d at 482-83. The *Fralin* court continued by noting that “[a] state adjudication may well avoid the necessity of a decision the federal constitutional question presented as well as avoid needless friction in federal-state relations over the administration of purely state affairs.” *Id.* The Fourth Circuit’s reasoning is equally applicable to this case where the plaintiffs challenge the application of local zoning regulations.

Moreover, the court does not find that litigating in the Circuit Court poses any

inconvenience to the parties. Finally, on the issue of fairness to the parties, the court recognizes that the defendant has expended time and effort in federal court, in particular, in the preparation and argument of their motion to dismiss. However, while the court's decision will result in the defendant repeating their arguments before a state court judge, the court does not find that this so adversely impacts the defendants as to outweigh the factors favoring remand.

For these reasons, the court shall exercise its discretion to decline supplemental jurisdiction over the remaining pendent state-law claim and shall remand the case to the Circuit Court of Albemarle County.

V. Conclusion

For the foregoing reasons, the court grants the plaintiffs' motion to amend their complaint, grants the plaintiffs' motion to remand, and denies the defendant's motion to dismiss as moot.

An appropriate order this day shall issue.

ENTERED: _____
Senior United States District Judge

Date

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

GOLD LEAF LAND TRUST;)	CIVIL ACTION NO. 3:01CV00047
and RIVER HEIGHTS ASSOCIATES)	
LIMITED PARTNERSHIP,)	
)	
Plaintiffs,)	
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v.)	<u>ORDER</u>
)	
BOARD OF SUPERVISORS OF)	
ALBEMARLE COUNTY,)	
VIRGINIA,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

as follows:

1. The Report and Recommendation, filed September 17, 2001, shall be, and it hereby is, REJECTED IN PART with regard to subject matter jurisdiction and ACCEPTED IN PART with regard to remand, however, on different grounds than those stated in the report.

2. The defendant's motion to dismiss, filed May 3, 2001, shall be, and it hereby is, DISMISSED AS MOOT;

3. The plaintiffs' motion to amend their complaint, filed November 9, 2001, shall be, and it hereby is, GRANTED, and the amended complaint shall be deemed filed as of the date of this Order;

4. The plaintiffs' motion to remand this matter to state court, filed November 9, 2001,

shall be, and it hereby is, GRANTED;

5. This action is hereby REMANDED to the Circuit Court of Albemarle County;

6. The Clerk of the Court is instructed to transfer the complete record of the case to the Circuit Court of Albemarle County and to strike the case from the docket of this Court.

The Clerk of the Court is further directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date