IN THE SUPREME COURT OF VIRGINIA

RECORD NO. 200512

IN RE: AUGUST 15, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF ROANOKE COUNTY

STAN SEYMOUR, *et al.*,

Petitioners - Appellants

v.

THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, *et al.*,

Respondents - Appellees

REPLY BRIEF TO ASSIGNMENT OF CROSS-ERROR

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PRELIMINARY STATEMENT

Pursuant to Rule 5:19(b), Petitioners[1] file this reply to the assignment of cross-error by Respondents. In their assignment of cross-error, Respondents contend:

> The trial court erred in applying the first prong of the two-prong test for the 'person aggrieved' standing test by this Court in *Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38 (2013), and in finding that the first prong of the test had been met by the Petitioners.

(Opp'n to Pet., at 2). As detailed below, Respondents' cross assignment of error is mistaken because the trial court's use of the two-prong test for standing set forth in *Friends of the Rappahannock* (the "Test") was appropriate in this matter involving a land use determination, and the trial court properly found that the Petitioners met the first prong of the Test.

[1] Unless otherwise noted, all capitalized terms shall have the same meaning as set forth in Petitioners' Petition for Appeal.

ARGUMENT

A. The trial court properly applied the first prong of the Test to the matter at hand.

The first prong of the Test provides that:

> [T]he complainant must own or occupy 'real property within or in close proximity to the property that is the subject of' the land use determination, thus establishing that it has 'a direct, immediate, pecuniary, and substantial interest in the decision.'

Friends of the Rappahannock, 286 Va. at 48, (quoting *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 420 (1986)).

The central thrusts of Respondents' arguments as to why the Test is the wrong standard to apply to the matter at hand are: (1) this is not an action for declaratory judgment but an appeal of a board of zoning appeals decision and (2) the Zoning Administrator's determinations are not land use determinations. Respondents' arguments are erroneous.

When setting forth the Test, this Court noted that "any distinction between an 'aggrieved party' and

'justiciable interest' is a distinction without a difference in declaratory judgment actions challenging land use decisions." *Friends of the Rappahannock*, 286 Va. at 48. In support of its decision in *Friends of the Rappahannock*, this Court cited numerous cases showing that the "justiciable interest" and "aggrieved person" standards are essentially interchangeable in land use determination matters.

Specifically, this Court cited *Deerfield v. City of Hampton*, 283 Va. 759, 762 (2012) stating "[w]e affirmed in a recent case that the 'aggrieved person' standard is appropriate in the context of a challenge to a land use decision by means of a declaratory judgment action"; *Braddock, L.C. v. Board of Supervisors Loudoun County*, 268 Va. 420, 422-25 (2004)noting the application of "the 'aggrieved person' standard to a party's challenge to a board of supervisors' denial of its application to rezone two tracts of land"; and *Friends of Clark Mtn. Found. v. Board of Supervisors of Orange County*, 242 Va. 16, 22, 406

S.E.2d 19, 22 (1991) stating that "it would be inconsistent to interpret the statutory section governing appeals from boards of supervisors differently from the statutory section governing appeals from boards of zoning appeals." *Friends of the Rappahannock*, 286 Va. at 47. Accordingly, the Test is the proper analysis for determining standing in land use determinations by county zoning administrators, boards of zoning appeals, and boards of supervisors.

Here, the Zoning Administrator's determinations were land use determinations. In his letter of March 30, 2018, the Zoning Administrator literally states that his letter is in response to Petitioner Stan Seymour's "request for zoning determinations related to the use of the Property." (Ex. 8, at 15). The Zoning Administrator then determines that the Wildlife Center's use of the SVWC Property is properly classified as a veterinary hospital/clinic; that the use complies with Roanoke County Ordinances; and that the construction of the proposed Raptor Building will

require a special use permit ("SUP"). *Id.* In his second determination letter, the Zoning Administrator determined that the Wildlife Center's proposed use for the Raptor Building will not require a variance before a special use permit application may be filed. (Ex. 9, at 22-23).

The Roanoke BZA later held that Petitioners did not have standing to challenge the Zoning Administrator's land use determinations. (Ex. 13.). While the Zoning Administrator and the Roanoke BZA did not grant the special use permit granting the Respondents the right to build the Raptor Building, their determinations that it was proper and appropriate for the SVWC to do so set the stage for the Board of Supervisors' decision to grant the special use permit. Without the Zoning Administrator's determination that the Wildlife Center's use of the land was proper or the Roanoke BZA's determination that the Petitioners lacked standing to challenge these determinations, no special use permit would have issued. Assuming *arguendo* that

the Petitioners do not have a direct ownership interest in the SVWC Property and that the Zoning Administrator's determination are, in fact, land use determinations, the trial court properly applied the Test to determine whether the Petitioners have standing to challenge these determinations.

Moreover, even if Respondents are correct and the Test is inapplicable to the case at bar, then for the reasons set forth in the Petition for Appeal, Petitioners have met their burden to satisfy the "aggrieved person" test set forth in *Virginia Beach Beautification Comm'n. v. Bd. of Zoning Appeals of City of Virginia Beach*, 231 Va. 415, 419-20 (1986).

Unlike the petitioners in *Virginia Beach Beautification Comm'n*, who owned no real property either within close proximity to the subject property or otherwise,[2] the Petitioners have clearly demonstrated that they actually own and occupy real property within

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[2] *Virginia Beach Beautification Comm'n v. Bd. of Zoning Appeals of City of Virginia Beach*, 231 Va. 415, 420 (1986).

close proximity to the SVWC Property. Further, the Petitioners are not trying to advance some perceived public right or redress some future public injury. Rather, Petitioners are concerned with how the use of the SVWC Property is impacting and will impact their use and enjoyment of their own property where they live, which directly implicates their direct, immediate and pecuniary interests.

B. The trial court properly found that Petitioners met the first prong of the Test.

Under the first prong of the Test, the party seeking standing must "own or occupy real property within or in close proximity to the property that is the subject of the land use determination." *Friends of the Rappahannock*, 286 Va. at 48. The first prong is not a bright-line rule, but this Court's ruling in other cases provides guidance and shows that Petitioners meet the first prong of the Test.

In *Riverview Farm Associates Virginia Gen. P'ship v. Bd. of Supervisors of Charles City County*, 259 Va. 419 (2000), this Court held that "plaintiffs live

within sufficiently close proximity to the property . . . to possess a 'justiciable interest' in the litigation" where all plaintiffs "owned property located within 2,000 feet of either the [property at issue] or the access road serving [the property at issue]." *Id.* at 427. Here, Petitioners meet both these criteria.

First, to access to the SVWC Property, people and vehicles must pass in front of or directly over Petitioner's property using two private easements. (Pet., at 6). This alone is sufficient for Petitioners to pass the first prong of the Test. Second, the Petitioners live within 1,000 feet of the SVWC Property. (Ex. 10, at 4). Respondents' recent attempt to change how close the Petitioners live to the SVWC Property (See Opp'n to Pet., at 8) by changing where the measurements are taken should be disregarded. (Opp'n to Pet., at 4). Regardless, even with Respondents' new distance measurements, Petitioners live within close proximity to the SVWC Property.

Moreover, Respondents' new numbers ignore the fact that the proposed Raptor Building will be placed in the front of the SVWC Property, closest to the Petitioners' property and residences.

In *Friends of the Rappahannock*, this Court explained that a purpose of the Test is to prevent anyone who may dislike a particular land use decision from arguing they are aggrieved. *Friends of the Rappahannock*, 286 Va. at 48-49 (citing *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 419-420 (1986)). The first prong accomplishes this by requiring petitioners to show that they have a "direct, immediate, pecuniary, and substantial interest in the decision." *Id.*

Here, the Petitioners are neighbors and have argued all along that the use of the SWVC Property as a wildlife rehabilitation center, which use the Zoning Administrator determined was proper, has a direct impact on their quiet enjoyment of their land. (See

Pet. for Appeal, generally). Therefore, Petitioners pass the first prong of the Test.

CONCLUSION

For the foregoing reasons, this Court should deny Respondents' cross-appeal and uphold the trial court's determination that Petitioners meet the first prong of the *Friends of the Rappahannock* test.

Respectfully submitted,

STAN SEYMOUR,
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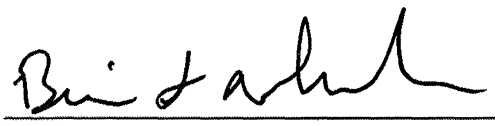
BLAINE CREASY

By: 

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CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with Rule 5:19(b) because it is not in excess of 1,750 words and contains 1,531 words, exclusive of the cover page, table of contents, table of authorities and certificate. This reply brief also complies with Rule 5:26.

Brian S. Wheeler

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Reply Brief was sent by first-class mail, with a courtesy copy sent by email, to counsel for Appellees this 20th day of May 2020:

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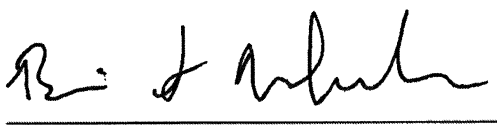

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