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August 27, 2007

D. Bruce Patterson, Clerk
Rockbridge County Circuit Court
2 South Main Street
Lexington, VA 24450-2599

Re: S. Charles Volpe, Administrator of the Estate of Charles Volpe v.
City of Lexington, Virginia

Dear Mr. Patterson:

Please find enclosed a Complaint filed on behalf of my client, S. Charles Volpe. Also enclosed is a check in the amount of \$211 to cover the filing and service fees. I am requesting that you serve Laurence A. Mann, City Attorney for Lexington, at this time.

Thank you for your assistance in this matter.

Very truly yours,


Mark D. Obenshain

MDO/jlh
137700
Enclosures

cc: Laurence A. Mann, Lexington City Attorney
Mr. S. Charles Volpe

VIRGINIA: IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

S. CHARLES VOLPE, Administrator of the
ESTATE OF CHARLES OLIVER VOLPE,

Plaintiff,

v.

CASE NO. _____

CITY OF LEXINGTON, VIRGINIA,

Defendant.

Serve: Laurence A. Mann, Esquire
City Attorney
15 East Nelson Street, Suite A
Lexington, Virginia 24450

COMPLAINT

Plaintiff, S. Charles Volpe, Administrator of the Estate of Charles Oliver Volpe, by and through counsel, moves for judgment against Defendant the City of Lexington, pursuant to Section 8.01-50 of the Code of Virginia, 1950, as amended, on the grounds and in the amount set forth below:

1. Plaintiff, S. Charles Volpe qualified as Administrator of the Estate of Charles Oliver Volpe (the "Administrator") in the Circuit Court of Rockbridge County on the 10th day of October, 2006.

2. The statutory beneficiaries represented by the Administrator S. Charles Volpe, individually, the father of the decedent, Kimberly Volpe, the mother of the decedent, and Derek Volpe, the brother of the decedent, all of whom reside together in and are citizens of Rockbridge County, Virginia.

3. The decedent, Charles O. Volpe ("Charles Volpe"), was a citizen of the Rockbridge County, Virginia on April 23, 2006, and at all times relevant hereto.

4. The Defendant City of Lexington is a political subdivision of the Commonwealth of Virginia.

5. The event giving rise to the claim arose in the County of Rockbridge, Virginia. Venue is proper in the County of Rockbridge, Virginia.

6. This is an action pursuant to Virginia Code Section 8.01-50 against the City of Lexington for the wrongful death of Charles Volpe, which occurred as a direct and proximate result of the gross negligence, and willful and wanton conduct of the City of Lexington, its agents, officers, or employees and by the maintenance of a public nuisance by the City of Lexington.

7. On October 10, 2006, pursuant to Virginia Code §8.01-222, as amended, Plaintiff gave due and proper notice of his claim against the City of Lexington.

8. On April 23, 2006, Charles Volpe was swimming in the Maury River (the "River") at Jordan's Point in the City of Lexington, Virginia, when he was swept over the low-head dam at Jordan's Point (the "Dam") and drowned.

9. Charles Volpe, sixteen years old at the time, entered the River via an existing concrete boat launch, located in the Jordan Point recreational park, that was approximately 95 feet west of the Dam.

10. At the location where Charles Volpe entered the River, the water appeared to be calm and safe. When he swam closer to the Dam, he was surprised and became trapped in an unexpectedly strong current. Despite his efforts to escape the current, Charles Volpe was then swept over the Dam.

11. After being swept over the Dam, Charles Volpe was pinned to the bottom of the river by the hydraulic force created by the Dam, and drowned.

12. The area next to the River at Jordan Point, including the Dam and River, has been dedicated and accepted by the City of Lexington as one of its public recreational parks. (the "Jordan Point Park"). It is under the supervision, management, and control of the City of Lexington.

13. At all times relevant hereto, the City of Lexington owned, managed, and operated, and had the duty to inspect and maintain the Jordan Point Park, and the Dam.

14. The Jordan Point Park contains a parking area, and a boat launch into the River only ninety-five (95) feet from the dam, where the public is invited to swim and participate in water sports.

15. The City of Lexington created and constituted the Jordan Point Committee ("JPC"), to serve as an official City committee charged with advising the City on matters relating to the design, development, operation, safety and maintenance of the Jordan Point Park and the Dam.

16. Prior to Charles Volpe's drowning, the JPC formally discussed concerns regarding the safety of the Dam, including the fact that there is strong recreational, swimming, and boating use of the River at Jordan Point Park, the fact that the boat ramp launches directly into the current, and the need to take safety measures and precautions to notify and protect recreational users of the River from the dangers posed by the Dam.

17. The City of Lexington had a representative present at all JPC meetings.

18. The City of Lexington had actual and constructive knowledge of the hazards posed by the Dam.

19. The City of Lexington had actual and constructive knowledge that the Dam posed an actual and significant risk of serious injury or death to recreational users of the River.

20. The City of Lexington had actual and constructive knowledge that the general public made strong recreational use of the River at Jordan Point Park, including swimming and boating and that there was an immediate need for safety measures to notify and protect such recreational users of the River from the dangers posed by the Dam.

21. The City of Lexington also had actual and constructive knowledge that recreational users of the River were unaware of the hazards posed by the Dam.

22. The City of Lexington had actual and constructive knowledge of affordable and reasonable measures it could have, but did not employ to warn and protect recreational users from the hazards posed by the Dam. The City of Lexington took no precautions and made no effort to protect recreational users of the river from the hazards posed by the Dam.

23. At all relevant times, there were no warning signs posted anywhere regarding the dangers associated with the Dam, nor any safety devices installed to protect recreational users from the hazards posed by the Dam.

24. The City of Lexington did not erect signs warning of the hazard posed by the Dam until July of 2006, three months after Charles Volpe's drowning.

25. The City of Lexington did not approve a safety system for the Dam, until July of 2006, three months after Charles Volpe's drowning.

26. Prior to and at the time of Charles Volpe's drowning, the City of Lexington made no effort of any kind to warn or protect recreational users of the Jordan Point Park and the River of substantial risk of death or serious injury posed by the Dam.

27. The purpose of the Dam was never "to prevent the tidal erosion, flooding or inundation of such locality, or part thereof."

28. The purpose of the Dam was originally for navigation and for the generation of power. At the time of Charles Volpe's death, the Dam served no purpose, other than to create a hazard to recreational users of the River.

COUNT ONE
(Gross Negligence)

29. Plaintiff restates each and every preceding allegation of this Complaint and incorporates each by reference as though set forth in full herein.

30. On the day of his death, Charles Volpe visited Jordan Point Park and used its facilities and the River lawfully and at the express or implied invitation of the City of Lexington.

31. On the day of his death, Charles Volpe had the right to assume that the Jordan Point Park and the Dam were reasonably safe for his visit.

32. The Dam constituted an unsafe condition, which was not open and obvious to a person using ordinary care for his own safety.

33. On the day of his death, Charles Volpe did not know, nor should he have known, of any unsafe condition at the Jordan Point Park or the Dam and he did not use the premises in a manner that exceeded the scope of the invitation.

34. The City of Lexington had the duty to use ordinary care to have the Jordan Point Park and the Dam in a reasonably safe condition for its recreational users, including Charles Volpe.

35. The City of Lexington had the duty to use ordinary care to warn users of the Jordan Point Park, including Charles Volpe, of any unsafe condition about which it knew, or by the use of ordinary care should have known.

36. Despite notice of the dangers posed by the Dam, the City of Lexington failed to take any action and was grossly negligent.

37. The grossly negligent conduct of the City of Lexington showed an absence of diligence, and such indifference to others as constitutes an utter disregard of caution amounting to a complete neglect of the safety of others and lack of even slight care.

38. As a result of said gross negligence, Charles Volpe sustained extreme bodily injury, physical pain and mental anguish, and ultimately said gross negligence was the proximate cause of his death.

COUNT TWO
(Willful and Wanton Conduct)

39. Plaintiff restates each and every preceding allegation of this Complaint and incorporates each by reference as though set forth in full herein.

40. On the day of Charles Volpe's death, the City of Lexington was aware the Dam constituted an unsafe condition.

41. The City of Lexington had a duty to use ordinary care to guard against those accidents which common knowledge and experience teach are likely to befall those invited to the Jordan Point Park, to engage in swimming and other aquatic sports in or near the Dam.

42. The City of Lexington breached these duties by, inter alia, failing to (i) provide any safety systems; (ii) exercise even slight care in the maintenance, inspection, management and operation of the Dam; (iii) provide any warning signs regarding the dangers posed by the Dam; (iv) respond in any way to notifications concerning the dangers posed by the Dam; and (v) respond in any way to notifications concerning the absence of any warning signs or safety devices.

43. Despite notice of the dangers posed by the Dam, the City of Lexington made the deliberate decision not to take any action.

44. The City of Lexington acted consciously in disregard of Charles Volpe's rights and with reckless indifference to the consequences, with the awareness, from the knowledge of the existing dangerous circumstances and conditions posed by the Dam, that its conduct would probably result in injury to another.

45. As a direct and proximate result of the willful and wanton conduct of the City of Lexington, Charles Volpe sustained extreme bodily injury, physical pain and mental anguish, and ultimately said willful and wanton negligence was the proximate cause of his death.

COUNT THREE
(Public Nuisance)

46. Plaintiff restates each and every preceding allegation of this Complaint and incorporates each by reference as though set forth in full herein.

47. The Dam creates a condition that is dangerous and hazardous in itself, and is therefore, a public nuisance.

48. The Dam endangers life and obstructs the reasonable and comfortable use of the River at Jordan Point Park by the general public.

49. The condition posed by the Dam is not authorized by law, and the City of Lexington was grossly negligent in its maintenance of the Dam.

50. The City of Lexington possessed the power to remove this nuisance and failed to take any action whatsoever to properly exercise this power.

51. As a direct result of the dangerous condition created by the Dam, Charles Volpe sustained extreme bodily injury, physical pain and mental anguish, and ultimately said public nuisance was the proximate cause of his death.

DAMAGES

52. Plaintiff restates each and every preceding allegation of this Complaint and incorporates each by reference as though set forth in full herein.

53. Under Section 8.01-53 of the Code of Virginia of 1950, as amended, S. Charles Volpe and Kimberly Volpe, as the father and mother of Charles Volpe, and Derek Volpe, as the brother of Charles Volpe, are the sole beneficiaries entitled to receive damages awarded in this action as compensation for their losses set forth below.

54. The Plaintiff's decedent, Charles Volpe, his estate and his statutory beneficiaries, and each of them, have suffered substantial damage and losses, both pecuniary and otherwise, for which the law entitles them to redress. These include, but are not limited to the following:

- a. Sorrow, mental anguish, and solace, including loss of society, companionship, and comfort;
- b. Loss of the services, protection, care, and assistance provided by Charles Volpe; and
- c. Burial and funeral expenses.

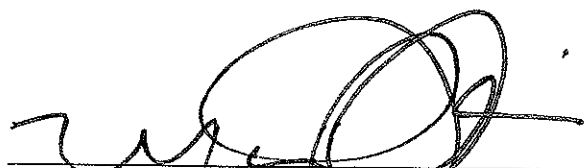
51. In addition to the foregoing, the Plaintiff and beneficiaries are entitled to an award of punitive damages from the City of Lexington as a result of its conduct which demonstrated such recklessness as evidences a conscious disregard for the life, safety, and health of others.

WHEREFORE, Plaintiff S. Charles Volpe, Administrator of the Estate of Charles Oliver Volpe, hereby requests judgment against the City of Lexington as follows:

1. Compensatory damages in excess of Three Million Dollars (\$3,000,000.00) (Counts One, Two and Three).
2. Punitive damages in the amount of \$350,000 (Count Two);
3. Pre and post-judgment interest;
4. Any and all such other relief as this Court deems just and equitable.

THE PLAINTIFF RESPECTFULLY REQUESTS A TRIAL BY JURY.

S. CHARLES VOLPE, Administrator of the
ESTATE OF CHARLES OLIVER VOLPE
By Counsel



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