

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF SUFFOLK

**DALE ROBERTS,
GERARD CELIA,
and
STERLING TAYLOR**

Plaintiffs

v.

Case No. CL22-2472

**THE CITY COUNCIL FOR THE CITY OF SUFFOLK, VIRGINIA AND
ITS MEMBERS: MICHAEL DUMAN, LEROY BENNETT, SHELLEY
BUTLER BARLOW, ROGER FAWCET, DANIEL GOLDBERG,
TIMOTHY JOHNSON, LUE WARD, and LEOTIS WILLIAMS**

Defendants

Service of Process under Virginia Code § 8.01-300

Michael Duman, Mayor
442 W Washington Street
Suffolk, VA 23434

Leroy Bennett, Vice Mayor
442 W Washington Street
Suffolk, VA 23434

Shelley Butler Barlow, Council Member
442 W Washington Street
Suffolk, VA 23434

Roger Fawcett, Council Member
442 W Washington Street
Suffolk, VA 23434

Donald Goldberg, Council Member
442 W Washington Street
Suffolk, VA 23434

PREPARED BY
**RANDALL,
PAGE &
BRUCH, PC**

FILED THIS 21 DAY OF
OCT, 2022 TIME _____
CITY OF SUFFOLK CIRCUIT COURT, VIRGINIA
TESTE: W. RANDOLPH CARTER JR., CLERK
BY: [Signature], D.C.

Timothy Johnson, Council Member
442 W Washington Street
Suffolk, VA 23434

Lue Ward, Council Member
442 W Washington Street
Suffolk, VA 23434

LeOtis Williams, Council Member
442 W Washington Street
Suffolk, VA 23434

PETITION FOR REVIEW AND COMPLAINT

PLAINTIFFS Dale Roberts, Gerard Celia, and Sterling Taylor; by counsel, pursuant to Virginia Code §§ 8.01-184 and 15.2-2285, bring this Petition for Review and Complaint (“Petition”), moving the Court for entry of a declaratory judgment and further relief from a decision by the members of the City Council of the City of Suffolk that was arbitrary, capricious, and unreasonable. In support of their Petition, Plaintiffs state the following:

1. The purpose of this action is to contest the decision by the City Council of the City of Suffolk (the “Council”) to approve an ordinance (RNZ2021-020) to rezone and amend the official zoning map of the City of Suffolk to change the zoning from B-2, General Commercial zoning district, and A, Agricultural zoning district, to M-2, Heavy Industrial zoning district (Conditional), for property located at 2925 Pruden Boulevard, Zoning Map 25, a portion of Parcels 57, and 57A, and Parcels 57B, 57C, 57E and Zoning Map 24, Parcel 33, Account Numbers 252849000, 252847000, 252857000, 252845000, 253102300, 252430600. This decision, made at the Council’s September 21,

2022, meeting, came subsequent to a rezoning request made on behalf of Matan Companies, LLP and other interested parties (the “Application”). This action seeks to obtain a declaration by the Court that the Council’s decision is void and of no effect against the subject properties.

2. Plaintiff Dale Roberts is a citizen of the Commonwealth of Virginia and resident of the City of Suffolk, Virginia, who resides at 2342 Pitchkettle Road in the City of Suffolk, Virginia.

3. Plaintiff Dale Roberts has standing to pursue this action because the rezoning ordinance creates a situation wherein his quiet enjoyment of his property shall be infringed, there will be increased traffic endangering his safety on the road where he resides, and his health and safety will furthermore be negatively impacted by the danger posed to his well-water by the extreme close proximity of a massive heavy industrial site and the inevitable and unavoidable pollution that will emit from that site.

4. Plaintiff Gerard Celia is a citizen of the Commonwealth of Virginia and resident of the City of Suffolk, Virginia, who resides at 1755 Kings Fork Road in the City of Suffolk, Virginia.

5. Plaintiff Gerard Celia has standing to pursue this action because his health and safety would be negatively impacted by the danger posed to his well-water by the close proximity of a massive heavy industrial site and the inevitable and unavoidable pollution that will emit from that site

6. Plaintiff Sterling Taylor is a citizen of the Commonwealth of Virginia and resident of the City of Suffolk, Virginia, who resides at 2232 Pitchkettle Road in the City of Suffolk, Virginia.

7. Plaintiff Sterling Taylor has standing to pursue this action because the rezoning ordinance creates a situation wherein his quiet enjoyment of his property shall be infringed, there will be increased traffic endangering his safety on the road where he resides, and his health and safety will furthermore be negatively impacted by the danger posed to his well-water by the extreme close proximity of a massive heavy industrial site and the inevitable and unavoidable pollution that will emit from that site.

8. The Council is, by and through its members named as individual Defendants above, a municipal governing body created and existing under Virginia Code § 15.2-1400 *et seq.*

9. This Court has jurisdiction over this action pursuant to §§ 8.01-184 and 15.2-2285 because it seeks a declaratory judgment based on actions that took place in the City of Suffolk, Virginia, and contests a zoning decision by the Council.

10. Venue is proper in this Court pursuant to Virginia Code §§ 8.01-185, 8.01-261, and 8.01-262.

11. Under § 31-403 of the City Zoning Ordinance, the A zoning district “provides for high intensity agricultural operations as well as agri-business and supportive industrial and commercial uses. A zoning implements the policies of the Comprehensive Plan to protect and preserve the valuable agricultural areas

and to implement agricultural protection zoning, to develop performance standards for rural businesses, to formulate policies for preservation of rural areas, pasture land and agriculture, to set maximum permissible densities or new zoning districts, to define specific areas for rural commercial uses, and to identify areas appropriate for agricultural preservation.”

12. Under § 31-403 of the City Zoning Ordinance, the M-2 zoning district provides for “areas of heavy and concentrated fabrication, manufacturing and industrial uses which are suitable based upon adjacent land uses, access to transportation and the availability of public services and facilities. It is the intent of this district to provide an environment for industries that is unencumbered by nearby residential or commercial development. M-2 must be located in areas where conflicts with other uses can be minimized to promote orderly transitions and buffers between uses. The M-2 district is established in order to provide sites suitable for natural resource extractive uses, and manufacturing facilities that have a greater impact on the surrounding area than industries found in the M-1 district.”

13. The Council’s approval of the Application was unreasonable, without valid basis in law, arbitrary and capricious, based on consideration of inappropriate factors, and made without giving due consideration to factors it should have considered such as the health, safety, order, prosperity, the Conservation of the City’s natural and historic resources, and the general welfare of the City and its residents.

14. Further, the Port 460 project associated with the Application is inconsistent with the County's long term vision for land use and growth management as outlined in the City's own Comprehensive Plan and approval of the Application would be inconsistent with the zoning of nearby properties.

15. An actual and justiciable controversy exists between the Plaintiffs and the Council.

16. This action contesting and appealing the approval of the Application is filed within thirty days of the date of the Council's action, as required by Virginia Code § 15.2-2285.

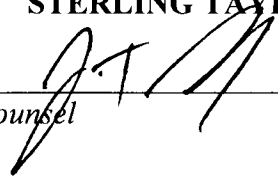
RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully move this Court to grant the following relief:

- a) a declaratory judgment ruling that the City Council for the City of Suffolk's decision approving the Application for rezoning is null and void; and
- b) such injunctive relief as may be necessary to enforce any order issued by the Court pursuant to Virginia Code § 8.01-186; and
- c) an award of Plaintiffs' costs under Va. Code § 8.01-190; and
- d) all such other relief the Court deems just and expedient under the circumstances.

**DALE ROBERTS,
GERARD CELIA, and
STERLING TAYLOR**

By _____
Of Counsel



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chrisdaniels@rpbfirm.com
Counsel for Plaintiffs

PREPARED BY
**RANDALL,
PAGE &
BRUCH, PC**



RANDALL, PAGE & BRUCH, P.C.
ATTORNEYS AT LAW

Trusted

Creative

Responsive

October 21, 2022

Via Hand Delivery

Hon. W.R. Carter Jr.
150 North Main Street
Suffolk, VA 23439-1604

Re: Zoning Appeal Petition for Filing;
Dale Roberts, et. al v. The City Council for the City of Suffolk, Virginia, etc.

Dear Clerk Carter:

Please be find enclosed for filing: one original Petition for Review and Complaint; one copy for service upon the Mayor or City Attorney at the address given for service; and a check for \$98.00 to cover the filing fee for this zoning appeal and service by the Sheriff. Please call me with any questions or concerns; my office phone is (434) 336-9090.

Regards,

Christopher P. Daniels, Esq.

Suffolk VA
143 North Main Street
Suffolk, VA 23434-4507
PH: (757) 935-9065
Fax: (757) 935-9067

Southampton County VA
28319 Southampton Parkway
Courtland, VA 23837-2191
PH:(757) 742-6115
Fax: (757) 742-6117

Emporia VA
408 South Main Street
Emporia, VA 23847-2314
PH: (434) 336-9090
Fax: (434) 336-7994

Virginia Beach, VA
4445 Corporation Lane #262
Virginia Beach, VA 23462
PH: (757) 932-7111
Fax: (757) 935-9067

Chesapeake, VA
By Appointment Only
2000 Burson Drive
Chesapeake, VA 23323
PH: (757) 844-2733
Fax: (757)742-6117

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL22-2472
(CLERK'S OFFICE USE ONLY)

City of Suffolk

Circuit Court

Dale Roberts, et. al

v./In re: The City Council for the City of Suffolk, etc.

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
- Monetary Damages
- No Monetary Damages
- Counterclaim
- Monetary Damages
- No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
- Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption – Foreign
- Adult Protection
- Annulment
 - Annulment – Counterclaim/Responsive Pleading
- Child Abuse and Neglect – Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint – Contested*
 - Complaint – Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement – Custody/Visitation Support/Equitable Distribution
- Separate Maintenance
- Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration – Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights – Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights – Restoration
- Other (please specify)

Damages in the amount of \$ are claimed.

10/21/2022

DATE

Christopher P. Daniels

PRINT NAME

408 S. Main Street; Emporia, VA 23847 / (434) 336-9090

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

chrisdaniels@rpbfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

***"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.