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In The  
**Supreme Court of Virginia**

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RECORD NO. \_\_\_\_\_

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**THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,  
INC., CONCERN FOR THE NEW GENERATION, KATHIE  
MOSLEY, PAUL WILSON, ADA WASHINGTON, ELLA ROSE,  
EVELYN DENT, HAROLD E. WOOD, JOHN LAURY, MARY B.  
ROSE, MARY ESTELLE ROSE, PATRICIA A. WOOD, ROBERT  
E. CLAIBORNE, RUBY LAURY and WALTER E. CLAIBORNE,**  
*Petitioners – Appellants,*

v.

**ROBERT C. “BOBBY” JONES, CHAIRMAN, BUCKINGHAM  
COUNTY BOARD OF SUPERVISORS,  
REBECCA S. CARTER, BUCKINGHAM COUNTY  
ADMINISTRATOR, JOHN BICKFORD, CHAIRMAN,  
BUCKINGHAM COUNTY PLANNING COMMISSION, and  
REBECCA S. COBB, ZONING/PLANNING ADMINISTRATOR,**  
*Respondents – Appellees.*

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**PETITION FOR APPEAL**

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Petitioners-Petitioners, The Blue Ridge Environmental Defense League, Inc., Concern for the New Generation, Kathie Mosley, Paul Wilson, Ada Washington, Ella Rose, Evelyn Dent, Harold E. Wood, John Laury, Mary B. Rose, Mary Estelle Rose, Patricia A. Wood, Robert E. Claiborne, Ruby Laury and Walter E, Claiborne, landowners and parties in interest (collectively "Petitioners"), pursuant to Rule 5:17, respectfully submit this petition for appeal from the final order entered by the trial court on April 18, 2018 (the "Order"), granting Respondents-Appellees' ("Respondents") motion to dismiss and dismissing with prejudice Petitioners' timely filed pleading contesting for public health and policy reasons a decision of the local governing body granting a special exception (the "Exception") to a foreign gas company, allowing it to construct a compressor station for a 42" diameter natural gas pipeline on a site zoned A-1 agricultural without a public utility exception, close to some homes of Petitioners.

## **ASSIGNMENTS OF ERROR**

1. The trial court erred in granting Respondents' motion to dismiss (the "Motion"). The ruling was based upon the conclusion that Petitioners' pleading titled NOTICE OF APPEAL ("Notice") failed as a pleading and therefore failed to meet the thirty-day filing requirement of Va. Code § 15.2-2285(F) even though it was filed with the trial court within that time. (Preserved by Petitioners' Brief in Opposition to Respondents' Motion and by oral argument in opposition to the Motion on January 29, 2018, as reflected in the Order and Respondents' noted objections thereto).
2. The trial court erred in concluding and effectively ruling in its Order granting Respondents' motion to dismiss that Petitioners' Notice fails as a pleading even under the more relaxed rules applicable to a *pro se* litigant. (Preserved by Petitioners' Brief in Opposition to Respondents' Motion and by oral argument in opposition to the Motion on January 29, 2018, as reflected in the Order and Respondents' noted objections thereto).

## **NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW**

This appeal presents a single issue of statutory compliance that affects the ability of *pro se* landowners and other parties in interest, aggrieved by the January 5, 2017 decision of a local governing body granting a special exception to a foreign natural gas company ("Gas Company") to operate a non-utility facility under the Public Utility Exception. The Gas Company applied for approval of a 55,000 horsepower natural gas compressor station

in the economically disadvantaged historical Union Hill and Union Grove African-American communities of Buckingham County, near homes of Petitioners. On January 5, 2017, the Appellees approved Special Use Permit Case No. 16-SUP236 (the "Permit") which provided the Gas Company with a special exception for a 55,000-horsepower natural gas compressor station in the Union Hill and Union Grove communities of Buckingham County.

Following this decision, Respondents filed their Notice *pro se* in the Clerk's Office of the Circuit Court of Buckingham County ("Clerk's Office") on February 6, 2017, in accordance with time requirements prescribed by Va. Code § 15.2-2285(F) allowing actions contesting such decisions to be filed in the circuit court within thirty days from the decision. The thirtieth day from the January 5 decision fell on a Saturday, and Respondents filed their paper entitled "Notice of Appeal" in the Clerk's Office on Monday, February 6, 2017, in accordance with Va. Code § 1-210(B).

The Notice challenged the Respondents' granting of the Exception on numerous grounds, including the failure to follow statutory procedural and substantive requirements concerning



public utilities, public health, and disproportionate adverse effects on a minority community. It cited Va. Code §§ 2.2-4026, 15.2-2200, 15.2-2283, 67-102, and Supreme Court of Virginia Rules 2A:2 and 2A:3 as authority to give the trial court jurisdiction to hear the contest and grant relief from the Board's decision.

Respondents filed a letter dated February 27, 2017 (the Feb. 27, 2017 Letter") in the Clerk's Office that same day, asserting that the Notice conferred no jurisdiction on the trial court and was an attempt at an administrative appeal. On March 8, 2017, Petitioners, by counsel, filed a Petition for Appeal (the "Petition") in the Clerk's Office. Thereafter several motions and responses were filed, including Respondents' Response Pleading which included motions to dismiss for failing to timely note appeal. Counsel for the parties agreed that this issue would be the only matter briefed and argued to the trial court. In accordance with an agreed briefing schedule, Respondents filed their Memorandum in Support of Motion to Dismiss for Failure To Timely File Appeal on January 10, 2018 and Petitioners filed their Brief in Opposition to Respondents' Motion to Dismiss on January

23, 2018. The issues having been thoroughly framed and briefed, counsel argued Respondents' Motion to Dismiss for Failure To Timely File Appeal on January 29, 2018. On April 18, 2018 the trial court entered the Order. On April 30, 2018 Petitioners filed their notice of appeal with the trial court.

### **STATEMENT OF FACTS**

This is a case seeking judicial review of a decision made on January 5, 2017, by the Buckingham County Board of Supervisors (the "Board"), to approve a Gas Company's application for a special exception, Permit 16-SUP236 (the "Permit"), to allow the construction of a compressor station for a natural gas pipeline project. Notice, pgs. 1-2; Order, pgs. 1-2; Petition, pgs. 1-4. On July 7, 2016, the Gas Company applied for the Permit to construct their compressor station with the Office of Planning and Zoning. A public hearing regarding Permit 16-SUP236 was held on September 26, 2016 and continued on October 17, 2016. The Planning Commission presented the Board with conditions on the Permit on December 12, 2016. These conditions included Condition #6, which allows the proposed compressor station to

operate with no noise limit whatsoever for five weeks per year, twenty-four hours a day, and up from 2-4 times the normal day or night sound levels for the area at all other times. The Gas Company had not acquired the required public utility listing to obtain the Permit for the compressor station. Petitioners include homeowners in the area of the proposed compressor station directly affected by the noise pollution and subject to adverse health effects of such pollution. The Order denied them the right to contest the action of the Board.

## **ARGUMENT**

### **Standard of Review**

Assignment 1 relates to the interpretation of the requirements of a statute; such rulings are reviewed de novo. *Fitzgerald v. Loudoun Cty. Sheriff's Office*, 289 Va. 499, 504 (2015). Assignment 2 addresses the law applicable to *pro se* litigants, and is also reviewed de novo. *Lane v. Starke*, 279 Va. 686, 690 (2010).

## Discussion

### **I. Petitioner's Notice timely filed in the Clerk's Office on February 6, 2017 informed Respondents of their challenge to the Board's decision to grant the Permit.**

Virginia Supreme Court Rule 1:4(d) requires every pleading to state facts on which the party relies in numbered paragraphs. It further states that it shall be sufficient if it clearly informs the opposite party of the true nature of the claim by the filing party. See 1-6 *Friend's Virginia Pleading and Practice* § 6.03(2) (2017) (*citing* Va. Sup. Ct. R. 1:4(d)).

Va. Code § 8.01-275 states:

No action or suit shall abate for want of form where the motion for judgment or bill of complaint sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. The court shall not regard any defect or imperfection in the pleading, whether it has been heretofore deemed misleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given.

This provision, requiring that the courts disregard defects in pleadings so long as they do not affect the substantial claims with which relief can be given, has been fully embraced by Virginia

courts since the beginning of the century. See *Norfolk & P. B. L. R. Co. v. Sturgis*, 117 Va. 532, at 540, 85 S.E. 572, at 575 (1915). (“If the matter pleaded be in itself insufficient without reference to the manner of pleading it, the defect is substantial; but if the only fault is in the form of alleging it, the defect is but formal.”)

Petitioners’ Notice did not number paragraphs as is custom, but did stylize paragraphs containing alleged facts as “first,” “second,” and “third.” Notice. Pgs. 1-2. Respondents’ motion to dismiss, like a demurrer, accepts as true all facts properly pled, as well as reasonable inferences from those facts. *Steward v. Holland Family Props., LLC*, 284 Va. 282, 286, 726 S.E.2d 251, 253–54 (2012). At this stage, it is not the function of the trial court to decide the merits of the allegations set forth in a pleading, but only to determine whether the factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action. *Riverview Farm Assocs. Va. Gen. P’ship v. Bd. of Supervisors of Charles County*, 259 Va. 419, 427 (2000).

Assuming the facts alleged are true, the aggrieved Petitioners are within their rights established by Va. Code § 15.2-2285 to contest the decision of the Board granting the Permit. They should not be denied justice for defect in following form when the substance of their pleading stands. *See Norfolk & P. B. L. R. Co.* at 540, 85 S.E. 572, at 575.

The second requirement for a pleading as set forth in Va. Sup. Ct. R. 1:4(d) is that the facts alleged sufficiently inform the opposite party of the true nature of the claim. Regardless of whether Petitioners erred in cites of legal authority and in the caption of their pleading, the Notice nonetheless sufficiently informs Respondents of Petitioners' claim.

Petitioners stated in their pleading that they are seeking "judicial review of the case decision by the Buckingham County Board of Supervisors on January 5, 2017, approving Special Use Permit Case No. 16-SUP236." Notice, pg. 1. Respondents acknowledged this when they filed the Feb. 27, 2017 Letter in the Clerk's Office. In this letter, Respondents aver that Petitioners' issue is outside the jurisdiction of the court per the legal authority

cited by the Notice. Feb. 27, 2027 Letter, pgs. 2-3. Respondents do not deny any allegations of fact by Petitioners. *Id.* If Petitioners were to strip all cited legal authority in the Notice, the facts would be substantially the same, and sufficient under these circumstances.

**II. The trial court erred in concluding that the Notice failed as a pleading, especially under relaxed rules applicable to Petitioners proceeding *pro se*.**

The courts have been proscribed to give generous help to *pro se* litigants. "Generally speaking, *pro se* litigants are held to a less stringent standard than trained attorneys; the Court must afford a *pro se* complaint generous construction." *Bracey v. Buchanan*, 55 F. Supp. 2d 416, at 421 (E.D. Va. 1999) (citing *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972) (per curiam)); *Vaizburd v. United States*, 384 F.3d 1278, n. 8 (Fed. Cir. 2004) This does not however, "require those courts to conjure up questions never squarely presented to them." *Bracey*, at 421 (citing *Beaudett v. City of Hampton*, 775 F.2d 1274 (4th Cir. 1985), cert. denied, 475 U.S. 1088, 106 S. Ct.

1475, 89 L. Ed. 2d 729 (1986)). The pleading must still have facts that the courts may grant relief to.

In response to the Feb. 27, 2017 Letter, Petitioners filed an amended pleading on March 8, 2017, by counsel, with the Circuit Court of Buckingham County entitled *Petition for Appeal*.


Respondents, on April 21, 2017, filed a Motion to Dismiss citing failure to timely note appeal in the *Petition*. Respondents admit in their *Memorandum in Support of Motion to Dismiss for Failure to Timely File Appeal* ("Memorandum") that the *Notice* was timely filed. Memorandum, pg. 1. Respondents assert that the *Notice* is not a pleading required to contest decision of the Board, again focusing on the caption and statutes cited. It is noteworthy that Respondents do not deny facts alleged in the *Notice*. "[I]f the only fault is in the form of alleging it, the defect is but formal." *Norfolk & P. B. L. R. Co.*, at 540, 85 S.E. 572, at 575. This Court can and should constructively apply the facts to established law, Va. Code Ann. § 15.2-2285, and conclude that the trial court erred in denying Respondents access to the court to contest the Board's decision. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544



(2007); *Rusyniak v. Gensini*, 629 F. Supp. 2d 203, 215 (N.D.N.Y. 2009); *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356-57 (Fed. Cir. 2007).

### **CONCLUSION**

The trial court erred in granting Respondents' motion to dismiss Petitioner's proceeding contesting the action of the Board. This Court should award the Petitioners an appeal, and thereafter reverse the trial court's Order and remand the case for further proceedings.

By:  \_\_\_\_\_  
Of Counsel

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## **CERTIFICATE**

Pursuant to Rule 5:17(i) of the Supreme Court of Virginia, I hereby certify the following:

1. The Petitioners-Petitioners are:

The Blue Ridge Environmental Defense League, Inc., Concern for the New Generation, Kathie Mosley, Paul Wilson, Ada Washington, Ella Rose, Evelyn Dent, Harold E. Wood, John Laury, Mary B. Rose, Mary Estelle Rose, Patricia A. Wood, Robert E. Claiborne, Ruby Laury and Walter E, Claiborne

2. Counsel for Petitioners-Petitioners are:

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3. The Respondents-Appellees are:

4. Robert C. "Bobby" Jones, Chairman, Buckingham County Board of Supervisors,  
Rebecca S. Carter, Buckingham County Administrator, John Bickford, Chairman, Buckingham County Planning Commission, and  
Rebecca S. Cobb, Zoning/Planning Administrator

5. Counsel for the Respondents-Appellees is:

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6. Seven copies of the foregoing Petition for Appeal were hand-filed with the Clerk of the Supreme Court of Virginia and one copy was served, via U.S. Mail, postage prepaid, and email, to counsel for the Appellee this 17th day of July, 2018.

7. Counsel for the Petitioners-Petitioners desire to state orally and in person to a panel of this court the reasons why this petition should be granted.



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Charles M. Lollar