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87-371/ Case file

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 1287

September Term, 1985

WILLIAM J. BAUMAN, et al.,

v.

WESTCHESTER, INC., et al.

85-7-SPH

Adkins
Bell, R.M.
Wenner,

JJ.

PER CURIAM

Filed: August 12, 1986

On October 8, 1985 the Circuit Court for Baltimore County (Brizendine, J.) filed an opinion and order which reversed an order of the Board of Appeals for Baltimore County, and reinstated an order of the Baltimore County Zoning Commissioner which directed the issuance of five building permits to Westchester, Inc. (appellee), a Baltimore County developer. Walter J. Bauman, et al. (appellants), a group of homeowners opposed to the issuance of the building permits, have appealed to this Court. For reasons explained below, we shall affirm the judgment of the circuit court.

The facts, although somewhat complex, are essentially undisputed. At issue is the development of an eight-acre parcel of land located in the Westchester subdivision in western Baltimore County. The property was originally purchased in 1967 by the Stefanowicz Corporation, the predecessor in title to the appellee. At that time its development was to include only single family homes.

In 1970 the Baltimore County Council adopted Bill No. 100, which substantially rewrote many of the county's zoning ordinances and provided for greater flexibility in residential development through the use of cluster development.[1] At that time the subject property was zoned D.R. 5.5 for maximum permissible density. In 1973 the Stefanowicz Corporation received

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1 "Cluster development" is a zoning technique which provides for greater flexibility and variation in housing, in the development of large tracts of land. It allows a developer to take unused density from one portion of a tract and add it to the permitted density in another portion of the tract. See 82 Am. Jur. 2d, Zoning and Planning, § 106.

approval from the Board of Appeals for Baltimore County (the "Board") of a development plan for eighteen and one-half acres utilizing the cluster concept. The plan consisted of a 108-unit apartment complex surrounded by single family homes. A record plat was filed early in 1975. In 1977 an amended plat was filed which made minor changes in the earlier plat. No changes were made, however, in the number of units planned, and the apartment buildings were clearly shown on the plat.

In January of 1975 the Stefanowicz Corporation entered into a public works agreement with the County. Pursuant to that agreement, the Stefanowicz Corporation constructed public streets, sewer lines, water lines, storm drains, sediment control facilities and other incidental improvements on the property, at substantial expense to the corporation. The public improvements were completed by late 1978, and conveyed to the County in April, 1979

In the meantime work was begun on the single family homes shown on the plat. By 1978 sales of those homes had begun. The buyers were told of the proposed apartment complex shown on the record plat and several of them signed statements which attested to their being advised of the proposed development plans.

At that time no construction on the apartment buildings had begun. The reasons for the delay in construction of the apartment buildings are somewhat unclear, but it appears that it was due partially to the developer's financial difficulties and partially to the developer's inability to obtain the proper sewer allocations. The property is located in the Patapsco Watershed which was experiencing a sewer deficiency at that time, making

sewer allocations difficult to obtain. For reasons which are not quite clear in the record, the developer was dropped from the waiting list for sewer allocations.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the permissible density on the subject property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning created the current controversy as to whether the 1977 plat is still valid.

In 1982, the Stefanowicz Corporation filed suit in the Circuit Court for Baltimore County to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. An opinion was elicited from the Director of Planning and Zoning which stated that the development plan had vested and reinstated the developer on the waiting list for sewer allocations. As a result, the lawsuit against the County was dismissed.

In reliance on the opinion of the Director of Planning and Zoning, Westchester, Inc. purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were then obtained along with utility permits for the subdivision. Further grading of the property was done and private utilities were installed under the permits. Westchester, Inc., received final building permits on July 30, 1984. The appellants, the homeowners surrounding the site for the apartment buildings, appealed the issuance of the permits to the County

Board of Appeals. Although both the County Attorney and the Zoning Commissioner were of the opinion that the subdivision plat had vested, the Board ruled otherwise. On appeal to the Circuit Court for Baltimore County, the court found itself in agreement with the County Attorney and the Zoning Commissioner and reversed the ruling of the County Board of Appeals. Unhappy with that result, the homeowners have brought the case to this court.

Although appellants pose numerous questions in their brief, many of them were not raised below and thus will not be considered here. Rule 1085. The questions that are properly before us are all rephrasings of the central issue in this appeal: Have the developer's rights to develop the subject property according to the plans contained in the 1977 recorded plat vested so as to insulate the property against the subsequent downshift in permitted density?

Professor Rathkopf defines "vested rights" in this context as follows:

> A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular nonconforming use or structure will continue after the effective date of the ordinance or amendment as a vested right.

4 Rathkopf, The Law of Zoning and Planning, § 50.01 (4th ed. 1986). The Court of Appeals has held that such rights may be acquired where (1) the landowner has obtained a valid permit; and (2) in reliance upon the permit, the owner has made a substantial beginning in construction and in committing

the land to the permitted use before the change in the zoning ordinance. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981); Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). Under this rule it is insufficient to show substantial expenses incurred in preparation for building, such as fees for studies and development plans or expenses for grading and clearing, and excavation; rather, the owner must show the commencement of construction of the structure itself. Steuart Petroleum Co. v. Board of County Commissioners, 276 Md. 435, 347 A.2d 854 (1975); County Council of Montgomery County v. District Land Corporation, 274 Md. 691, 337 A.2d 712 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). While the Court of Appeals has acknowledged that the application of this rule may be less onerous in other jurisdictions, it has declined to relax it in this state. Steuart Petroleum Co. v. Board of County Commissioners, supra; County Council of Montgomery County v. District Land Corporation, supra; see generally, Rathkopf, supra, § 50.03. In the case sub judice, no building permits were issued after the improvements had been made. Furthermore, in spite of the completion of the public works and the incurring of substantial expenses by the appellee, no construction has yet begun on the actual apartment buildings. Thus, the appellee has not met either requirement of the standard enunciated by the Court of Appeals and can claim no vested rights under a common law theory.

The most vigorously disputed question in this appeal, however, is whether the plat had vested under the statutory provisions of the Baltimore County Code. Section 22-68 of the Code provides, in pertinent part:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> ...
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

This statute was enacted in 1982, as a part of the regulations adopted by the Baltimore County Council in Bill No. 56-82. Bill No. 56-82 included new legislation encompassing § 22-37 through § 22-105 of the Baltimore County Code entitled "Article IV. Development Regulations of Baltimore County".

Notwithstanding the seemingly clear application of the language of § 22-68 to the subject property, the County Board of Appeals concluded that the statute was not controlling in this case. This conclusion was based on the Board's interpretation of § 22-40 (also enacted in 1982 as a part of Bill No. 56-82) which sets forth the scope of Article IV, the Developmental Regulations. Section 22-40 reads as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

Under the Board's interpretation of § 22-40, the case turned on the statutes in existence in 1975, the year the public works agreement was executed. In 1975 there was no "saving" statutes in effect, and thus the Board ruled that the subdivision plat had not vested. As we have noted, the Circuit Court disagreed with the Board's interpretation and application of the statutes, as do we.

Section 22-40, a more general provision, serves to make the new regulations apply to all developments except those which had taken significant steps toward development prior to the effective date of the new regulations. The new regulations are primarily intended to be prospective in order to provide protection to those developments. If

read in isolation, the more general language of § 22-40 would seem to negate the similar but more specific protection in § 22-68. The statutes must be read as part of an integrated whole, however, and not as isolated parts. Nothing in § 22-68 indicates that the Baltimore County Council intended it to apply only prospectively. Furthermore, the legislative history of § 22-68, as recounted in the Opinion of the County Attorney in the record below, indicates to the contrary. The County Attorney notes that § 22-68 and its predecessor statutes were enacted by the County Council in recognition of the fact that it takes a substantial expenditure of funds to proceed through various county regulations in the subdivision process, and that a developer should be given a reasonable period of time to achieve a developed status for this property without running the risk of losing his investment through a change in the zoning regulations.

Additionally, the Board also ignored the effect of the predecessor statutes to § 22-40. In 1977 the County Council enacted Bill No. 12-77, known as the Interim Development Act. Section 22-15.1(L)(3) of that Act provided essentially that record subdivision plats, whether recorded prior to or after the enactment of Bill No. 12-77, would lapse and become invalid if they were undeveloped after five years from the later of the date of the enactment or the date of recordation. The statute further provided that where substantial construction on required public improvements had occurred, the subdivision would be considered "developed". This provision was repealed and reenacted in substantially the same form in 1979, in Bill

No. 61-79. Thus it seems clear from the history of the present § 22-68 and its predecessors, the statutes were enacted to provide protection for precisely the type of development that is at issue in this case. The subdivision plat vested by virtue of the substantial construction (indeed, it may be more accurate to say the completed construction) of the public improvements under the public works agreement, as provided in § 22-68 and its predecessor statutes.[2]

As a final comment, the circuit court noted that, even absent the statutory intervention of § 22-68, the facts of this case cry out for an application of the doctrine of equitable estoppel. Equitable estoppel is defined as:

> ... the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps otherwise have existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Knill v. Knill, ___ Md. ____ (No. 39, Sept. Term, 1985, filed 6/27/86, Slip. Op. at 9), quoting from 3 J. Pomeroy, Equity Jurisprudence, § 804 (5th ed. 1941). The appellants have strongly opposed the application of this doctrine in favor of the developer on the ground that there was insufficient detrimental reliance by the developer on the actions of the county officials to call for an application of estoppel. They have,

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2 We note further that § 22-40 speaks only of executory public works agreements. It would be somewhat strange to provide protection for those subdivisions where the public works agreements are simply executory, and not for those where the public works agreements have been fully performed.

however, missed the most essential point. While we may be inclined to agree that an estoppel could be invoked against the County under these facts, we do not see how estoppel can be invoked against the neighboring landowners. It was not their conduct upon which the appellee relied. See generally, Rathkopf, supra, § 50.04. The appellee presented a good argument for the application of estoppel - it simply had the wrong party on the opposing side of this case.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

10/8/85

10/8/85

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT Case No. 85-7 SPH and Case No. CBA-84-132	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY 10/218/85-CG-1483

* * * * * * * *

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MEMORANDUM OPINION AND ORDER

This case came before the Court on September 17, 1985, on the appeal of Westchester, Inc. (Westchester). Westchester appeals a Baltimore County Board of Appeals Opinion and Order dated March 28, 1985, later confirmed by its Order of May 7, 1985, following hearing on Appellant's Motion for Reconsideration.

This case was heard by the County Board of Appeals on appeal by Protestants (Appellee) from an Opinon and Order of the Zoning Commissioner of Baltimore County which authorized the issuance of certain building permits to Westchester. Protestants also appealed the actual issuance of the permits by the Department of Licenses and Permits of Baltimore County.

Although the facts of this case are lengthy and complex, those central to the dispute are not contested. The dispute involves the development of that subdivision located in the First District of Baltimore County known as Westchester. This property was originally purchased by a predecessor to the Appellant in 1967. The development of the property was initially to include only

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single family homes. In 1970, the Baltimore County Council adopted Bill No. 100 which facilitated greater flexibility in residential development through the device of cluster development. Under this Bill, developers were allowed to take unused zoning density from one portion of a development tract and add it to the permitted zoning in another area of the tract.

The previous developer of the Westchester subdivision, the Stefanowicz Corporation, utilized the provisions of Bill 100 and gained approval from the Baltimore County Board of Appeals for a development plan. This plan contained an apartment complex which was to be surrounded by single family dwellings. The Board ruled that the final development plan was valid in an Order dated October 12, 1973. In 1975, the Stefanowicz Corporation negotiated and received approval for a public works agreement. In 1977, an amended record plat was filed which clearly showed the 108 unit apartment complex. The public improvements were completed in October of 1978 and were conveyed to the County by Deed dated April 19, 1979. By 1978, when many of the public improvements had been placed, the single family lots were being sold. The purchasers were aware of the proposed apartment complex as it appeared in the record plat and, in fact, several purchasers signed a statement attesting to that knowledge.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the zoning of the Westchester property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning has created the current controversy because it raises the issue of whether the record plat of 1977 remains valid in spite of the downshift. If the development plan has vested,

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then it should be protected against subsequent changes in zoning. Otherwise, the downshift of 1980 renders the development plan void.

Much of the problem arising in this case stems from the developer's inability to obtain the proper sewer allocation. Because the Patapsco Watershed was experiencing a sewer deficiency during this time (the late 70's and early 80's), sewer allocations were difficult to obtain. The needed sewer allocation was granted and then withdrawn as the developer was put on a waiting list. Amidst some apparent confusion, the developer was dropped from the waiting list.

Suit was filed in 1982 in the Baltimore County Circuit Court by the developer to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. On December 1, 1982, an opinion was elicited from the Director of Planning and Zoning which declared that the subdivision development plan vested and reinstated the developer's waiting list status for sewer allocations. Relying on this opinion, Westchester purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were finally obtained in June, 1983. Additionally, the developer obtained utility permits for the subdivision. Further grading work was performed and private utilities were installed under the approved permits during 1983 and 1984. Final building permits were granted to the developer on July 30, 1984. The protestants, the homeowners surrounding the proposed apartment complex, appealed the issuance of the permit to the County Board of Appeals. Although formal opinions

of both the County Attorney and the Zoning Commissioner (after a special hearing) determined the subdivision plat to have vested, the County Board of Appeals ruled otherwise.

Thus, as previously stated, the issue in this case is whether the record plat filed in 1977 is vested. Appellant advances several different legal theories in support of its argument for vesting. One theory is that under common law the subdivision record plat is vested. All parties involved in the case have agreed that the proper standard to apply is found in Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972). The Court in Rockville Fuel quoted an earlier case, The Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969), for the general law in regard to "vested rights" in an existing zoning case:

> In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

The standard thus contains two prongs: a permit prong and what has sometimes been referred to as a substantial construction prong. In the discussion that follows the Court's quotation of the standard, it is clear that the permit required must be a building permit. Insomuch as no building permits in the present case were obtained until after the land improvements were made, the record

plat of 1977 fails to vest as it does not satisfy the permit requirement. Furthermore, the cases which discuss the substantial construction requirement as to when construction commences, all speak of the actual building or structure involved not preliminary land improvements. For these reasons, the Court agrees with the County Board of Appeals that Appellant's record plat does not vest under common law.

Appellant also argues that the plat vests under two different statutory provisions. The first statutory basis for vesting involves the question of the applicability of a provision of the Baltimore County Code, § 22-68. Section 22-68, in pertinent part, provides:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> . . .
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

There is no question that § 22-68 is currently the law in Baltimore County. The Board of Appeals observed that if the 1977 record plat was governed by § 22-68, then it would be vested. (Opinion, p. 7). The Board, however, concluded that

§ 22-40 of the Code provides that § 22-68 applies only to development plats recorded after the date of the new regulations, June 11, 1982. (Opinion, p. 9.).

Section 22-40 provides:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2).

The Board of Appeals ruled that the clear and unambigious language of § 22-40 precludes the application of § 22-68 to the Westchester development. Appellees further argue that § 22-68 does not apply because it is a subdivision regulation and thus has no bearing on a zoning question. Appellee notes that Article 3 of Title 22 of the Baltimore County Code is captioned "Zoning" whereas Article 4 (which contains both § 22-40 and § 22-68) of Title 22 is captioned "Development Regulations". Appellees thus argue that § 22-68 insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations. There is nothing implicitly or explicitly in the Code, however, to support this argument. Appellees also argue that zoning is a nondelegatable legislative function, while subdivision control is a delegated administrative function.

The Court acknowledges the differences between the concepts of zoning, planning and subdivision regualtion. See E.g. Board of County Commissioners v. Gaster, 285 Md. 233, 401 A.2d 666 (1979);

Board of County Commissioners v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 26 (1985). All these cases quote 1 E. Yokley, Zoning Law and Practice § 1-2 (4th ed. 1978) which comments:

> ...[Z]oning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.
>
> . . .
>
> There are three integral parts of adequate land planning, the master plan, zoning, and subdivsiion. (emphasis added).

The caption under Title 22 of the Baltimore County Code confirms this integration: "Planning, Zoning and Subdivison Control". Thus, while the comparison of any of these component parts of land planning may to some degree be likened to comparing apples and oranges, it is clear that they all belong in the same basket. It is thus necessary to consider the articles of Title 22 as an integrated whole, not as subdivided parts existing in isolation.

This requires a close scrutiny of § 22-40 and § 22-68. Section 22-40, captioned simply "scope of regulations", serves to make the new regulations apply to all developments except those which have taken significant steps towards development prior to the date of the new regualtions. The new regulations in these cases are thus primarily intended to be prospective only in order to provide protection to those developments. If read in isolation, however, the general decree of § 22-40 would negate the similar yet more specific protection of § 22-68. There is nothing in

§ 22-68 to indicate that the protection it offers is to be prospective only. Most importantly, the legislative history of § 22-68 indicates the contrary. It is axiomatic to state that the polestar of statutory interpretation is to ascertain and carry out the real intent of the legislature when it enacts a statute. See E.g. Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979). The legislative history of § 22-68 is thoroughly recounted in an opinion written by the County Attorney which is dated May 17, 1984. The opinion traces the history of several statutory provisions that the County, through the Office of Planning and Zoning as well as the County Council, utilized to provide protection through vesting for subdivision plats in which some steps toward development had been taken. The opinion notes that from 1955 to (at least) 1977, the Office of Planning and Zoning interpretated § 103.1 of the Baltimore County Zoning Regulations to insulate subdivision plats which had received tentative County Board approval from subsequent zoning changes. The effect of this interpretation was to vest the developer's plan. The County Council also passed the Interim Development Control Act, formerly codified at § 22-16 of the County Code, which set forth certain circumstances under which a development would vest. Finally, in 1982, the County Council repealed all previous subdivision regulations and passed the development regulations (which include § 22-68) now in effect. In his opinion, the County Attorney notes that since at least 1977 the Baltimore County Council has chosen to recognize that it takes a substantial expenditure of funds to comply with the various County regulations in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the

risk of losing his investment by changes in the zoning classification. (Opinion, p. 9). The Opinion further indicates that the County Council purposely chose to change the Maryland line of case law concerning vesting institute less stringent requirements for vesting. (Opinion, p. 9). Noting further details the legislative history of § 22-68, the County Attorney concluded that § 22-68 was intended to apply to plats recorded prior to June 11, 1982, the effective date of the new subdivision development regulations.

This Court agrees with the County Attorney's opinion. The Court finds after considering the background of legislative history and circumstances, that the County Council would not have enacted § 22-68 if it did not intend for it to apply to cases prior to the effective date of the new subdivison regulations that otherwise meet its requirements.

In addition to § 22-68, Appellant argues that § 103.1 serves as a statutory basis for the vesting of the Westchester record plat of 1977. Section 103.1 provides:

> These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prio to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.
>
> Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with

> any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.
> (footnotes omitted).

The Court finds that the clear and unambigious language indicates that it was intended to apply only to cases prior to the date of its enactment, 1955. The Board of Appeals, the Zoning Commissioner, and the County Attorney all seem to concur in this assessment. The Office of Zoning and Planning for some reason, however, interpreted § 103.1 as providing vesting protection for developers for some 30 years past the date of enactment (1955). The Court agrees that § 103.1 itself does not serve to vest the record plat of 1977. Any reliance by Appellants on the County's interpretation of § 103.1 only affects the issue of estoppel. The Board of Appeals opinion correctly noted that notwithstanding the incorrect interpretation of § 103.1 by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to Appellant. (Opinion, p. 14).

Under Maryland law, equitable estoppel is defined as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have perhaps otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy.

Dixon v. Process Corp., 38 Md. App. 644, 382 A.2d 893 (1978) quoting 3 J. Pomeroy, A Treatise on Equity Jurisprudence § 804 (5th ed. 1941).

Whether the doctrine is to be applied in a given case is dependent soley upon the particular facts and circumstances of that case. Rodgers v. John, 131 Md. 455, 102 A. 549 (1917). The facts of this case cry out for an application of the doctrine. The Court finds it impossible to accept the conclusion of the Board of Appeals that there was a lack of reliance and no change of position by the developer as a result of the County's assurances that the record plat of 1977 was vested. (Opinion, p. 16, 17). Only after extensive negotiations and communications with the County (which concluded in the assurance that the record plat was vested), did Appellant purchase the Westchester property out of bankruptcy. The negotiations were far from casual or informal. The developer filed suit against the County in 1982 and the centerpiece of the settlement of that action was the assurance that the plat with the 108 unit apartment complex was vested. This was set forth in a formal opinion by the Director of the Office of Planning and Zoning.

It should be further noted that the property's zoning density was downshifted in 1980 with no notice to the property owner. Although notice is now required in such cases, it was not in 1980.

The Court is also unable to accept the Board of Appeals' conclusion that equitable estoppel is unavailable to Appellant because of a lack of activity in developing the property. The Board of Appeals itself noted that the sewer allocation process which prevented the developer from securing the necessary hookups was "with some justification" blamed for the inactivity from sometime

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in 1979 unti 1982. While the Board ultimately found that the developer did not "actively" seek the allocations, the affirmative action that the developer failed to take has not been revealed by the Board or Appellee.

While it may be true that Appellant might be able to develop the property in some other way consistent with the current zoning, it does not follow that to disallow the vesting of the plat would not still be highly inequitable. The Zoning Commissioner, after a hearing, also concluded in his opinion that the 30 year old interpretation of § 103.1 was incorrect. The Commissioner nonetheless found that Appellant acted in good faith reliance on that interpretation and other assurances by the County. The Commissioner thus ruled that under the circumstances of this case, to make the new interpretation retroactive would be "highly inequitable and oppressive". (Opinion, P. 9).

This Court conludes that in view of the considerable money and effort expended by Appellant by reason of justified, good faith reliance, coupled with the substantial change of position by the developer, the application of equitable estoppel is required in this case.

When a reviewing court examines a factual decision reached by an administrative agency, it must determine whether reasoning minds could reasonably reach that conclusion by direct proof or by permissible inference from the facts and the record before the agency. If the conclusion could be reached then it is based upon substantial evidence and the court has no power to reject that conclusion. See E.g. Commission on Human Relations v. Washington County Community Action Council, Inc., 59 Md. App. 451, 476 A.2d 222 (1984).

Furthermore, in applying this substantial evidence test, a court may not substitute its judgment for that of the members of the administrative agency from which the appeal is taken. Bullock v. Pelham Wood apts., 283 Md. 505, 390 A.2d 1119 (1978).

It has been noted, however, that the standard of review for a finding of law is not so limited. While the view taken by administrative officials is strong and persuasive, it may be disregarded for strong and argent reasons. Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 76 (1985) citing Baltimore Building Construction Trades v. Barnes, 290 Md. 9, 427 A.2d 979 (1981).

For the above reasons, it is therefore **ADJUDGED** and **ORDERED** on this 8th day of October, 1985, that the Order of the County Board of appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed.

AUSTIN W. BRIZENDINE
Judge

Copies sent to:

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IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT	*	BEFORE THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	NO. 85-7-SPH and CBA-84-132

*** *** *** *** *** *** *** ** * ** *** *** *** *** ***

ORDER

Upon review of the aforegoing Motion for Stay, Notice to the agency, and hearing on said Notice, it is hereby

ORDERED this 12 day of June, 1985, by the Circuit Court for Baltimore County that the Order of the Board of Appeals dated May 7th, 1985 in Case Number 85-7-SPH and Case Number CBA-84-132 be and the same is hereby STAYED pending final determination by this Court on Appeal.

John E. Raine, Jr.
JUDGE

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COUNTY BOARD OF APPEALS
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True Copy Test
ELMER H. KAHLINE, JR., Clerk
Per Gloria Betts
Deputy Clerk

FILED JUN 12 1985

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

5/7/85

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 85-7-SPH and CBA-84-132

: : : : : : : : : : : : :

O P I N I O N

This case again comes before this Board following the Board's granting of Petitioner's Motion for Reconsideration on April 25, 1985. A brief review of the procedural history of this matter is in order.

Following the Zoning Commissioner's Order of July 18, 1984, and the issuance of permits by the Department of Permits & Licenses on July 30, 1984, the matter was appealed to this Board. Several days of testimony and argument then ensued. The Board, in its Opinion and Order of March 28, 1985, reversed the Zoning Commissioner's Order and revoked the permits. The Petitioner then filed, under the purview of Board Rule 10, a Motion for Reconsideration and Speedy Hearing. A hearing was held on April 25, 1985, during which counsel for the Petitioner, Protestants and County, all presented oral argument. In view of the complex issues, lengthy argument and appeal deadline, we felt it prudent to grant the Petitioner's Motion for Reconsideration so as to enable the Board to review all of the evidence and argument. After having done so, it is the opinion of this Board that its prior Order of March 28, 1985 was correct, and we therefore adopt that Opinion and Order and incorporate it herein.

The Board granted Petitioner's Motion for Reconsideration to study two issues where mistake was alleged, namely, our interpretation of Sections 22-40 and 22-68 of the County Code and the doctrine of estoppel.

Insofar as those provisions of the Code, we are urged by the Petitioner to "harmonize" 22-40 and 22-68 so as to find that the language of 22-68 controls. We cannot do so. The language of 22-40 is clear and unambiguous and we believe must be interpreted as stated in our March 28, 1985, Opinion. Section 22-40 speaks of its application to "all development". Additionally, development means subdivision (See Baltimore County Code 1978, 1983 Cumulative Supp., Section 22-39). To harmonize Sections 22-40 and 22-68 as suggested by the Petitioner, would obviate the clear meaning and language of 22-40.

Insofar as estoppel, we are again unpersuaded to reverse our earlier holding, for the reasons set forth therein.

Therefore, we find that our Opinion and Order of March 28, 1985, is correct and should be readopted and will so order.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 7th day of May , 1985, by the County Board of Appeals, ORDERED that the Opinion and Order of the Board of Appeals of Baltimore County dated March 28, 1985, be and is hereby re-adopted, and that said Opinion and Order in its entirety is incorporated herein.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure and the time for said appeal will run from May 7 , 1985.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

LeRoy B. Spurrier

Patricia Phipps

4/25/85

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-7-SPH and CBA-84-132

: :

ORDER

After oral argument, Memoranda and further consideration of the issues, it is this 25th day of April, 1985, ORDERED by the County Board of Appeals of Baltimore County that the Board's Order of March 28, 1985 is hereby stricken, and it is

FURTHER ORDERED that the Motion for Reconsideration by the Petitioner, Westchester, Inc., is hereby GRANTED, and that the Board will take the matter under advisement and issue a further Opinion and Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

LeRoy B. Spurrier

Patricia Phipps

3/28/85

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-7-SPH and CBA-84-132

: :

OPINION

This case comes before the Board on an appeal from the Order of the Zoning Commissioner of Baltimore County, dated July 18, 1984, which granted the petition for special hearing to have a building permit issued to the Appellee, Westchester, Inc. Also encompassed in this matter is an appeal from the issuance of building permits by the Department of Permits and Licenses on July 30, 1984. Both, the Order of the Zoning Commissioner and the issuance of the permits pertain to the development of that subdivision located in the First District of Baltimore County known as Westchester. The appeals were merged into one hearing before this Board so as to consolidate all relevant issues regarding this subdivision.

The property now known as the Westchester subdivision was originally acquired by a predecessor to the Appellee herein in 1967. Although the plans for the development of the subdivision originally included only the building of single family homes, by January 30, 1975, the developer had executed a Public Works Agreement (#17404) providing for the construction of 108 apartment units. The property was zoned at that time as D.R. 5.5.

Under the terms of PWA #17404, the developer was required to con-

struct Bathurst Road for a distance of 630 feet, St. Johnsbury Lane for a distance of 620 feet, Stoneham Court for a distance of 180 feet, and Drawde Court for a length of 200 feet. Additionally, the developer was required to construct sewer lines, storm drains, water lines and other incidental improvements relative to these roads. The developer constructed all of these improvements in accordance with County standards and paid for all work done thereon at a cost of approximately $180,000.00. All construction was completed by October, 1978, and the above named roads and improvements were conveyed to the County by deed dated April 19, 1979.

Prior, however, to the construction of these roads pursuant to PWA #17404, the developer filed a plat detailing the proposed 108 apartment units. A slightly amended plat upon which the Appellee now wishes to proceed was recorded among the land records of Baltimore County in Plat Book EHK, Jr., 41, Folio 16 on March 14, 1977. As stated above, the zoning on the property at this time was D.R. 5.5.

Following the receipt of the necessary permits for the revised March, 1977, plat the Appellee commenced development of a portion of the property as delineated on the plat. Specifically, single family homes were constructed and sold. Buyers of these houses were advised of the nature of the recorded plat and its proposed apartments. Several buyers were even required to sign statements confirming their knowledge of the proposed apartments. However, no construction began on the

apartments during this time despite the fact that all governmental permits and approvals had been obtained.

The reason for this inaction by the developer on the apartment portion of the plat was extensively addressed at the hearing before this Board. Specifically, the President of Westchester, Inc., Walter Stefanowitz, testified that the lack of construction was because of financial difficulties of his company. These difficulties culminated in the filing for reorganization under bankruptcy in May of 1980. Westchester, Inc. purchased this property out of bankruptcy from the predecessor corporation which owned the property during this time. Mr. Stefanowitz was also a principal in that company. Despite obtaining all of the necessary permits for the construction of the single family houses shown on the plat, the developer was not ready to construct the apartment portion of the approved plat until, by his own testimony, at least December, 1979. However, by this time difficulties in reacquiring sewer permits prevented construction of the apartments.

The activities of the developer during this period from the time construction could have commenced, April of 1977, until December, 1979, is of particular note. After a period of inactivity for almost two years, the developer offered this property for sale in March of 1979. However, a sale was never consummated. Additionally, the developer explored the possibility of developing this parcel for townhouses. Extensive work was done in this regard. Preliminary County approval

was obtained, plans were drawn, etc., yet final County approval was never obtained.

The lack of final County approval for the townhouse development was to prove particularly troublesome for Westchester, Inc. because of the County Council's actions of 1980. In the comprehensive map process of that year, the zoning on the property was downshifted to D.R. 3.5, with some D.R. 5.5. Because of this downshifting, when the developer attempted to revive his townhouse proposal in early 1982 he was advised by the County that the townhouse development was not allowable. The developer then swung back to pursuing his original apartment plan, which is the matter before this Board for consideration.

Unfortunately for the developer however, immediate construction of the apartments under the March, 1977, plat was not possible because of a lack of sewer allocation. A history of this sewer allocation problem is also of particular note. In 1978, the developer had obtained County approval for sewer connections for the proposed 108 apartment unit complex. These allocations were revalidated in February, 1979, however, later withdrawn in July of that year due to the lack of substantial construction. Still later, in November of 1979, the County passed Growth Management legislation which revised the method for issuing sewer allocations. Although the developer did not apply for sewer allocations for his apartment development under this new system, he did apply for and was granted a reserved position to receive sewer connections for the proposed townhouse development. This authorization, however, expired because the proposed townhouse development was never recorded. For the

next several years, until April of 1982, there was little activity insofar as the Westchester development, and the Appellee-developer blamed this, with some justification, on the sewer allocation process which prevented him from securing the necessary hookups. Testimony was also produced that allocation may well have been obtained had the developer actively sought the needed allocations. Rather, no activity occurred because of a combination of the two factors; the developer did not pursue an allocation and the County dropped the Appellee from its allocation list. Additionally, evidence before the Board showed that although the new Growth Management legislation curtailed the amount of sewer hookups in this watershed, some sewer permit issuance continued which may have allowed the subject developer to proceed had he not been dropped from the list.

By April of 1982, the developer realized his predicament. Because of the 1980 zoning downshifting he could not proceed with the proposed townhouse construction. Likewise, because of a lack of sewer capacity and allocation, he could not commence construction on the 108 apartment units. Consequently, a suit was filed by the developer in April, 1982. This suit requested that the County be enjoined from voiding the March, 1977, apartment plat and further, asked that the County be ordered to issue the required sewer allocation permits. Rather than contest this suit in a court of law, the matter was settled by a decision of the Office of Planning and Zoning. In a letter to Appellee's counsel of December, 1982, the Director of the Office of Planning and Zoning advised that it was his view that the

plat was vested and had no expiration date. This decision was based primarily upon the work that was completed under PWA #17404 and subsequently deeded to the County. Consequently, relying on this opinion, Westchester purchased the property out of the bankruptcy proceedings which reorganized the Stefanowitz corporation. Finally, although not immediately available, the needed sewer allocations were provided in June, 1983. Later, in February of 1984, the developer obtained permits for additional water mains, storm drains and sewer lines. Building permits were granted on July 30, 1984, the issuance of which is appealed to this Board. Also, a hearing was held by the Zoning Commissioner on the issuance of said permits, after which he issued his Order of July 18, 1984, which has also been appealed to the Board.

Although the appropriate permits have been issued by Baltimore County and the Zoning Commissioner has held that the proposed apartment construction may go ahead, the Protestants herein have appealed to this Board. The Protestants, who are primarily the residents in the single family homes surrounding the proposed development, have raised concern as to whether or not this development may proceed in view of the 1980 zoning downshifting.

Thus the issue in the case turns on whether the plat filed by the predecessor of Westchester, Inc. in March of 1977 is vested. Currently, the law in this area for Baltimore County is found in §22-68 of the Baltimore County Code. This section was part of Bill #56-82, which was passed by the County Council on April 19, 1982, enacted by the County Executive on April 27, 1982 and became

effective on June 11, 1982. Section 22-68 provides the time limit for validity of subdivision plats. Specifically, in Subsection (a) it is provided: "A subdivision plat shall lapse and be invalid. . . .if such subdivision, section or parcel has not been developed, as defined in subsection (c), . .". Further on, in said Subsection (c) it is stated: "A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel: (1) Building permits have been issued; or (2) substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the appropriate regulations and requirements of the Department of Public Works." Under this language, it is clear that the plat under consideration in the case before us has met the test of substantial construction on required public improvements. Clearly, the work under PWA #17404 was completed and transferred to the County in 1979, well before the scheduled expiration date under the above legislation.

Prior to the enactment of Bill #56-82, similar legislation had been adopted by the County. Specifically, on April 16, 1977, Bill #12-77 was enacted. This act was subsequently codified in §22-16 of the Baltimore County Code, 1978. Under subparagraph (h) Vested rights, (3) of §22-16, the County Council provided: "Record subdivision plats. . . , shall be deemed to have lapsed. . . ,where the applicable subdivision, section or parcel thereof remains undeveloped for a period of five (5) years. . .". Further on, the statute defines the circumstances under which a subdivision would be considered undeveloped. One of the tests under the standard is

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whether there had been a lack of substantial construction on required public improvements pursuant to the applicable regulations and requirements of the Department of Public Works. The effect of this bill, which was repealed by Bill #178, 1979, was continued in its essence under Bill #61-79. This newer bill retained the same standards and test as was originally adopted under Bill #12-77. Clearly, under the language in both the current statute (§22-68) and its predecessors (§22-16 and Bill #61-79) the plat in the case before the Board is vested. Although a great deal of inactivity occurred insofar as the actual construction of the apartments, the work under the Public Works Agreement was completed. The County Attorney, in his Opinion of May 17, 1984, reached this same conclusion based upon this statute.

Notwithstanding this inescapable conclusion under the mandates of the current vesting legislation, it is this Board's conclusion that the said legislation is not controlling in this case. The Board's conclusion in this regard is based upon the current portion of the Baltimore County Code in §22-40. That Section describes the scope of the regulations which were promulgated and adopted under Bill #56-82. Bill #56-82 included new legislation encompassing §22-37 through §22-105 of the Baltimore County Code. Section 22-40 provides the scope of this legislation. It provides in part: "These regulations shall apply to all development except such development which, prior to the effective date of this Article [June 11, 1982], . . . a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of. . . [the] public works agreement

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execution, . . .". Therefore, under the mandate of §22-40, §22-68 is not germane to the Westchester subdivision. Specifically, because the subdivision public works agreement was executed in 1975 and the plat recorded in March of 1977, §22-68 clearly does not apply. Likewise, as the public works agreement and plat recordation was before the first attempt by the County to legislate in this area, the above cited legislation is not applicable to this case. As we hold that §22-68 and its predecessors are not controlling in this case because of the scope of §22-40, we need not enter into the discussion by the Zoning Commissioner, in his Opinion, regarding his authority and the distinction between the Planning and Zoning functions. Instead, the case turns on the appropriate statutes and laws as were existing at the time a public works agreement was executed.

As stated above, the County's first attempt to provide a "vesting guideline" was the adoption of Bill #12-77 in April, 1977. For the status of the law prior to the adoption of this bill, one must look to the decisions handed down from Maryland's higher courts. The chief decision which has been cited by both parties to this matter and is the cornerstone of the Zoning Commissioner's Opinion is Rockville Fuel & Feed Co. v City of Gaithersburg, 266 Md. 117, 291 A 2nd 672, (1972). Quoting from an earlier decision, Richmond Corporation v Board of County Commissioners for P.G. Co, 254 Md. 244, 255 A 2nd 398 (1969), the court provided: "In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against a subsequent change in the

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zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use." This standard has been cited and relied upon in both prior and subsequent decisions in the Court of Appeals, See - Steuart Petroleum Co. v Board of County Commissioner of St. Mary's Co, 276 Md.435 (1975), County Council for Montgomery County v District Land Corportion, 274 Md. 691 (1975), Mayor and City Council of Baltimore v Crane, 277 Md. 198 (1976), and Washington Suburban Sanitary Commission v. T.K.V. Associates, 281 Md. 1 (1977). Clearly, under the language stated in Rockville, supra, and the other above cases, the Petitioner's plat was not vested. There was not a building permit, at least not until 1984, and no construction thereunder. Despite what we see as the clear meaning of Rockville and the other cited decisions, the Petitioner maintains that his plat was vested against the zoning downshifting. In support of this position, Petitioner notes that, amongst other factors, the public was on notice through the record plat of this apartment development; (2) the expenditure of large funds by the developer on the land itself and (3) the performance of the public works agreement and settlement of its 1982 law suit created an enforceable contract with the County to develope the land. We dismiss all of these arguments and hold that under the principles stated in Rockville and the other decisions, there was no vesting.

Although there was notice to the public in 1977 and shortly thereafter, this notice cannot continue indefinitely. There was testimony to this Board as to the little activity on this site in recent years, particularly since the completion of the public works agreement. Additionally, the attempted sale of the property in 1979 and the bankruptcy of the company could serve to cause a reasonable notice to believe that the original development plan may not be continued. As to the expenditure of funds, the Board need only note Maryland case law which provides that such expenditure is irrelevant, See - Washington Surburban Sanitary Commission v. T.K.V. Associates, supra. Finally, we find no contractural obligation with Baltimore County. The work under the public works agreement could have been used in combination with other development as was, in fact, contemplated in the aborted townhouse development. Insofar as to the settlement with the County over the 1982 law suit, we note that the Protestants herein were not parties to that suit and that the question as to the vesting of this plat was never raised, nor considered, until after the suit was settled.

Therefore, it is clear, at least to this Board's view, that the subject property was not vested under the common law guidelines. However, the Petitioner further relies upon §103.1 of the Baltimore County Zoning Regulations (BCZR) in order to vest its plat.

Subsection 103.1 of the BCZR is a part of §103 which itself is entitled "Application of Zoning Regulations". The subject section provides in part: "These Regulations shall apply as of the date of their adoption but the provisions pertaining

to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations." This provision was adopted in March, 1955, and to paraphrase, provides that zoning regulations ordinarily apply as of the date of their adoption.

As was noted in both the Opinion of the County Attorney, dated May 17, 1984, and Zoning Commissioner Jablon's Opinion of July 18, 1984, this statute had always been interpreted by Zoning Commissioners in office from 1955 through at least 1983 as providing that approval by the Planning Board was sufficient to protect, or vest, a recorded subdivision plat from subsequent zoning change even if there had been no substantial construction thereon. This view of the subject Section was verified by the Director of Current Planning, Eugene Bober, who testified before this Board as to his understanding of the Regulations' interpretation. Thus, at the time of both the zoning downshift and the filing and settlement of the law suit with the County, it was assumed by all that §103.1 did provide the necessary insulation to protect the subject site from downshifting which occurred in 1980.

Notwithstanding this agreed longstanding interpretation of the Section, Commissioner Jablon in his Opinion, stated that it was his belief that the Section was

clear upon its face and that "The conclusion is inescapable that under the plain wording of Section 103.1, BCZR, only those plats submitted and approved by the Planning Commission, but with no substantial construction begun at the time of adoption of the 1955 BCZR, and plats submitted for approval to the commissioner, but not as yet approved at the time of the change in 1955, are protected from subsequent zoning change where there has been no substantial construction." In his Opinion, the Zoning Commissioner delineates the reasons for his conclusion, primarily citing the clear and unambiguous language of the statute. Without again restating the reasons set forth in that Opinion, we hold that the Zoning Commissioner is correct in his interpretation of the statute. The regulation clearly states that the language applies to those subdivisions, developments or parcels approved or tentatively approved "prior to the adoption of these Regulations". Notwithstanding the longstanding interpretation of Baltimore County, we hold that the subject Section does not insulate the subject subdivision. Despite this language of Subsection 103.1, the Petitioner has asked this Board to interpret this Section in context with other subsections of the BCZR, specifically §103.3 and §103.4. However, we find that not to be necessary. The Section in and of itself is not ambiguous and provides insulation only to subdivisions in existence prior to the adoption of the regulation in 1955. As the Zoning Commissioner stated in his Opinion, and we believe correctly so, because the language is clear and unambiguous, there does not exist a need to resort to contemporaneous construction as an aid to ascertain the legislative intention in the adoption of this statute.

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The final and yet most difficult issue before the Board concerns, at least indirectly, the interpretation of §103.1. Notwithstanding the incorrect interpretation of that statute by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to the Petitioner.

Equitable estoppel has been defined by the appellate courts of Maryland in a number of cases, including Savonis v. Burke, 241 Md. 316 (1965) wherein it is stated: "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which have otherwise existed, either of property, or contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy." Insofar as it is used in the context of zoning cases, equitable estoppel has been defined as when "a landowner has relied in good faith upon an act or omission of the government, (often the issuance of a permit) and has made a substantial change of position to the land, has made substantial expenditures, or has incurred extensive obligations." Handling Zoning and Land Use Litigation: A Practical Guide - Peterson and McCarthy, Authors, §9-1 (A).

There have been a number of cases, including the one cited by the Zoning Commissioner in his Opinion (Saah v. District of Columbia Board of Zoning Adjustment, 433 A2d 1114 D.C. (1981)), where equitable estoppel has been held to estop a municipality from enforcing a zoning regulation. In these cases, a permit

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has been issued and construction has taken place. Additionally, in those instances the courts have held that equitable estoppel is proper because the enforcement of regulations would make it highly inequitable or oppressive to the landowner. In spite of these holdings the courts invoke equitable estoppel only grudgingly. Also, unlike the Saah case and other cases, the developer in this matter did not obtain a permit and commence substantial construction. The permits were obtained only in 1984, well after the zoning downshifting.

Notwithstanding this lack of a permit and substantial construction, the Petitioner desires the relief provided under the equitable estoppel doctrine because of the interpretation County officials have provided of §103.1 of the BCZR. The Petitioner argues that because of the longstanding incorrect interpretation of BCZR §103.1, he is entitled to insulation (vesting) of his plat. There are few cases where estoppel is claimed because of comments made by a county employee. One of particular note is Colonial Investment Co., Inc. v. City of Leawood, Kansas, 646 P2d 1149 (1982). In that case the court held that statements made by county officials to the contrary would not estop the municipality from later enforcing zoning regulations.

In our view, the matter turns on the activity, or lack thereof, of the developer. As pointed out earlier in this Opinion, although the plat was recorded in 1977 and the public works construction was completed thereafter there has been little activity on this property. Although the footprint of this property may exist and some grading has been done, there has been no above ground construction. Therefore, we

believe this matter is distinguishable from that line of cases where a permit was issued and actual construction was performed. The testimony in the case clearly shows that even after the public works improvements were deeded to the County, the developer actively planned, in his fifty-five townhouse plat, other uses for the property. The moneys which were expended for the public works construction, although earmarked for the 108 apartment complex, could be used in a variety of developments, such as the proposed townhouse development. Even today, the work done under the public works agreement was not lost or useless work but, in fact, could still serve this property if it were developed in accordance with zoning regulations presently in force.

It is also of note that we find a lack of reliance by the developer as is required by the doctrine of equitable estoppel. There was no testimony that the Petitioner inquired of County officials into the effect of the 1980 downshifting. That is, there is no testimony that the Petitioner was concerned in 1980 as to how the downshifting would affect his recorded plat. Rather, the testimony before the Board showed that at the time of the downshifting, the development of 108 apartment units was not being actively considered and the townhouse development was the top priority. Therefore, we find little in the way of reliance by the Petitioner upon the County's existing interpretation of the statute. Finally, we are unable to find that element of equitable estoppel which requires a substantial change of position to the land. The courts of this State have held that equitable estoppel will not be found where the person claiming the protection of this doctrine has not prejudicially changed position as a result of

the act or statement of the government body. Mayor & City Council of Baltimore v. Crown Cork & Seal Co., 122 F2d 385 (1956). The evidence before us was not persuasive that there had been a change in position by the developer because of the County's interpretation of BCZR 103.1.

Therefore, after due consideration of the testimony and evidence brought before this Board, legal arguments made, we hold that the subject plat is not vested and the property is bound by the zoning regulations currently in force. Therefore, we find the Opinion and Order of the Zoning Commissioner and the issuance of building permits by the Department of Permits and Licenses to be in error and will reverse same.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 28th day of March, 1985, by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner of Baltimore County, dated July 18, 1984, be REVERSED and the Special Hearing to have a building permit issued petitioned for, be and the same is hereby DENIED, and it is

FURTHER ORDERED that the building permits described herein which have been issued by the Department of Permits and Licenses of Baltimore County be and the same are hereby REVOKED.

Any appeal from this decision must be in accordance with Rules B-1

through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

LeRoy B. Spurrier

Patricia Phipps

7/18/84

IN RE: PETITION FOR SPECIAL HEARING
NW/S Bathurst Road, 95' N of
Westchester Road - 1st Election
District

Westchester, Inc. - Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 85-7-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein, Westchester, Inc., has filed this petition at the direction of the Zoning Commissioner in order to determine whether a building permit should be issued.

The Westchester subdivision, commenced in the 1960's, has single family residences built by the Petitioner surrounding it. This subdivision originally called for 108 apartment units to be constructed on the property then zoned D.R. 5.5. The subdivision plat was in fact recorded among the Land Records of Baltimore County in Plat Book EHK, Jr. 41, Folio 16 on March 14, 1977. After the recordation, the Petitioner began to examine alternatives to the apartments, i.e. townhouses, but abandoned the concept due to the sewer moratorium which brought an abrupt halt to all development in the area. Then in 1980, the County Council downshifted the property from D.R. 5.5 to D.R. 3.5, with some D.R. 5.5, in the comprehensive map process. Prior to the zoning change, in 1979 the Petitioner had applied for its permits under the sewer allocation process. Unbeknownst to the Petitioner, however, it later got bumped from the list but did not find out until after other developments, which were lower on the list, received their permits. At the same time, the Petitioner was in reorganization under the Bankruptcy Act. It was not until 1981 that the Petitioner tried to gain the financing to proceed with development. At this point, the Petitioner

DATE July 18, 1984
BY Marylee Mayer Clerk
ADMINISTRATIVE ASSISTANT

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was notified by the County that it was no longer on the waiting list. The County maintained that the development for 108 apartments, represented by the validly recorded plat, for which the Petitioner had received approval for 108 connections in 1978, had lapsed, and it was doubtful that the Petitioner could quality for an allocation under the provisions of the Growth Management legislation which had taken effect in November, 1979. The Petitioner was also told that the proposed alternative to the apartments, 55 townhouses, would not be permitted as there was no sewer capacity available and was no longer valid anyway inasmuch as the revised plat, the townhouses, has been abandoned by the Petitioner and never pursued to final approval. Correspondence dated March 15, 1982 from the Office of Planning and Zoning to the attorney for the Petitioner confirmed that the downshifting from D.R. 5.5 to D.R. 3.5 would prevent the townhouse proposal under the then current regulations due to the failure to have had the revised plat recorded before the zoning change. In fact, the Petitioner was told that it could not proceed with the townhouses because the zoning had changed and that it could not proceed with the 108 apartments because there was no sewer capacity available.

The Petitioner, for its own protection, filed suit against the County in April, 1982. Suit was initiated to have the County issue the necessary Reserve Capacity Use Permit and to declare the recorded plat vested under the Growth Management legislation then in effect and the Development Regulations, which would take effect on June 11, 1982.

The Petitioner founded its contentions on a Public Works Agreement, No. 17404, which included the subject property, and was approved by the County Executive on January 24, 1975. The Agreement required the Petitioner to construct Bathurst Road for a length of 630 feet, St. Johnsbury Road for a length of 620 feet,

DATE July 15, 1982 (Mod)
BY Mary Carey Lyons
ADMINISTRATIVE ASSISTANT

Stoneham Court for a length of 180 feet and the construction of Drawde Court for a length of 200 feet. In addition to these public roads, the Petitioner was required and did construct public water and sewer in the beds of these roads, as well as appropriate storm drains. The Petitioner also constructed a sewer line running through the proposed apartment development from Bathurst Road to Drawde Court. Sewer lines amounted to approximately 1,660 feet, water lines amounted to approximately 1,720 feet, storm drains to approximately 1,630 feet and total street paving to approximately 1,630 feet. The Petitioner constructed and paid for all these public improvements and all met County standards. Installation of public utilities was completed in October, 1978 and, with the roads referred to above, were conveyed to the County by deed dated April 19, 1979. The Public Works Agreement was completed in a timely fashion at the cost of $180,000, and accepted by the County in 1979. The Petitioner also admits that it did not proceed with the construction of the apartment units and interior private roads and utilities systems. (At the present time, the curb cuts and rumps for the interior roads are completed, the grading is done, stormwater management completed with necessary abuttments to the site, public sewer and water is available to the subject property, the storm drains done, and sediment control and ponds completed - although the Protestants state that the latter is useless and is not located where it would do any good, citing County correspondence to that effect.)

After the filing of the suit, the County agreed with the Petitioner that its plat was vested, and that the Petitioner could proceed with development subject only to the sewer moratorium, and in June, 1983, the Office of Planning and Zoning issued the necessary permit, No. 529, which allocated 32,400 gallons of sewer allocation for 108 apartment units. This permit has no expiration date, Section 4A02.4.G.5, Baltimore County Zoning Regulations, (BCZR).

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The Petitioner subsequently requested building permits to construct the apartment units, as indicated on the recorded plat of 1977. The appropriate building permit has been stayed pending review of the contentions raised by the Protestants that the Petitioner is not protected from the 1980 downshifting.

The Protestants argue that the 1980 zoning change prevents the Petitioner from now proceeding to develop the subject property; the Petitioner had failed to vest prior to the zoning change and therefore could not now proceed notwithstanding the public improvements constructed prior to the change.

The Petitioner seeks relief pursuant to Section 500.7, BCZR, to have its building permits issued.

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular use or structure will continue after the effective date of the ordinance or amendment as a vested right. 4 Rathkopf, The Law of Zoning and Planning, 50 -2. Vested rights occur when the property owner:

1. obtains a building permit, and

2. proceeds under the permit to exercise his right on the land by a substantial beginning to construct, so that the neighborhood may be advised as to the intended land use.

Rockvill Fuel and Feed Co. v. City of Gaithersburg, 266 Md 117 (1972). Claims of vested rights generally arise when the owner seeks to proceed in accordance with prior zoning despite an existing or pending amendment to the zoning regulations. It would accrue when

> "[a] manifest commencement of some work or labor on the ground which everyone can readily see and

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> recognize as the commencement of a building...begun with the intention and purpose then formed to continue the work until the completion of the building."

Rupp v. Cline and Sons, 230 Md 573, 578 (1963).

Maryland case law is clear - mere approval or even recordation of a subdivision plat, without statutory intervention, does not insulate the plat from further zoning changes. Stewart Petroleum Co. v. Board of County Commissioners of St. Mary's County, 276 Md 435 (1935); County Council for Montgomery County v. District Land Corporation, 274 Md 691 (1975); Mayor and Council of Baltimore v. Crane, 277 Md 198 (1976); and WSSC v. TKU Associates, 281 Md 1 (1977). In the latter case, the Court determined that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where there was no such statutory intervention to preserve previous approvals with regard to height, area, density, use and bulk requirements. See also Mullison v. Secretary of Health and Mental Hygiene, 357 A.2d 274.

Therefore, the issue becomes bifurcated - (1) does there exist intervening legislation sufficient to protect the Petitioner from the 1980 zoning change, and (2) if not, has the rule of law, as enunciated in Rockville, supra, been satisfied.

Section 103.1, BCZR, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. It also provides that current minimum restrictions pertaining to use, height, area, and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, (now Planning Board), however, is used to refer to the immediate successor to the Commission, which was eliminated in 1955 with the

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adoption of Chapter 610 (Senate Bill 556) of the Public Local Law of 1955, as enacted by the General Assembly and effective June 1, 1955, which established the current form of county government. Was the intention of the legislation to extend the benefit of Section 103.1, BCZR, only to those plats submitted and approved by the Commission, or was the intent to extend its benefit to plats also approved by the Board, foreverafter?

Although prior interpretations by the Office of Law have given validity to the latter, it is the opinion of the Zoning Commissioner that the language of Section 103.1, BCZR, is clear and unambiguous and that its intent was to protect only those plats submitted for approval to the Commission and which were pending at the time the Charter was adopted.

> The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. Purifoy v. Merc.-Safe Dep. & Trust, 273 Md. 58, 327 A. 2d 483 (1974); Scoville Serv., Inc. v. Comptroller, 269 Md. 390, 306 A. 2d 534 (1973); Height v. State, 225 Md. 251, 170 A. 2d 212 (1961). Equally well settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished, Walker v. Montgomery County, 244 Md. 98, 223 A. 2d 181 (1966), and in light of the evils or mischief sought to be remedied, Mitchell v. State, 115 Md. 360, 80 A. 2d 1020 (1911); in other words, every statutory enactment must be 'considered in its entirety, and in the context of the purpose underlying [its] enactment,' Giant of Md. v. State's Attorney, 267 Md. 501 at 509, 298 A. 2d 427, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. Grosvenor v. Supervisor of Assess., 271 Md. 232, 315 A. 2d 758 (1974); Height v. State, supra. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intention of the Legislature. Purifoy v. Merc.-Safe Deposit & Trust, supra. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. Gatewood v. State, 244 Md. 609, 224 A. 2d 677 (1966). On the other hand, as

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> stated in Maguire v. State, 192 Md. 615, 623, 65A. 2d 299, 302 (1949), '[a]dherence to the meaning or words does not require or permit isolation of words from their context'*** [since] the meaning of the plainest words in a statute may be controlled by the context...' ' In construing statutes, therefore, results that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B.F. Saul Co. v. West End Park, 250 Md. 707, 246 A. 2d 591 (1968); Sanza v. Md. Board of Censors, 245 Md. 319, 226 A. 2d 317 (1967); Height v. State, supra

State v. Fabritz, 276 Md 416 (1975), cert den'd, 425 US 942 (1976).

Applying these principles to Section 103.1, BCZR, the conclusion is inescapable that under the plain wording of Section 103.1, BCZR, only those plats submitted and approved by the Planning Commission, but with no substantial construction begun at the time of adoption of the 1955 Baltimore County Zoning Regulations, and plats submitted for approval to the Commissioner, but not as yet approved at the time of change in 1955, are protected from subsequent zoning change where there has been no substantial construction pursuant to the standards set out in Rockville, supra.

However, as the recent opinion by the County Attorney, dated May 17, 1984, points out, from 1955 until at least August 1, 1983, it has been the interpretation of the Zoning Commissioners in office during those years that a subdivision plat which has received tentative approval from the Board is protected from subsequent changes to use, height, area and density accomplished by either ordinance, amendment or by comprehensive rezoning maps. It is true that the effect of this interpretation has been to give a developer a vested right to proceed notwithstanding subsequent zoning changes prior to the issuance of a permit and the commencement of construction. Because it is the opinion here that the language of Section 103.1, BCZR, is clear and unambiguous, there does not exist a sufficient basis to resort to a contemporaneous construction as an aid in ascertaining the legislative intention. The criteria contained in Section 103.1, BCZR, is reasonably precise as the subject matter requires and is reasonably

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adequate and sufficient to guide the Zoning Commissioner and to enable those affected to know their rights and obligations. See American Power and Light Co. v. S.E.C., 329 US 90 (1946). However, the prior interpretation as cited above and contained in the letters of advice from the County Attorney, dated September 24, 1979 and February 10, 1981 must all be given great weight, although not for the reasons given therein. (See Hope II v. Baltimore County, Case No. 107030, where the County argues the opposite view that Section 103.1, BCZR, does not provide the protection from subsequent zoning changes as opined in the cited letters of advice.)

The Petitioner here, like all developers from 1955 to August, 1983 (when I assumed office), had the right to rely on past and consistent interpretations made by Zoning Commissioners in office. In 1977, at the time of recordation, in 1982, at the time the Petitioner's lawsuit was settled, the past, the present and consistent interpretations by the Zoning Commissioners, who, pursuant to the Charter and the BCZR had the sole responsibility and authority to interpret, was that approval by the Board was sufficient to protect a recorded subdivision plat from subsequent zoning change even though there was no substantial construction on the subject site. I am estopped from enforcing the change in interpretation enunciated herein on developers such as the Petitioner here who had a right to rely on this prior interpretation.

There exists to the Petitioner the defense of equitable estoppel. Estoppel always requires proof that the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief. The other party must also change its position in reliance on those facts, thereby causing some injury. There must be good faith by a party acting on affirmative acts of municipality. Saah v. D.C.

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Bd. of Zoning Adjustment, 433 A.2d 1114 (D.C., 1981). In municipal zoning cases, however, estoppel may be invoked only with great caution; only when special circumstances make it highly inequitable or oppressive to enforce the regulations. 8A McQuillin, Municipal Corporations, Section 25.349 and 27.56; 3 Rathkopf, supra, 45-38. The defense of estoppel is based on a substantial burden of proof, a requirement to show that the agents of Baltimore County acted to induce reliance and that such reliance was to the owner's detriment to such an extent that enforcement of the regulations would be "highly inequitable or oppressive". Zoning Commission v. Lescynski, 453 A.2d 1144 (Conn., 1982). Whether a vested right exists is immaterial, the Petitioner's actions throughout the process were founded on the interpretation of Section 103.1, BCZR, then enforced, and the lawsuit was indeed settled based on the County and the Petitioner's belief that the plat was in fact vested. If there had been reason to believe otherwise, the Petitioner would have specifically addressed the issue. But the parties acted in good faith, and the Petitioner acted in reliance on the facts described above. To make the new interpretation retroactive would be "highly inequitable and oppressive".

The County Attorney in his May 17, 1984 opinion concludes that the language contained in the Interim Development Control Act (I.D.C.A.) and its successor, the Developments Regulations, in and by itself also provides protection to the developer, who meets the strictures contained therein, from subsequent zoning changes. The County Attorney provides an excellent summary of both the factual history of the Westchester subdivision and of the pertinent legislation affecting it. Suffice it to say that I disagree with his conclusion that Bill No. 12-77, codified in Section 22-16, Baltimore County Code, (BCC), and later Bill No. 61-79, vests a recorded plat insofar as subsequent zoning changes are concerned providing the terms and conditions contained therein have been met. I further disagree with his conclusion that Bill No. 56-82, which repealed all previous

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subdivision regulations and adopted the development regulations now in effect, particularly Section 22-68, et seq., BCC, creates protection for the plat recorded in accordance with the conditions delineated therein. It is uncontested that the Petitioner has met the requirements of the subdivision and development regulations. It did vest under their terms and conditions, but one must distinguish between the planning objectives contained therein and the zoning objectives contained in the BCZR. The County Attorney by intertwining the intent of the development regulations with that of the zoning regulations ignores this fundamental and legal difference and in fact combines the two contrary to the obvious intent of the Council. Does or does not the Zoning Commissioner have the authority to interpret the development regulations? If there is no such authority, then the import of the County Attorney's conclusion is to further erode the responsibility specifically assigned to the Zoning Commissioner to decide that a proposed building or use of land, building, or structure complies in all respects with the regulations then in effect with respect to zoning. Section 500.1, BCZR. In other words, who decides what is a "substantial" expenditure of funds, or if there has been "substantial construction or required public improvements"? If the authority to judge is with the Zoning Commissioner, then the County Attorney has effectively combined the development regulations with the zoning regulations. I do not think he so intends and I know the Council did not so intend.

The distinction between the planning function and the zoning function is comprehensive. In Board of County Commissioners of Carroll County v. Stephans, 286 Md 384, 389 (1979), the court said, "[S]ome confusion exists relative to the terms planning and zoning, which are not synonymous. Zoning is concerned with the use of property but planning is broader in its concept."

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> "Expressing the matter in another way, let us say that zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power."

1 E. Yohley, Zoning Law and Practice, Section 1-2 (4 Ed. 1978).

> "The end product of the planning function is the production of a master plan that embodies recommendations for an area's development based on predictions of needs and resources for an estimated future period. It proposes goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries. In addition, it suggests methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications. The end product of the comprehensive zoning map that establishes, through zoning classifications, the way in which land may presently be utilized and developed. The zoning function is essentially limited to the establishment of land use districts through the imposition of zoning classifications."

Howard County v. Dorsey, 438 A.2d 1339, 1345 (1982).

The courts have consistently interpreted planning broadly to include the systematic development of a community in order to promote the perceived interests of the general public, while zoning has been interpreted more narrowly to consist primarily with the use of land. Washington County Taxpayers Association v. Board of County Commissioners of Washington County, 269 Md 454 (1973).

The implementation of the I.D.C.A. and subsequent development regulations by the County Council are certainly an integral part of the planning function, not the zoning function. The fact that the Council provided the Planning Board (and now the County Review Group (C.R.G.)) with the authority to approve a subdivision plat (and not the Zoning Commissioner) underscores the difference between planning and zoning. The police power which resides with the Council to legislate uses of land does not reside with the Planning Board in its consortium of assigned responsibilities. The Planning Board is responsible for determining future growth and development pursuant to the Master Plan by promoting common interests in matters of general public interest.

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The vesting permitted under the development regulations, therefore, cannot be equated with the vesting of rights under the zoning regulations, and should there be a divergent and contrary result, it is up to the County Council to resolve it by enacting specific zoning legislation. The fact that the Council created a new maze, the C.R.G., only solidifies the view that Section 103.1, BCZR, is not the panacea to the vested rights conflict that has been assumed all these years. The C.R.G. has assumed much responsibility from the Planning Board and Section 103.1, BCZR, does not reflect this major reformation of the development process in Baltimore County. Even if the past letters of advice from the County Attorney's office are correct in their interpretation, their impact is muted and negated by the substitution of the C.R.G. for the Board in the development regulations and by the lack thereof in Section 103.1, BCZR.

It is the conclusion here that there is no intervening statute sufficient to protect a developer, who has an approved subdivision plat, from a subsequent zoning change without the securing of a building permit, and proceeding to substantial construction on the site. Since the Petitioner does not have a building permit, and there is no intervening legislation, the Petitioner would not be protected from the 1980 downshifting if this decision were to be made retroactive.

Subject to later legislation, the law as expressed in Rockville, supra, shall henceforth be enforced on all subdivisions subsequently approved and recorded. This shall be consistent with such prior enforcement on that construction exempted or not subject to the development regulations. It must be emphasized that the protection afforded under the development regulations for approved plats does not extend to the zoning regulations.

After due consideration of the testimony, evidence and legal arguments

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presented, it is determined that the Petitioner is entitled to its building permit.

Pursuant to the advertisement, posting of the property and public hearing on the petition held, and for the reasons given above, the request to have the building permit issued to the Petitioner for development as approved and recorded in 1977 should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 18th day of July, 1984, that the Petition for Special Hearing to have the building permit issued be and is hereby GRANTED, subject to the following:

With good cause shown by the Protestants,

1. No building permit shall be issued until either the thirty (30) day appeal period has expired without an appeal being taken to the County Board of Appeals or, if an appeal is taken, the Board upholds this decision.

Zoning Commissioner
of
Baltimore County

FILING
DATE July 18, 1984
BY Mary Simpson (Clerk)
ADMINISTRATIVE ASSISTANT

AJ:eoh

cc: Robert J. Romadka, Esquire
John B. Gontrum, Esquire
C. Victor McFarland, Esquire
Paul L. Snyder, Jr., Esquire
People's Counsel
Malcolm F. Spicer, Jr., County Attorney

...ITING FOR SPECIAL HEARING

...G COMMISSIONER OF BALTIMORE COUNTY:

...ned, legal owner(s) of the property situate in Baltimore County and which is ... description and plat attached hereto and made a part hereof, hereby petition for a ... and/or Section 500.7 of the Baltimore County Zoning Regulations, to determine whether ... Zoning Commissioner and/or Deputy Zoning Commissioner should approve

...e of a building permit No. 4 on A record plat, found to ... id, when the zoning classification of the plot property ... anged.

... to be posted and advertised as prescribed by Zoning Regulations.

...ree to pay expenses of the above Special Hearing advertising, posting, etc., upon ... tion, and further agree to and are to be bound by the zoning regulations and restri... ore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

MAP 24
NW 2 H
E.D. 1
DATE —
Zone —
1010
OR —

Legal Owner(s):

Westchester, Inc.
(Type or Print Name)
Martin W. Stefanowicz, Pres.
Signature

MAP SW10
28
E.D. 15
DATE 7-6-83
ZONE 6A
1010 6A
OR —

(Type or Print Name)

Signature

...ttioner:

...Gonzales/John B. Contrum
(Type or Print Name)

9413 Gunview Rd. 256-3010
Address Phone No.

Baltimore, Md. 21236
City and State

...n Blvd.

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

..., Md. 21221

John B. Contrum
Name

...ephone No.: 686-8274

809 Eastern Blvd. 686-8274
Address Phone No.

...By The Zoning Commissioner of Baltimore County, this 22nd day ...y, 19 84, that the subject matter of this petition be advertised, as ...e Zoning Law of Baltimore County, in two newspapers of general circulation through... County, that property be posted, and that the public hearing be had before the Zoning ... of Baltimore County in Room 106, County Office Building in Towson, Baltimore ... 5th day of July, 19 84, at 9:30 o'clock

Zoning Commissioner of Baltimore County.

allocations difficult to obtain. For reasons which are not quite in the record, the developer was dropped from the waiting list ...wer allocations.

The Baltimore County Council, in the comprehensive map process of downshifted the permissible density on the subject property from D.R. D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning d the current controversy as to whether the 1977 plat is still

In 1982, the Stefanowicz Corporation filed suit in the Circuit ...rt for Baltimore County to protect the 1977 record plat from being ...ded and to compel the issuance of sewer allocations. An opinion was ...cited from the Director of Planning and Zoning which stated that the ...velopment plan had vested and reinstated the developer on the waiting ...t for sewer allocations. As a result, the lawsuit against the County ... dismissed.

In reliance on the opinion of the Director of Planning and Zoning, ...chester, Inc. purchased the property from the bankruptcy proceedings ...ch reorganized the Stefanowicz Corporation. The sewer allocations were ...n obtained along with utility permits for the subdivision. Further ...ding of the property was done and private utilities were installed ...r the permits. Westchester, Inc., received final building permits on ... 30, 1984. The appellants, the homeowners surrounding the site for ...apartment buildings, appealed the issuance of the permits to the County

61-79. Thus it seems clear from the history of the present § 22-68 its predecessors, the statutes were enacted to provide protection for ...rcise of the type of development that is at issue in this case. The ...ivision plat vested by virtue of the substantial construction (indeed, ...ay be more accurate to say the completed construction) of the public ...rovements under the public works agreement, as provided in § 22-68 and ... predecessor statutes.[2]

As a final comment, the circuit court noted that, even absent the ...atutory intervention of § 22-68, the facts of this case cry out for an ...plication of the doctrine of equitable estoppel. Equitable estoppel is ...fined as:

> "... the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps otherwise have existed, ... either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy."

...ull v. Knill, ___ Md. ___ (No. 39, Sept. Term, 1985, filed 6/27/86, ...lip. Op. at 9), quoting from 3 J. Pomeroy, Equity Jurisprudence, § 804 ...5th ed. 1941). The appellants have strongly opposed the application of ...his doctrine in favor of the developer on the ground that there was ...insufficient detrimental reliance by the developer on the actions of the ...county officials to call for an application of estoppel. They have,

[2] We note further that § 22-40 speaks only of executory public works agreements. It would be somewhat strange to provide protection for those subdivisions where the public works agreements are simply executory, and not for those where the public works agreements have been fully performed.

Board of Appeals. Although both the County Attorney and the Zoning Commissioner were of the opinion that the subdivision plat had vested, the Board ruled otherwise. On appeal to the Circuit Court for Baltimore County, the court found itself in agreement with the County Attorney and the Zoning Commissioner and reversed the ruling of the County Board of Appeals. Unhappy with that result, the homeowners have brought the case to this court.

Although appellants pose numerous questions in their brief, many of them were not raised below and thus will not be considered here. Rule 1085. The questions that are properly before us are all rephrasings of the central issue in this appeal: Have the developer's rights to develop the subject property according to the plans contained in the 1977 recorded plat vested so as to insulate the property against the subsequent downshift in permitted density?

Professor Rathkopf defines "vested rights" in this context as follows:

> A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular nonconforming use or structure will continue after the effective date of the ordinance or amendment as a vested right.

4 Rathkopf, The Law of Zoning and Planning, § 50.01 (4th ed. 1986). The Court of Appeals has held that such rights may be acquired where (1) the landowner has obtained a valid permit; and (2) in reliance upon the permit, the owner has made a substantial beginning in construction and in committing

the land to the permitted use before the change in the zoning ordinance. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981); Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). Under this rule it is insufficient to show substantial expenses incurred in preparation for building, such as fees for studies and development plans or expenses for grading and clearing, and excavation; rather, the owner must show the commencement of construction of the structure itself. Steuart Petroleum Co. v. Board of County Commissioners, 276 Md. 435, 347 A.2d 854 (1975); County Council of Montgomery County v. District Land Corporation, 274 Md. 691, 337 A.2d 712 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). While the Court of Appeals has acknowledged that the application of this rule may be less onerous in other jurisdictions, it has declined to relax it in this state. Steuart Petroleum Co. v. Board of County Commissioners, supra; County Council of Montgomery County v. District Land Corporation, supra; see generally, Rathkopf, supra, § 50.03. In the case sub judice, no building permits were issued after the improvements had been made. Furthermore, in spite of the completion of the public works and the incurring of substantial expenses by the appellee, no construction has yet begun on the actual apartment buildings. Thus, the appellee has not met either requirement of the standard enunciated by the Court of Appeals and can claim no vested rights under a common law theory.

The most vigorously disputed question in this appeal, however, is whether the plat had vested under the statutory provisions of the Baltimore County Code. Section 22-68 of the Code provides, in pertinent part:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> ...
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

This statute was enacted in 1982, as a part of the regulations adopted by the Baltimore County Council in Bill No. 56-82. Bill No. 56-82 included new legislation encompassing § 22-37 through § 22-105 of the Baltimore County Code entitled "Article IV. Development Regulations of Baltimore County".

Notwithstanding the seemingly clear application of the language of § 22-68 to the subject property, the County Board of Appeals concluded that the statute was not controlling in this case. This conclusion was based on the Board's interpretation of § 22-40 (also enacted in 1982 as a part of Bill No. 56-82) which sets forth the scope of Article IV, the Developmental Regulations. Section 22-40 reads as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

Under the Board's interpretation of § 22-40, the case turned on the statutes in existence in 1975, the year the public works agreement was executed. In 1975 there was no "saving" stacutes in effect, and thus the Board ruled that the subdivision plat had not vested. As we have noted, the Circuit Court disagreed with the Board's interpretation and application of the statutes, as do we.

Section 22-40, a more general provision, serves to make the new regulations apply to all developments except those which had taken significant steps toward development prior to the effective date of the new regulations. The new regulations are primarily intended to be prospective in order to provide protection to those developments. If

read in isolation, the more general language of § 22-40 would se... negate the similar but more specific protection in § 22-68. The... must be read as part of an integrated whole, however, and not as... parts. Nothing in § 22-68 indicates that the Baltimore County C... intended it to apply only prospectively. Furthermore, the legis... history of § 22-68, as recounted in the Opinion of the County At... in the record below, indicates to the contrary. The County Atto... that § 22-68 and its predecessor statutes were enacted by the Co... in recognition of the fact that it takes a substantial expenditu... funds to proceed through various county regulations in the subdi... process, and that a developer should be given a reasonable perio... to achieve a developed status for this property without running ... of losing his investment through a change in the zoning regulati...

Additionally, the Board also ignored the effect of the prede... statutes to § 22-40. In 1977 the County Council enacted Bill No... known as the Interim Development Act. Section 22-15.1(L)(3) of ... provided essentially that record subdivision plats, whether recor... to or after the enactment of Bill No. 12-77, would lapse and beco... if they were undeveloped after five years from the later of the ... the enactment or the date of recordation. The statute further p... that where substantial construction on required public improvemen... occurred, the subdivision would be considered "developed". This ... was repealed and reenacted in substantially the same form in 1979

however, missed the most essential point. While we may be inclined to agree that an estoppel could be invoked against the County under these facts, we do not see how estoppel can be invoked against the neighboring landowners. It was not their conduct upon which the appellee relied. See generally, Rathkopf, supra, § 50.04. The appellee presented a good argument for the application of estoppel - it simply had the wrong party on the opposing side of this case.

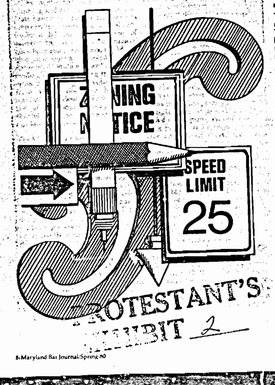
JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

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A PERFECT UNION: The Wedding of Planning and Zoning in Maryland

By Stanley D. Abrams



"The zoning case load in Maryland is extraordinarily interesting for several reasons ... Most zoning litigation land a large part of the zonings in Maryland, outside Baltimore City and Annapolis, is at the county level, primarily in the communities around Baltimore and Washington.... Second, Maryland zoning law is a tight, carefully worked out system, internally consistent and mostly on a high level of technical competence; one does not get the same here, as one does in several other states, that incremental decisions or decisions based upon a different philosophy are likely in turn to without anyone noticing the difference. Moreover, the prevailing rules of law adopted in '50 and really more zoning; instead of using a grab bag which simply gave a court full discretion in deciding any given case as in Illinois, these rules provide some guidance in predicting what is likely to keep, or later to an inadequate situation. Finally, most of Maryland zoning law has been dominated by a special local concept rule, the change or mistake criteria described below and is trying to interpret and apply this di... rule, the

RECEIVED
AUG 18 1986
ZONING OFFICE

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
NO. 1287
September Term, 1985

WILLIAM J. BAUMAN, et al.
v.
WESTCHESTER, INC., et al.

Adkins
Bell, R.H.
Wenner,
JJ.

PER CURIAM

Filed: August 12, 1986

COUNTY BOARD OF APPEALS
'86 AUG 13 A 9:57

On October 8, 1985 the Circuit Court for Baltimore County (Grizzanne, J.) filed an opinion and order which reversed an order of the Board of Appeals for Baltimore County, and reinstated an order of the Baltimore County Zoning Commissioner which directed the issuance of five building permits to Westchester, Inc. (appellee), a Baltimore County developer. Walter J. Bauman, et al. (appellants), a group of homeowners opposed to the issuance of the building permits, have appealed to this Court. For reasons explained below, we shall affirm the judgment of the circuit court.

The facts, although somewhat complex, are essentially undisputed. At issue is the development of an eight-acre parcel of land located in the Westchester subdivision in western Baltimore County. The property was originally purchased in 1967 by the Stefanowicz Corporation, the predecessor in title to the appellee. At that time its development was to include only single family homes.

In 1970 the Baltimore County Council adopted Bill No. 100, which substantially rewrote many of the county's zoning ordinances and provided for greater flexibility in residential development through the use of cluster development.[1] At that time the subject property was zoned D.R. 5.5 for maximum permissible density. In 1973 the Stefanowicz Corporation received

[1] "Cluster development" is a zoning technique which provides for greater flexibility and variation in housing, in the development of large tracts of land. It allows a developer to take unused density from one portion of a tract and add it to the permitted density in another portion of the tract. See 82 Am. Jur. 2d, Zoning and Planning, § 106.

approval from the Board of Appeals for Baltimore County (the "Board") of a development plan for eighteen and one-half acres utilizing the cluster concept. The plan consisted of a 108-unit apartment complex surrounded by single family homes. A record plat was filed early in 1975. In 1977 an amended plat was filed which made minor changes in the earlier plat. No changes were made, however, in the number of units planned, and the apartment buildings were clearly shown on the plat.

In January of 1975 the Stefanowicz Corporation entered into a public works agreement with the County. Pursuant to that agreement, the Stefanowicz Corporation constructed public streets, sewer lines, water lines, storm drains, sediment control facilities and other incidental improvements on the property, at substantial expense to the corporation. The public improvements were completed by late 1978, and conveyed to the County in April, 1979

In the meantime work was begun on the single family homes shown on the plat. By 1978 sales of those homes had begun. The buyers were told of the proposed apartment complex shown on the record plat and several of them signed statements which attested to their being advised of the proposed development plans.

At that time no construction on the apartment buildings had begun. The reasons for the delay in construction of the apartment buildings are somewhat unclear, but it appears that it was due partially to the developer's financial difficulties and partially to the developer's inability to obtain the proper sewer allocations. The property is located in the Patapsco Watershed which was experiencing a sewer deficiency at that time, making

10854 YORK ROAD COCKEYSVILLE, MARYLAND 21030 PHONE (301) 666-5300

THIS CONTRACT OF SALE, made this 16 day of January, 19 78
between THE STEFANOWICZ CORPORATION, Seller, and
Mr. William E. Rawlings & Mrs. Susanne T. Rawlings (wife) Buyers
Present Address 1222 Newfield Road Baltimore, Maryland 21207
Phone 矩-6495

WITNESS: that the Seller does hereby bargain and sell unto the said Buyers, and the latter do hereby purchase from the former, the following described property, situate and lying in Baltimore County, State of Maryland: a Annapolis dwelling in substantial accordance with Builders' Plans Brochure, a copy of which is attached hereto and made a part hereof, together with Lot No. 35 Block No. F in Drawda Court Rolling Green Baltimore Maryland 21228

Development, on which said dwelling is to be constructed, in fee simple, at and for the price of

Sixty thousand and five hundred and 00/100 Dollars ($ 60,500.00),
of which One thousand and 00/100 Dollars ($ 1,000.00)
have been paid at or prior to the signing here, which downpayment the parties hereby agree and instruct shall be held pending settlement by Grampier Realty, Inc., Realtor, in an interest bearing escrow account, and the balance to be paid in cash at the time of settlement, which shall take place within ten (10) days after written notification of the completion of the aforesaid improvements; said settlement date is estimated to be on or before June 6 19 78. In the event that settlement is held hereunder Seller shall be entitled to the interest accrued on the downpayment, but in the event Buyers shall become entitled to return of downpayment, then Buyers shall be entitled to the interest accrued thereon.

This contract is subject to the Buyers procuring at their own cost and expense a mortgage in the sum of Thirty three thousand five hundred and 00/100 Dollars ($ 33,500.00) with interest at the rate of 9 1/2 per cent per annum, or the prevailing rate at time of settlement, to be amortized over a period of 30 years, for which Buyers shall make an application within five (5) banking days hereof, the execution hereof and endeavor in secure with due diligence. If Buyers shall not have procured such mortgage commitment in the exercise of due diligence within twenty-one (21) days from the execution hereof, Seller shall return to Buyers the down payment made hereunder, and on such payment this contract shall thereupon become null and void and of no further effect to bereon the parties hereto, with no further liability on the part of one to the other.

IT IS UNDERSTOOD AND AGREED between the parties hereto that:

(1) Buyers represent & at the property is purchased from their own investment. This contract shall not be assigned by Buyers nor shall it be effected by recording among the Land Records of said ... County without the express written consent of the Seller, in the event of such assignment or other act resulting in a breach of this agreement, Seller shall have the right and option to ...

(2) There shall be no changes in the construction of the dwelling, either by extras or deletions, unless outlined in a written change order executed by the Buyers and the Seller. The cost of such change order, if any, shall be reached by mutual consent between the parties and paid for at the time Seller accepts the change order by execution thereof. All such change orders must be submitted by Buyers to Seller within thirty (30) days from the execution of this contract.

(3) Buyers shall select exterior trim, brick, stone and exterior paint from the standard selection of not less than two (2) shades of antique white. Buyers shall have the privilege of selecting exterior paint colors, colors of roof shingles and tile and ... and shade of brick, provided, however, that ... complete model provided by Seller within thirty (30) days from the execution of this contract. Buyers shall make all ... selections within thirty (30) days from the execution of this contract, and in the event Buyers fail to make such selections within the time ... Seller may proceed with the construction of the dwelling using its own discretion concerning the ... selections. Extraordinary selections, and Buyers will be charged for the cost of same.

(4) Seller shall establish the grade of the lot, the number and extent of the grading of the lot. Finish grading shall be done in accordance with generally accepted grading practices. The ... shall be responsible for the ... and ... of the grading of his lot.

(5) After the original grading and seeding of the property by the Seller, Buyers shall be responsible for preservation by the Buyers, the grass and shall keep and maintain same in good condition. Buyers shall not ... any building materials on the lot. Buyers shall not ... any trees, shrubs or other vegetation from the property ... and are to ... and Seller shall have no responsibility for the ... of any trees, shrubs or other vegetation ... Buyers ... and ... and Seller shall have no responsibility for the ... of any trees, shrubs or other vegetation ... Buyers ...

PROTESTANT'S EXHIBIT 3

From: [illegible]
Date: [illegible]
Subject: [illegible]
Date: [illegible]
From: [illegible]
Re: [illegible]
[illegible] is the draft of an opinion which I would like to circulate for your consideration. Please note that I have not yet had an opportunity to discuss the matter with [illegible]. Please call me with your comments.
Date: [illegible]
THIS COPY FOR PERSON ADDRESSED
SIGNED

PROTESTANT'S EXHIBIT 1

LAW OFFICES
McFARLAND, WEINKAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
100R FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

C. VICTOR McFARLAND
LOUIS A. WEINKAM, SR.
THOMAS J. O'CONNELL
KENNETH A. MASTERS

TELEPHONE
AREA CODE 301
788-5500
744-3858

September 11, 1984

County Board of Appeals of
Baltimore County
200 Court House
Towson, Maryland 21204

Re: Case Nos. CVA-84-132 and 85-7-SPH
Westchester, Inc.
Proposed Hearing Dates: November 13 and
14, 1984

ATTN: Ms. June Holmen, Secretary

Dear Ms. Holmen:

Please be advised that on Tuesday, November 13, at 9:30 a.m., I am scheduled to argue the case of the Corwin Property before the Circuit Court for Baltimore County. The date of November 14 is okay.

Please give me a call so that I can line my schedule up to make sure that the dates that you have set are clear before all the notices are sent out.

Very truly yours,

C. Victor McFarland

CVMcF/lr

cc: Mr. Bill Bauman
Mr. Thomas Olear
Robert J. Romadka, Esq.
John B. Gontrum, Esq.
Thomas J. Bollinger, Esq.

9/13/84 Grant of 11/13 Hold one postponed to 11/14 Next second day for 11/15

COUNTY BOARD OF APPEALS
RECEIVED
SEP 12 P 02 03

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

JOHN W. HESSIAN, III
ZONING COMMISSIONER

July 31, 1984

The Honorable William T. Hackett
Chairman, County Board of Appeals
Old Court House
Towson, Maryland 21204

RE: Case No. 85-7-SPH
Westchester, Inc., Petitioner

Dear Mr. Hackett:

On July 26, 1984, my Order was issued in the above-referenced case. This case contains issues important not only to the specific involved parties but also to others throughout the County. It is my belief that a prompt resolution of these issues is important for all concerned.

Consequently, I am requesting that this matter be set for hearing on Appeal at the Board's earliest opportunity.

Thank you for your consideration of this matter.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: John B. Gontrum, Esquire
C. Victor McFarland, Esquire

COUNTY BOARD OF APPEALS
RECEIVED
AUG 3 A 10:

July 26, 1984

Zoning Commissioner Arnold Jablon
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

RE: Westchester, Inc.
Building permit/Special Hearing

Dear Commissioner Jablon:

Pursuant to my attorney's discussions with you, I am hereby giving a commitment not to proceed under the building permit until such time as the Board of Appeals has rendered a favorable decision on the building permit and special hearing.

It is my understanding that based on this commitment, you will release the building permit so it may be appealed along with your decision in the special hearing, and that you will modify your Order accordingly.

Your cooperation and consideration in expediting the hearing process on this matter has been and is greatly appreciated.

Very truly yours,

Walter Stefanowicz

WSW

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Zoning Commissioner
FROM: Norman E. Gerber, Director, Office of Planning and Zoning
SUBJECT: Westchester, Inc., Zoning Petition No. 85-7-SPH

Date: June 14, 1984

In view of the subject of this matter, no comment from this office would be appropriate.

Norman E. Gerber per Stefanowicz
Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

LAW FIRM
Romadka, Gontrum, Lanegan & Foos
CHESAPEAKE TRUST BUILDING
ONE MARYLAND E. MYLAND
SHELL, MARYLAND 21401
TELEPHONE (301) 269-6620

ROBERT J. ROMADKA
JOHN B. GONTRUM
WILLIAM A. FOOS, III

OF COUNSEL
ALFRED W. WALPERT

July 12, 1984

Zoning Commissioner Arnold Jablon
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

RE: Westchester Inc.
Case #85-7 SPH

Dear Commissioner Jablon:

Enclosed please find the photographs with the descriptions noted on the back which were referred to at the time of the hearing on the above captioned case. These pictures were all taken within the last week and indicate some of the improvements on the property. The two groups of pictures indicate separate sewer clean-outs and storm drain inlets for each of the buildings.

Also enclosed are representative copies of purchaser contracts and acknowledgments with respect to the proposed development of an apartment complex on the 8.1 acres. These indicate that the neighboring property owners were aware of the proposed use of the subject property.

Finally, I am enclosing a copy of a Summation of Expenditures by Westchester on the proposed development all made since December of 1982. These include the financing of the property which was obtained in reliance on the vesting of the record plat and on the subsequent availability of sewer hook-ups.

Very truly yours,

John B. Gontrum

JBG/msw
enc.
cc: C. Victor McFarland, Esquire with enclosures
Mr. Walter Stefanowicz

85-

LAW OFFICES
McFARLAND, WEINKAM, O'CONNELL & MASTERS
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CATONSVILLE, MARYLAND 21228-5029

C. VICTOR McFARLAND
LOUIS A. WEINKAM, SR.
THOMAS J. O'CONNELL
KENNETH A. MASTERS

TELEPHONE
AREA CODE 301
788-5500
744-3858

July 6, 1984

ZONING DEPARTMENT

Arnold Jablon, Esquire
Zoning Commission of Baltimore
County, Maryland
County Office Building
Towson, Maryland

Re: Petition for Special Hearing
Sec. 500.7
Westchester Part of Plat 4, Sec. 2
The Stefanowicz Corporation

Dear Mr. Jablon:

Enclosed is a copy of the Defendants' Memorandum of Points and Authorities dated August 18, 1981, filed in Hope vs. Baltimore County, filed by the Office of Law and signed by the County Solicitor and John Austin, Assistant County Solicitor. I referred to and read from pages 6, 7 and 8.

At the hearing, I intended to read from the enclosed treatise that is not titled and unsigned, given to me by the late Giles Parker, member of the Board of Appeals. I wanted to read pages 2 and 3 as part of my argument, until I saw the newspaper reporter taking notes. I did not get the appendix referred to from Mr. Parker.

The point in the treatise is that the Office of Zoning and Planning has been considering zoning matters as subdivision matters. In spite of Bill 100 referring to itself 11 times as a zoning regulation, the only hearing in DR Zones is before the CRG despite the fact that it is a "floating zone".

This interpretation keeps lawyers and Courts out of what they consider their domain.

McFARLAND, WEINKAM, O'CONNELL & MASTERS

Page 2
Arnold Jablon, Esquire
July 6, 1984

The claim that they have construed Section 101.1 over the last few years in a certain way must be considered in light of their attitude toward zoning, lawyers and Courts. The fact that they have changed a zoning regulation Bill 100 into a subdivision regulation should be a beacon as to the direction their thinking takes.

Very truly yours,

C. Victor McFarland

CVMcF/lp
Enc.
cc: Robert J. Romadka, Esq.
John Gontrum, Esq.
Bill Bauman

DANIEL HOPE, JR., M.D., et al
Plaintiffs
v.
BALTIMORE COUNTY, MARYLAND, et al
Defendants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
IN EQUITY
152/318/107030

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES

Baltimore County, Maryland and the Baltimore County Council, Defendants, by Leonard S. Jacobson, County Solicitor and John A. Austin, Assistant County Solicitor, their attorneys, submit the following Memorandum to assist the Court in its consideration of the issues raised by the Memorandum submitted on behalf of the Plaintiffs in these proceedings. These issues arise from the preliminary motions filed on behalf of these Defendants, pursuant to Rule 322 of the Maryland Rules of Procedure, and the issues presented by said motion have also been raised in a demurrer filed on behalf of the remaining Defendants, Victor Frenkil, Walden Associates and Victor Development Company. This Memorandum will address the issues presented in the same order as they were presented in the Plaintiffs' Memorandum.

1. Can an agency of the county government be named as a party and defendant other than Baltimore County, Maryland.

The Plaintiffs' Memorandum fails to address the direct holdings of the Court of Appeals in the case of County Council for Montgomery County v. Supervisor of Assessments of Montgomery County, 274 Md. 116 (1965). In that case the Court of Appeals dismissed a suit filed in the name of the County Council for Montgomery County in the following language:

"Accordingly, we conclude that it is the corporate entity of Montgomery County, Maryland, so known in its charter, which is vested with the right of appeal under Article 81, Section 256(a) in lieu of the prior corporate entity, the County Commissioners of Montgomery County. .... For purposes of

-1-

this opinion we need go no further than to say that it is necessary that the appeal be maintained in the name of the corporate entity. Since the County Council is not the corporate entity an appeal may not be maintained in its name."

Like Montgomery County, Maryland, Baltimore County, Maryland has adopted the charter form of government, and in its charter, specifically Section 103, it is stated that the corporate name shall be Baltimore County, Maryland. The powers of local home rule as established by the voters of Baltimore County in Section 101 of the Charter vested the powers in the name of the body corporate and politic, Baltimore County, and delegated the exercise for those powers pursuant to Section 102 to the appropriate agencies as set forth in the Charter. However, the Charter does not establish any separate entity known as the County Council but simply designates the County Council as the legislative agency of the body corporate. Accordingly, the County Council of Baltimore County at all times exists only as an agency of the body corporate which has no existence independent and apart of the body corporate itself. Further, for the purposes of the instant litigation, a declaratory decree directed to Baltimore County, Maryland would afford the Plaintiffs full and complete relief in that such an order could hardly be disregarded by the agents or elected officials of Baltimore County. For these reasons it is respectfully submitted that the inclusion of Baltimore County Council as an additional party is unnecessary and improper in that the County Council does not have a legal existence separate and apart from that of the body corporate and politic, Baltimore County, Maryland.

2. Standing

Baltimore County, Maryland, based upon a subsequent review of the exhibits attached to the original Bill of Complaint, acknowledges that the Petitioners, in the Bill of Complaint, have met their burden of establishing

-2-

standing as a prima facie matter, sufficient to entitle them to go forward to the merits of the case. Baltimore County does not, however, concede that the Plaintiffs can establish at trial all of the required elements of standing sufficient to entitle them to the relief which they seek. Such matters, however, are properly left to the merits of the instant case and need not be considered further by the Court at this time.

3. The instant case is barred by the doctrine of res judicata.

The previous case of Daniel Hope v. Baltimore County, et al, 288 Md. 656 (1980) was a final decision which determined that the Plaintiffs had incorrectly relied upon the provisions of Section 22-38 of the Baltimore County Code in noting a direct appeal to the Circuit Court for Baltimore County from an adverse decision of the Planning Board of Baltimore County. Having failed to preserve their right to appeal to the Board of Appeals, as the Court of Appeals decided that they must do, the Plaintiffs were barred from challenging the decision of the Planning Board in approving the subdivision plat of the developer. Thus, it is respectfully submitted that this decision cannot be collaterally challenged in an equity proceeding such as has been presented in the instant case. This point was clearly decided by the Court of Special Appeals in the case of Davis v. Frederick County Board of County Commissioners, 25 Md. App. 68, 334 A. 2d 165 (1975). In that decision Judge Davidson, speaking for the Court, discussed in detail the subject of res judicata in the following language:

"The doctrine of res judicata is designed to insure that litigation is brought to an end and to prevent harassment of an adversary by a multitude of actions. In Maryland the doctrine of res judicata, or estoppel by judgment, consists of two branches, direct estoppel by judgment and collateral estoppel by judgment. Stirling v. Local 438, 207 Md. 132, 140, 113 A. 2d 389, 393, cert. denied 350 U.S. 875, 76 S. Ct. 119, 100 L. Ed. 773 (1955). The doctrine of direct estoppel is predicated upon the policy of the English common law that once a given matter becomes the subject of litigation

-3-

in and of adjudication by a court of competent jurisdiction, the parties must bring forward their whole case and may not subsequently reopen the same subject of litigation in respect of another matter which might have been but was not brought forward". (Citing cases).

The Court in Davis went onto hold that the appropriate test for comparing causes of action for the purposes of res judicata is whether there has been a "single wrongful invasion of a single primary right." Applying this test to the facts of that case, the Court of Special Appeals held that:

"It is apparent that neither the passage of the Enabling Act, if improper, or the passage of the P.U.D. Ordinance, if improper, or a combination of both, if improper, constituted a single wrongful invasion of the homeowner's primary right to be free from the intrusion of an unlawfully established planned unit development adjacent to their homes. Whether the harms suffered by the homeowners was due to the alleged invalidity of the Enabling Act or to the alleged invalidity of the P.U.D. Ordinance or to both, the harm for which they sought redress was the same. The same cause of action in both suits being the same, the doctrine of direct estoppel by judgment is applicable. The judgment in the original suit constitutes an absolute bar to the second and is conclusive, not only as to matters which were litigated in the earlier case, but as to all matters which would have been litigated."

Applying this holding to the case at bar, it is clear that the homeowners in the instant case, all of whom are identical to the Plaintiffs in Hope I, continue to seek redress for the single wrongful invasion of what they believe to be their primary right to be free from the proposed intrusion of the garden apartment development as set forth in the original subdivision plat. In this suit they are seeking exactly the same relief from exactly the same harm, and thus in the case at bar, like the Davis case, the doctrine of direct estoppel by judgment is applicable. The Plaintiffs have presented no other authority which suggests that a different result should obtain.

The Plaintiffs have, however, suggested that the doctrine of res judicata, and the subdoctrines outlined in the Davis case should not apply to the decision of an administrative agency. In so doing, the Plaintiffs concede that the purpose of this law suit is to seek to relitigate the question

-4-

of the propriety of the Planning Board's approval of the subdivision plat in question. This is precisely what the decision in Hope I said that they could not do, having failed to properly appeal from the Planning Board's decision. What was finally adjudicated in Hope I was the question of their right to seek a review of the Planning Board's action, and it is irrelevant whether or not the merits of the Planning Board's decision was ever reached by the decision in Hope I, for the result is unchanged. The Defendants dispute that the Court's ruling in Hope I was only on a preliminary matter, but rather it went to the fundamental jurisdiction of the Circuit Court for Baltimore County to hear the appeal under the provisions of Section 22-38 of the Baltimore County Code. Further, the Court of Special Appeals of Maryland has clearly decided that an unreversed final decision of a zoning board passed in the exercise of its discretion based upon issues of fact or mixed issues of law and fact are fully binding upon the parties to the cause as to all issues determined therein. See Board of County Commissioners of Cecil County v. Racine, 24 Md. App. 435, 332 A. 2d 306 (1975). The Planning Board's decision in approving the subdivision plat was made in the exercise of its discretion based upon mixed issues of law and fact, and having now become an unreversed final decision is not subject to collateral attack in these proceedings. See Board of County Commissioners v. Racine, supra. The mere fact that the Plaintiffs earnestly sought appellate review of the Planning Board's decision and chose the incorrect forum in which to present their case, although lamentable, is not a ground for allowing them to relitigate in an Equity proceeding, the same issues that were resolved in Hope I. It is respectfully submitted that the res judicata effect of Hope I is sufficient to completely bar the Plaintiffs from receiving any of the relief sought in the instant Bill of Complaint.

4. The re-zoning of the subject property has rendered the issues raised by the Plaintiffs moot.

-5-

The Comprehensive Zoning Map of 1980 reclassified all of the subject property, and a substantial portion of the property surrounding it, to a zoning classification of DR 2. See Exhibit A attached. This re-zoning "downshifted" the previous zoning on the property which previous zoning permitted a higher density of development (DR 3.5 and 5.5). It is under these prior zoning classifications that the Planning Board granted its approval of the subdivision plan, and the number of units designated on said plan were based upon computations resulting from the then existing zoning classification. The current zoning classification, which permits a fewer number of units to be developed on the property, obviously requires the submission of new development plans in that the same total number of units can no longer be developed consistent with the new zoning classification. It is beyond question that a landowner enjoys no vested rights to a particular zoning classification unless and until he has taken appropriate steps to vest his right to the uses permitted under the zoning classification. The test for vesting has been stated many times by the Court of Appeals, most succinctly in Steuart Petroleum Company v. Board of County Commissioners of St. Mary's County, 276 Md. 435 (1975), wherein the Court stated the test to be that which it had previously enunciated in People's Counsel v. Public Service Commission, 259 Md. 409, 270 A. 2d 105 (1970) and Rupp v. Earl H. Cline & Sons, 230 Md. 573, 188 A. 2d 146 (1963) as being:

"[A] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as a commencement of a building; begun with the intention and purpose then formed to continue the work until the completion of the building".

Specifically, in the Steuart Petroleum case the Court rejected the argument that the acquisition of permits, the expenditure of large sums of money on architectural and engineering designs and even the pouring of six concrete footings was not sufficient to vest the zoning for a refinery that

-6-

would cost approximately $160,000,000 to construct. Similarly, the Court of Appeals held in County Council for Montgomery County v. District Land Corporation, 274 Md. 691 (1975) that,

"... A building permit creates no vested right in an existing zoning classification unless substantial construction had been undertaken in reliance thereon (citing cases) and that possession of a building permit, taken together with the payment of a high price and reliance on existing zoning, and with substantial expenditures for architectural fees creates no vested right in the absence of actual construction (citations omitted)."

Applying these holdings to the case at bar it is clear that the developer has acquired no vested rights to his previous zoning classification (DR 3.5 and 5.5) and if the property is to be developed it must be developed under its current zoning classification. Because this downzoning will permit fewer apartment units than those designated on the subdivision plat previously approved by the Planning Board, the developer will be required to submit a new subdivision plan to the Planning Board for its approval. Whether or not the developer in such a case would have a need to exercise the options given to him under the provisions of Bill No. 100 or any other provisions of the subdivision rules and regulations of Baltimore County, will be a matter left up to the developer. Accordingly, whether or not any of the challenged provisions of Bill No. 100 will in any way be utilized in the future in a way that will injure the Plaintiffs, is a matter that at this point, is speculative, at best, and one which is not yet ripe for a judicial determination. For these reasons, it is respectfully submitted that unless and until the developer determines to submit for approval a new subdivision plan requiring the use of the clustering concepts available under the provisions of Bill No. 100, the propriety of such provisions is a matter that is not before the Court at this time and, therefore, should not be decided. Because the developer can no longer use the subdivision plan that was approved by the Planning Board it is not necessary for this Court to adjudicate the legal correctness of the Planning Board's decision in approving

-7-

such a plan.

The Plaintiffs go on to argue that the developer may, at some future point in time, try to argue that the provisions of Section 103 of the Zoning Regulations of Baltimore County will in some way "grandfather" or vest his right to develop under the previously approved subdivision plan. A copy of Section 103 is attached hereto as Exhibit B, and nothing contained therein in any way gives a developer vested rights to develop under a plan approved under a previous zoning classification. To the contrary, Section 103 merely provides that those persons who had secured subdivision approval prior to the adoption of the regulations themselves, many years ago, could continue to develop under the previously existing zoning regulations. There is no language in Section 103 nor any of the other zoning regulations of Baltimore County that would extend to a developer the right to develop under a previously approved subdivision plan in the face of a downzoning of the property. Further, even if such language were contained in Section 103 it could not stand in the face of the clear holding of the Court of Appeals concerning vesting set forth above. In summary, the Plaintiffs' fears concerning Section 103 simply will not be realized in that the developer failed to meet the test for vesting, as set forth by the Court of Appeals and, therefore, must develop their property in conformity with the restrictions placed upon it by the current zoning classification and not by the zoning classification under which their original subdivision plat was approved.

5. The Plaintiffs are not entitled to maintain this case in its current posture.

The last three issues raised by the Plaintiffs, when taken together, consists of arguments in support of the proposition that the Plaintiffs should be entitled to present, in a bill in Equity the complaints that should have properly been presented to the Board of Appeals. In order to establish jurisdiction, the Plaintiffs additionally argue that their prayers for declara-

-8-

atory relief on constitutional grounds are sufficient to vest jurisdiction in this Court to adjudicate the factual correctness of the Planning Board's action. As has been argued previously herein, judicial review of the merits of the Planning Board's decision has been foreclosed by the decision of the Court of Appeals in Hope I. It is respectfully urged, therefore, that the res judicata effect of the decision Hope I, therefore, bars this Court from granting the prayers for relief set forth in subparagraphs b, c, d, e, h, i and j of the Plaintiffs' Bill of Complaint. These prayers for relief seek a judicial review of the Planning Board's decision, which for the reasons previously presented herein, is foreclosed by the decision in Hope I.

The Plaintiffs' additional prayers for declaratory relief are contained in paragraphs a, f and g of the Bill of Complaint and it is respectfully submitted that these prayers for declaratory relief have been rendered moot by the downzoning of the property that occurred with the adoption of the Comprehensive Zoning Maps of 1980. With respect to the claims for injunctive relief contained in Paragraph i, this relief is not necessary in view of the fact that the developer cannot now use building permits for sewer allocations which were issued as a result of the previous subdivision plat. Accordingly, the downzoning of the property has rendered moot the request for declaratory and injunctive relief sought by the Plaintiffs in that these requests all relate to the previous subdivision plan that was based upon the previous zoning. Further, in order to have standing to seek the declaratory relief prayed in connection with Bill No. 100, the Plaintiffs must show that they will be adversely affected by the provisions of Bill No. 100 in question. This they cannot do because the particular characteristics of the previous subdivision plan which relied on Bill No. 100, may or may not be utilized again in any future development plan that is submitted with respect to the subject property. Rather than undertake a review of the constitutionality

of Bill No. 100 on the face of a hypothetical application of its provisions to a development that may never be pursued, this Court should dismiss these proceedings until such time as a proper case is presented to this Court for its determination.

Section 3-409 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, part of the Declaratory Judgment Act, specifically provides in Subsection (a) as follows:

> "... A court may grant a declaratory judgment or decree in a civil case if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if: (1) an actual controversy exists between contending parties; ..."

Clearly, this section contemplates the existence of an actual ongoing controversy between the contending parties to the declaratory judgment proceedings. It has been held, however, that the courts have discretion to refuse to grant declaratory relief where it would not serve a useful purpose or terminate a controversy. See Hamilton v. McAuliffe, 277 Md. 336, 353 A. 2d 643 (1977), Mayor and City Council v. Seabolt, 210 Md. 199, 123 A. 2d 207 (1956), Brohawn v. TransAmerica Insurance Company, 276 Md. 396, 347 A. 2d 842 (1975). Further, it has been consistently held that the discretionary denial of declaratory relief is proper when there was no justiciable issue or controversy, where the factual foundation for such declaratory relief was speculative, and where the requested declaration might never be necessary. See Hamilton v. McAuliffe, supra, Lucas v. Mercantile Safe Deposit and Trust Co., 29 Md. App. 633, 350 A. 2d 156 (1976). Therefore, it is clear that it is appropriate for a court to decline to render a requested declaration when there exists no actual controversy between the parties and when the factual basis for the declaratory relief is, as is in the case at bar, speculative or hypothetical. In the instant case the requested declarations concerning Bill No. 100 seek a declaration of those provisions that relate to a subdivision plan that cannot now be the

subject of future development. Any future plans for development of the property cannot be undertaken under the old plan and future use or development of the property has not yet been formulated by the developer. Accordingly, the instant litigation does not present to this Court an actual controversy between the Plaintiffs and the developer or Baltimore County, and, therefore, in the exercise of the discretion vested in this Court under Section 3-409 the requested declaratory relief should properly be denied.

CONCLUSION

For the reasons stated the Defendants Baltimore County, Maryland and the Baltimore County Council respectfully request that the Motion Raising Preliminary Objection be granted and that the within Bill of Complaint be dismissed with costs to be assessed against the Plaintiffs.

Respectfully submitted,

LEONARD S. JACOBSON
County Solicitor

JOHN A. AUSTIN
Assistant County Solicitor
Messanine - Court House
Towson, Maryland 21204
494-4420
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this 7th day of August, 1981, copies of the foregoing Defendants' Memorandum of Points and Authorities were mailed, postage prepaid, to C. Victor McFarland, Esquire, 920 Frederick Road, Catonsville, Maryland 21228, Attorney for Plaintiff, and to Mark Pollak, Esquire, 1100 Charles Center South, Baltimore, Maryland 21201 and to Joel J. Feinberg, Esquire, 36 South Charles Street, 1100 Charles

Center South, Baltimore, Maryland 21201.

JOHN A. AUSTIN
Assistant County Solicitor

From a background of extensive experience in representing clients in zoning matters (mostly Protestors), added to over nine years' experience as minority member of the County Board of Appeals, I feel that I have developed sufficient knowledge of zoning matters to justify my reaching certain conclusions. The County Board of Appeals is appointed by, is responsible to, and is indeed a part of the Legislative Branch of Baltimore County Government, as represented by the County Council. I have tried to limit the length of this report, but I have materials in my files to support and document any statements of fact or opinion made herein.

It is an established principle that all zoning laws are in derogation of a land owner's common-law rights in the use of his property and must, therefore, be strictly construed and viewed with a suspicious eye. In view of the fact that almost all zoning laws are based upon planning concepts, it is well to know who is doing the planning and impelled by what motives or theories.

It must also be recognized that people generally are opposed to change, especially in growing communities like Baltimore County. It has been said that "Everyone who moves to Baltimore County wants it to stay exactly the same as it was as of his date of arrival." This is nothing new, as has been said by John Steinbeck in "American and Americans" - "It is possible that the first colonist on these shores, as soon as he got the seaweed out of his boots, turned and shouted toward the old country, 'No more now - that's enough!'". Proper zoning and reasonable, orderly development of any area must take into consideration all points of view and come to a balance.

Baltimore County, prior to the adoption of Bill 100 and its procedures in the new zoning code, had one of the finest set of zoning laws and regulations in the United States, and this is on the authority of real experts, nationally famous in the field. One of the reasons for this is the fortunate circumstance that Baltimore County has no incorporated towns or villages, each with its own separate zoning code, as is the case in most parts of the United States, with resulting confusion.

Until 1970, Baltimore County zoning was proceeding under an adequate plan of development with a master plan and in accordance with established procedures, under rules laid down by the Courts and administered by the Zoning Commissioner, acting with the advice of the Planning Board and, at least supposedly, the Planning Staff. Property owners were protected by the right of an appeal to the County Board of Appeals, which was deliberately and intentionally cut up by the County Charter as an agency of the Legislative Branch of the Baltimore County government, its members appointed by the County Council, not by the County Executive, and its hearings and deliberations conducted under quasi-judicial rules of evidence and procedure; although its decisions, which have the force of law, are legislative enactments and not judicial decisions. Its decisions are based on a thorough hearing of the facts and the consideration of all sorts of testimony, expert and otherwise, in open hearing with a complete stenographic record made of each case. On the contrary, the new law provides all sorts of proceedings in which the Planning Board and Planning Staff have been given legislative powers by Bill 100. I do not believe the County Council was fully aware of this when this Bill was presented to them. This Bill was not prepared by nor even referred to the Office of the County Solicitor, which under the Charter is the Legal Department of the County Government, and which advises both the County Council and the County Executive. This Bill, with all of its ramifications, was prepared by the Planning Staff in its own "ivory tower" and presented to the County Council almost as a fait - accompli. It was amended in some detail by the Council without adequate study or hearing any substantial opposition to any of its provisions.

A thorough study of this Bill 100 and the Amendments which have now been proposed thereto, will be found in "Appendix A," attached hereto, with particular reference to Section 30. of page 111, which was added as an afterthought. Coupled with Section 130 which provides for "Fixes," the effect, if not the intention, of these provisions is to confine the

use of much of the land in Baltimore County to large developers and gives the small property owners no comfort whatever. I refer again to "Appendix A" for details of these matters, and pause only to point out that under these provisions we are liable to have commercial development, high-rise apartments, and public housing for the indigent (a form of built-in slum) almost anywhere in Baltimore County that the Planners and the large developers care to have them.

II

It has been said, "The deepest sin against the human mind is to believe things without evidence." (Thos. H. Huxley); and further, it was said by Abraham Lincoln that, "You can't fool all of the people all of the time." What I am specifically referring to is the continued claims of the Planners that the recent changes in the law were made by experts after fair and adequate public hearings and, hence, should never be criticized. The Courts have held that "A public hearing contemplates a fair and impartial hearing, at which competent evidence will be placed before a fair and impartial tribunal." That I mean can be exemplified by the following facts:-

The Court of Appeals of Maryland in the case of Mier vs. Whitney on April 9, 1970, stated as a part of its opinion:

> "This case was thoroughly and carefully tried before the Board. There were seven full days of testimony with a transcript of over 1,050 pages with some 16 documentary exhibits - 26 filed by the petitioners and 20 by the protestants. The expert testimony produced by both sides was given by well qualified and well known experts. The opinion of the Board, filed on July 2, 1968, consists of some nine printed pages in the Record Extract and is a carefully considered opinion. The opinion of the lower court is also carefully considered, well written and has been most helpful to this Court. It consists of sixteen printed pages in the Record Extract. Indeed, the analysis of the substantial record in the case by the lower court in its opinion is so accurately and completely done that we shall adopt the statement of the facts as given in the lower court's opinion as our statement of the facts in this opinion for the Court. This Court stated the facts as follows: ..."

This is an almost typical case to illustrate the type of consideration given petitions for changes in zoning classifications under the old law. Compare this with the public hearing procedure "Ground Rules" prepared by the Office of Planning and Zoning for public hearings conducted by the Planning Board:- "Time limit for oral comment at the hearings will be five minutes;" and compare with the public hearing procedures as established by the rules of the County Council for its public hearings on the new zoning maps:- "Time limit for oral comment at the hearings will be five minutes. Individuals with several issues may be given additional time to complete their comments. A bell will be rung at the end of 4½ minutes to notify the speaker that he has thirty seconds to conclude his remarks. The bell will be rung again at the end of five minutes, ending the speaker's remarks." If such procedures come within any acceptable definition of a fair and impartial hearing, I have been unable to find any authority to this effect in the reported cases. As a matter of fact, the County Council hearings were conducted in an atmosphere of unthinking emotionalism, rowdyism, demonstrating with signs and banners, threats, and the shouting down of anyone in opposition to those creating the disturbance. In a similar case to this in another jurisdiction the Court said, "Unfortunately the atmosphere of the proceeding was not conducive to calm deliberation, and organized bus loads of the angry property owners filled the hearing room and regularly interrupted witnesses and counsel by booing and hissing or applauding." (American University vs. Prentis 333 F., Supp. 357). In another case, the Court found that a resolution had been passed "under the impact of a completely committed organized audience reaction." (Certain-teed vs. Paris Township, 351 Ill. 43). In both of these cases and many others, the courts have determined that such circumstances obviously precluded any requirement for a fair and impartial public hearing and that any decisions made under those circumstances are found to be arbitrary and capricious. The above case can almost be given as a description of some of the public hearings held prior to the adoption of the new zoning maps under Bill 100.

It is also a fact that certain members of the Planning Staff approved or abetted the sort of situation described above, all the time meeting privately with groups and committees of large developers in the County and consulting them as to what the contents of the law and the maps should be. Neither Baltimore County nor any municipality can put up with this sort of thing for long without surrendering to government by uproar and demonstration rather than by normal legislative and judicial processes.

Determination as to zoning and rezoning of individual pieces of property are legislative matters to be determined as a result of quasi-judicial proceedings. These proceedings are in practical effect often adversary proceedings similar to a law suit between disputants whose rights must be determined by the courts. On the contrary, the Planners seem to be of the opinion that they should be in a position of big brother who will tell the citizens of Baltimore County where and when to live or engage in business. They seem to take it as a personal affront that when any of their decisions are challenged it is usually done by a citizen represented by a lawyer. In fact, it has been stated by one prominent member of the Planning Staff in support of Bill 100 that "We are going to take the lawyers out of zoning." This is almost as outrageous as the quotation from Shakespeare in Act II of "Henry IV," "The first thing we do, let's kill all the lawyers."

All of the above are not intended to be an out-and-out criticism of all of the estimable ladies and gentlemen comprising the Planning Board; but a survey of the Minutes of the Planning Board's, which would take up too much space for this document, indicates primarily that they have hardly ever disagreed with, much less failed to approve, any suggestion made by the Planning Staff; and I consider it to be one of the functions of the Planning Board, appointed by the County Executive and not by the County Council, to protect the property owners of Baltimore County from "The Planners" when necessary and, believe me, it is a necessity! I might add that I have always felt that this was also one of the functions of the Zoning Commissioner and the County Board of Appeals.

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MAY 17 AM

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

May 17, 1984

Honorable Donald P. Hutchinson,
County Executive
Wessanine - Court House
Towson, Maryland 21204

Honorable Ronald B. Hickernell
County Countil of Baltimore County
Second Floor - Court House
Towson, Maryland 21204

Ted Zaleski, Director
Office of Permits & Licenses
111 W. Chesapeake Avenue
Towson, Maryland 21204

✓ Arnold Jablon, Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Norman E. Gerber, Director
Office of Planning & Zoning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Westchester
Opinion #1-84

Gentlemen:

This Office has received inquiries from all of you concerning the status of the development known as Westchester and particularly the status of that Plat entitled "Amended Plat of a Portion of Plat 4, Section 2, Westchester" recorded among the Plat Records of Baltimore County in Plat Book EHK, Jr 41, folio 16 on March 14, 1977 (the "Plat").

The controversy surrounding this development came to the surface when the Developer, The Stefanowicz Corporation, applied for building permits to construct approximately 108 apartment units as shown on the Plat. At the time this Plat was originally approved by the Baltimore County Planning Board and at the time of its recordation, the subject property, which contains approximately 18.9 acres, was zoned D.R. 5.5. A new comprehensive zoning map for the First Councilmanic District was adopted by Bill #184-80, effective December 11, 1980. By that new map the subject property was downzoned to D.R. 2 and D.R. 3.5.

The ultimate question to be decided is what effect, if any, does the 1980 Comprehensive Rezoning (from D.R. 5.5 to D.R. 2 and D.R. 3.5) have on the developer's ability to proceed with his previously approved and recorded Plat.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edith T. Eisenhart, Administrative Secretary - Board of Appeals — Date: May 15, 1985

FROM: Malcolm F. Spicer, Jr., County Attorney

SUBJECT: Westchester, Inc. CBA #84-132 & 85-7-SPH

I note from your Certificate of Notice, dated May 14, 1985, that you have incorrectly listed Paul Snyder as an attorney for the Protestants. Please be advised that Mr. Snyder did appear at an early hearing in this regard in his capacity as an Assistant County Attorney representing Baltimore County. Since that time the case has been reassigned and the only names that should appear as attorneys for Baltimore County are Malcolm F. Spicer, Jr., County Attorney and Thomas J. Bollinger, Assistant County Attorney.

Accordingly, I would appreciate your correcting your records and the Certificate.

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

RECEIVED COUNTY BOARD OF APPEALS MAY 17 P 04 E

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 14, 1985

Robert J. Romadka, Esquire and
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Re: Westchester, Inc.
Case #CBA-84-132
& #85-7-SPH

Gentlemen:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court. Also enclosed is an invoice covering the cost of certified copies o necessary documents which must be included in this file. Please remit as indicated on invoice.

Very truly yours,

Edith T. Eisenhart

Edith T. Eisenhart, Adm. Secretary

Enclosures

cc: Westchester, Inc.

May 14, 1985

BILLED TO: Robert J. Romadka, Esquire and
John B. Gontrue, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Cost of certified copies of documents filed in case #85-7-SPH and #CBA-84-132 . . . . . $ 80.00

Westchester, Inc.
NW/S Bathurst Road 95'
E. of Westchester Road
1st District

MAKE CHECKS PAYABEL TO: Baltimore County, Md.

REMIT TO: County Board of Appeals
Room 200 Courthouse
Towson, MD 21204

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
May 14, 1985

C. Victor McFarland, Esquire
1002 Frederick Road
Baltimore, MD 21228

Re: Westchester, Inc.
Cases #CBA-84-132 &
85-7-SPH

Dear Mr. McFarland:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Edith T. Eisenhart

Edith T. Eisenhart, Adm. Secretary

Enclosures

cc: Paul L. Snyder, Jr., Esquire
Malcolm F. Spicer, Jr., Esquire
Thomas J. Bollinger, Esquire

The Westchester Improvement Assoc. Inc

518 St. Johnsbury Road
Catonsville, MD 21228
April 30, 1985

Mr. Donald P. Hutchinson
Baltimore County Executive Officer
Court House Mezzanine
Towson, Maryland 21204

Dear Mr. Hutchinson:

Once again I find myself writing to you concerning our Association's struggle concerning the development known as Westchester Section 2, Plat 4 in Catonsville. This time, however, I feel that I must begin by congratulating you for maintaining the low standards and ideals that the citizens of Baltimore County have, unfortunately, come to expect from the office of the County Executive. Despite several opportunities to exercise integrity and justice, your administration has chosen to continue in the tradition of Spiro Agnew and Dale Anderson and prostitute itself on behalf of developers and at the expense of private citizens.

On March 29, 1985, following two days of testimony, 64 pages of legal memoranda, and four months of deliberation, the Board of Appeals exhibited overwhelming fortitude and courage by reversing earlier decisions by the County Attorney and the Zoning Commissioner and revoking building permits that had been illegally issued. The integrity of the members of the Board of Appeals in this matter is highly commendable. (It is important to note here that the Board of Appeals members are appointed by the County Council and NOT by your staff.)

On April 12, following prompting and encouragement by the County Attorney's office, the developer's attorneys filed a Motion for Reconsideration by the Board of Appeals. Prior to the hearing, representatives of our Association were told that such motions are seldom, if ever, granted. The motion was heard at 9:30 on April 25. At this hearing, the county was represented by Mr. Spicer himself, who had also chosen to submit a Motion for Reconsideration, although he delayed making such a motion until April 24 and delivered a copy to our attorney less than 10 minutes before the hearing was scheduled to begin.

When given the opportunity to argue his position Mr. Spicer, of course, argued the side of the developer. This, despite the fact that during the original hearing in November, the county was represented by a junior member of the County Attorney's staff, offered no verbal testimony, declined all opportunities to cross-examine witnesses, and declined to submit a memorandum. Then, to our astonishment, Mr. Spicer freely admitted that the "county's interest is in protecting the developers." This attitude has certainly been obvious to anyone who has followed county activities during your administration (witness the recent introduction of Bill 45-84), but for exhibition of outrageous audacity. To make this situation even more outrageous, Mr. Spicer serves as the legal advisor to the Board of Appeals.

Mr. Donald Hutchinson
Baltimore County Executive Officer
Court House Mezzanine
Towson, Maryland 21204

1 Roeder Court
Baltimore, Md 21228
April 26, 1985

Re: Westchester

Dear Mr. Hutchinson:
Given the following circumstances, what conclusions would you reach?

1. The Board of Appeals of Baltimore County rarely grants a Motion for Reconsideration.
2. The Board of Appeals granted a Motion for Reconsideration in the Westchester case, despite no allegation in the motion of fraud, mistake or irregularity.
3. Mr. Gontrum, the attorney for the developer, has never before filed a Motion for Reconsideration despite all his years of arguing cases before the Board of Appeals.
4. Mr. Gontrum filed such a motion in the Westchester case.
5. The County Attorney is the legal advisor to the Board of Appeals.
6. The County Attorney was also a party to the Westchester case, on the side of the developer.

RECEIVED COUNTY BOARD OF APPEALS APR 29 A 11 03 E

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 7, 1985

Robert J. Romadka, Esq.
John B. Gontrum, Esq.
809 Eastern Boulevard
Baltimore, MD. 21221

Re: Westchester, Inc.
Files #85-7-SPH & CBA-84-132

Dear Sirs:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Jane Holmen, Secretary

Encl.
cc: Westchester, Inc.
C. Victor McFarland, Esq.
Paul L. Snyder, Jr., Esq.
Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.
John Reisinger
Joseph Nolan
Ted Zaleski
Arnold Jablon
Jean M. H. Jung
James Dyer
Norman Gerber
James Hoswell
Hon. R. B. Hickernill

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 25, 1985

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Re: Westchester, Inc.
Files #85-7-SPH & CBA-84-132

Dear Sirs:

Enclosed herewith is a copy of the Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart, Adm. Secretary

Enclosure

cc: Westchester, Inc.
C. Victor McFarland, Esquire
Paul L. Snyder, Jr., Esquire
Malcolm F. Spicer, Jr., Esquire
Thomas J. Bollinger, Esquire
John Reisinger
Joseph Nolan
Ted Zaleski
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James C. Hoswell

LAW OFFICES
McFARLAND, WEINRAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1002 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

C. VICTOR MCFARLAND
LOUIS J. WEINRAM, SR.
THOMAS A. O'CONNELL
KENNETH H. MASTERS

TELEPHONE AREA CODE 301 788-1300 744-3050

April 19, 1985

Board of Appeals of Baltimore County
Court House
Towson, Maryland 21204

Re: Case No. 85-7-SPH
Westchester, Inc.

Gentlemen:

Enclosed please find the original and two copies of an Answer to Motion for Reconsideration and For Speedy Hearing, together with Points and Authorities and a Judgment, to be filed in the subject case.

Very truly yours,

C. Victor McFarland

CVMcF:fd
Encls.
cc: John B. Gontrum, Esq.
Michael McMahon, Assistant County Solicitor
William J. Bauman
Thomas O'Lear

RECEIVED COUNTY BOARD OF APPEALS APR 22 A 8 09

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 28, 1985

Robert J. Romadka, Esquire and
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Re: Case No. 85-7-SPH and
Case No. CBA-84-132
Westchester, Inc.

Dear Sirs:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled matter.

Very truly yours,

Edith T. Eisenhart, Adm. Secretary

Enclosure

cc: C. Victor McFarland, Esquire
Westchester, Inc.
Paul L. Snyder, Jr., Esquire
Thomas J. Bollinger, Esquire
Malcolm F. Spicer, Jr., Esquire
Norman E. Gerber
James C. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
John Reisinger
Joseph M. Nolan
Ted Zaleski, Jr.

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C. VICTOR MCFARLAND
LOUIS J. WEINRAM, SR.
THOMAS A. O'CONNELL
KENNETH H. MASTERS

TELEPHONE AREA CODE 301 788-1300 744-3050

February 8, 1985

Lawrence Schmidt, Esquire
Chairman
Westchester Panel
County Board of Appeals
Court House
Towson, Maryland 21204

Re: Westchester Subdivision
Board Case No. 85-7-SPH

Dear Mr. Chairman:

Enclosed is the Appellants Memorandum filed on behalf of William J. Bauman et ux, et al in the case. Unfortunately the commercial reproduction company had photocopy machine problems and you will find marks on the pages.

I have sent it any way because of the time constraints in this case. In addition to same time limits, we did not complete each page in some instances.

I hope that the form is satisfactory.

Enclosed are two additional copies for the other members of the Board.

Very truly yours,

C. Victor McFarland

CVMcF:law
enc.
cc: John B. Gontrum, Esquire
Malcolm Spicer, County Attorney

RECEIVED COUNTY BOARD OF APPEALS FEB 13 P 1 33

LAW FIRM
Romadka, Gontrum, Hennegan & Foos
GERMANIA FEDERAL BUILDING
800 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES B. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

January 27, 1985

Board of Appeals of Baltimore County
Court House
Towson, Maryland 21204

Re. Case No. 85-7-SPH
Westchester, Inc.

Dear Members of the Board:

Attached please find the Memorandum of the Petitioner Westchester, Inc. We certainly do appreciate the Board's patience and indulgence in waiting so long for our Memorandum in this case. Hopefully, it will be of some service to you.

It is my understanding that the memoranda in this case were to be filed contemporaneously without answers and rebuttals. I have not seen any other memoranda in producing this one and do not believe that any other has been filed. It is my understanding, however, that Mr. McFarland still intends to file one on behalf of the Association.

My client is most anxious to have this matter concluded as he is still paying financing charges while the matter is pending. Accordingly, we would ask for a prompt resolution for this matter even though we recognize that the delay to this point has been that of counsel in preparing their memoranda.

Thank you for your courtesy and consideration of this matter.

Very truly yours,

John B. Gontrum

enclosure
cc. C. Victor McFarland

RECEIVED COUNTY BOARD OF APPEALS JAN 28 A 9 28

LAW OFFICES
McFARLAND, WEINRAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1002 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

C. VICTOR MCFARLAND
LOUIS J. WEINRAM, SR.
THOMAS A. O'CONNELL
KENNETH H. MASTERS

TELEPHONE AREA CODE 301 788-1300 744-3050

November 6, 1984

Board of Appeals of
Baltimore County
200 Court House
Towson, Maryland 21204

Re: William J. Bauman, et ux, et al v. Westchester
Case No. 85-7-SPH and CBA-84-132

Gentlemen:

Attached hereto are two subpoenas to be issued in the above-referenced case.

Thank you for your cooperation in this matter.

Very truly yours,

C. Victor McFarland

CVMcF/lr
Encs.

RECEIVED COUNTY BOARD OF APPEALS NOV -6 A 11 20

LAW FIRM
Romadka, Gontrum, Hennegan & Foos
GERMANIA FEDERAL BUILDING
800 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES B. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 31, 1984

County Board of Appeals
of Baltimore County
Room 200 Court House
Towson, Maryland 21204

RE: Case No. CBA-84-132
Case No. 85-7-SPH
Westchester, Inc.

Attention: Mrs. Edith Eisenhart

Dear Mrs. Eisenhart:

Please have the Board issue a Subpoena Duces Tecum for Robert Morton, Inspection Division, County Public Works Department, County Office Building, Towson, Maryland to appear at hearing on November 14, 1984.

Your attention in this matter is greatly appreciated.

Very truly yours,

John B. Gontrum

JBG/sjf

Robert Morton
Walter Stefanowicz

Mr. Sheriff:

COST $ 5.00
SUMMONED 147-84 19 84
NOT SERVED _____ 19
REASON NOT SERVED _____

SHERIFF OF BALTIMORE COUNTY
EDWARD BALCOM

Please issue the above summons.

June Holmen, Secretary, Bd. of Appeals

RECEIVED COUNTY BOARD OF APPEALS NOV -4 A 8 08

LAW FIRM
Romadka, Gontrum, Hennegan & Foos
GERMANIA FEDERAL BUILDING
800 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN
CHARLES B. FOOS, III

OF COUNSEL
ALFRED M. WALPERT

October 31, 1984

County Board of Appeals
of Baltimore County
Room 200 Court House
Towson, Maryland 21204

RE: Case No. CBA-84-132
Case No. 85-7-SPH
Westchester, Inc.

Attention: Mrs. Edith Eisenhart

Dear Mrs. Eisenhart:

Please have the Board issue a Subpoena Duces Tecum for Planning Director, Norman Gerber, Court House, Towson, Maryland, to appear at hearing on November 14, 1984.

Your attention in this matter is greatly appreciated.

Very truly yours,

John B. Gontrum

JBG/sjf

cc: Norman Gerber, Planning Director
Walter Stefanowicz

Mr. Sheriff:

COST $ .00
SUMMONED _____ 19
NOT SERVED _____ 19
REASON NOT SERVED _____

SHERIFF OF BALTIMORE COUNTY
EDWARD BALCOM

Please issue the above summons.

June Holmen, secretary, Bd. of Appeals

RECEIVED COUNTY BOARD OF APPEALS NOV -4 A 8 53

LAW FIRM

Ronaldson, Gontrum, Lennon & Fox

CHESAPEAKE FEDERAL BUILDING
809 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN D. RONALDSON
CHARLES E. FOX, III

JOSEPH H. FOREMAN

July 12, 1984

Zoning Commissioner Arnold Jablon
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

RE: Westchester Inc.
Case #85-7 SPH

Dear Commissioner Jablon:

Enclosed please find the photographs with the descriptions noted on the back which were referred to at the time of the hearing on the above captioned case. These pictures were all taken within the last week and indicate some of the improvements on the property. The two groups of pictures indicate separate sewer clean-outs and storm drain inlets for each of the buildings.

Also enclosed are representative copies of purchaser contracts and acknowledgments with respect to the proposed development of an apartment complex on the 8.1 acres. These indicate that the neighboring property owners were aware of the proposed use of the subject property.

Finally, I am enclosing a copy of a Summation of Expenditures by Westchester on the proposed development all made since December of 1982. These include the financing of the property which was obtained in reliance on the vesting of the record plat and on the subsequent availability of sewer hook-ups.

Very truly yours,

John B. Gontrum

JBG/msw
enc.
cc: C. Victor McFarland, Esquire with enclosures
Mr. Walter Stefanowicz

LAW OFFICES
McFARLAND, WALSH, O'CONNELL & MARTIN
LOCH RAVEN OFFICE PARK
CATONSVILLE, MARYLAND 21228-5029

August 3, 1984

Arnold Jablon, Zoning Commissioner
Office of Planning & Zoning
County Office Building
Towson, Maryland 21204

Re: Petition for Special Hearing
W/s, west side of Bathurst Road
First Election District
Case No. 85-7-SPH

Dear Mr. Jablon:

I understand from Mr. Romadka that you have issued a supplement to your Findings of Facts and Conclusions of Law dated July 18, 1984. I also understand from talking to Mr. Romadka that Mr. Romadka has written a letter to you indicating that his client will not proceed with construction while the Appeal is pending before the Board of Appeals.

I have not received a copy of any of the above correspondence, or I would know why a building permit would be approved before the Board of Appeals has an opportunity to determine the matter.

I would appreciate receiving copies at your very earliest opportunity.

Very truly yours,

C. Victor McFarland

CVMcF/lr
cc: Robert J. Romadka, Esq.
John Gontrum, Esq.
Bill Bauman

AUG 6 AM

LAW OFFICES
McFARLAND, WALSH, O'CONNELL & MARTIN
LOCH RAVEN OFFICE PARK
CATONSVILLE, MARYLAND 21228-5029

August 1st 1984

Director of Permits and Licenses
County Office Building
Towson, Maryland 21204

Re: Appeal from the Issuance of Building Permits 61773 through 61777
Westchester, Inc.

Dear Sir:

Enclosed is an Order of Appeal, together with a check in the amount of $75.00 representing the cost of the appeal fee. Please forward it to the Board of Appeals to be heard with an appeal filed from an Order of the Zoning Commissioner by William J. Bauman, et ux., et al.

If you have any questions, please call me.

Very truly yours,

C. Victor McFarland

CVMcF/lr
Encs.
cc: Arnold Jablon, Esq.
John B. Gontrum, Esq.
Malcolm F. Spicer, Jr., Esq.
County Attorney
Phyllis Friedman, Esq.
People's Counsel
Board of Appeals

General Contractors, 600 Washington Avenue, Towson, Maryland
21204

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 1st day of August, 1984, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared C. VICTOR McFARLAND, and made oath in due form of law that the matters and facts set forth in the foregoing Order of Appeal are true to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

(4) Sodor shall determine, in its sole discretion, the manner and method of the grading of the lot, which grading shall be done in accordance with generally accepted grading practices. The size and number of cut slopes, platforms, and drains shall be determined by Sodor and shall be coordinated in a manner satisfactory to Sodor.

(5) After the completion of the grading or backfilling of the property by the Sodor and the assumption of possession by the

The Westchester Improvement Assoc. Inc.

January 9, 1985
618 St. Johnsbury Road
Catonsville, MD 21228
January 4, 1985

John Rosenberger, President
The Westchester Improvement Association
County 618 St. Johnsbury Road
Towson, Catonsville, Maryland 21228

RE: Case No. 85-7-SPH Section 2, Plat 4
Westchester, Inc.
Permits 61773-74-75-76-77

Dear Mr. Rosenberger:

Enclosed please find the photographs with the descriptions noted on the back which were referred to at the time of the hearing on the above captioned case. These pictures were all taken within the last week and indicate some of the improvements on the property. The two groups of pictures indicate separate sewer clean-outs and storm drain inlets for each of the buildings.

Also enclosed are representative copies of purchaser contracts and acknowledgments with respect to the proposed development of an apartment complex on the 8.1 acres. These indicate that the neighboring property owners were aware of the proposed use of the subject property.

Finally, I am enclosing a copy of a Summation of Expenditures by Westchester on the proposed development all made since December of 1982. These include the financing of the property which was obtained in reliance on the vesting of the record plat and on the subsequent availability of sewer hook-ups.

Very truly yours,

John B. Gontrum

JBG/msw
enc.
cc: C. Victor McFarland, Esquire with enclosures
Mr. Walter Stefanowicz

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Zoning Commissioner

Date: June 14, 1984

FROM: Norman E. Gerber, Director
Office of Planning and Zoning

SUBJECT: Westchester, Inc.
Zoning Petition No. 85-7-SPH

In view of the subject of this matter, no comment from this office would be appropriate.

Norman E. Gerber per [illegible]
Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

June 26, 1984

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
809 Eastern Blvd.
Baltimore, Maryland 21221

RE: Item No. 335 - Case No. 85-7-SPH
Petitioner - Westchester, Inc.
Special Hearing Petition

Gentlemen:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

This hearing is required in order to determine whether your client's development is exempt from zoning legislation that was passed subsequent to approvals that were originally received.

At the time of this writing, comments from the members of this Committee were not available. This petition was accepted for filing on June 1, 1984.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

June 18, 1984

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Westchester, Inc.

Location: W/S Bathurst Road 100' N. Westchester Ave.

Item No.: 335 Zoning Agenda: Meeting of 6/12/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

(X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Capt. Joseph Kelly 6-18-84 Noted and Approved: George M. Kegerist
Planning Group / Special Inspection Division — Fire Prevention Bureau

/mb

May 28, 1984

Robert J. Romadka, Esquire and
John B. Gontrum, Esquire
Chesapeake Federal Building
809 Eastern Boulevard
Baltimore, Maryland 21221

Gentlemen:

Please be advised that I am in receipt of an Opinion prepared by the County Attorney, Malcolm F. Spicer, which refers to the Westchester development proposed by your client, Walter Stefanowicz. Because of this Opinion, I feel it necessary that a hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR) be held to determine the effect, if any, of Section 103.1, BCZR, and the principle of vested rights on the property proposed for development.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: Mr. Timothy Kelley, Vice-President
The Westchester Improvement Association, Inc.
5 Dramde Court
Baltimore, Maryland 21228

The Honorable Donald P. Hutchinson
County Executive

The Honorable Ronald B. Hickernell
County Council

Malcolm F. Spicer, Esquire
County Attorney

Mr. Norman E. Gerber, Director
Office of Planning and Zoning

Mr. Ted Zaleski, Jr., Director
Department of Permits and Licenses

IN THE MATTER
OF THE APPLICATION OF
WESTCHESTER, INC.
FOR SPECIAL HEARING
RE BUILDING PERMIT AND
APPLICATION FOR PERMITS
NW/S BATHURST ROAD, 95'
N. OF WESTCHESTER ROAD
1st DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
10/218/85-CG-1483

COUNTY BOARD OF APPEALS
'85 OCT 10 P 12 23

MEMORANDUM OPINION AND ORDER

This case came before the Court on September 17, 1985, the appeal of Westchester, Inc. (Westchester). Westchester appeals altimore County Board of Appeals Opinion and Order dated ch 28, 1985, later confirmed by its Order of May 7, 1985, lowing hearing on Appellant's Motion for Reconsideration.

This case was heard by the County Board of Appeals appeal by Protestants (Appellee) from an Opinon and Order of Zoning Commissioner of Baltimore County which authorized the uance of certain building permits to Westchester. Protestants so appealed the actual issuance of the permits by the partment of Licenses and Permits of Baltimore County.

Although the facts of this case are lengthy and complex, ose central to the dispute are not contested. The dispute involves e development of that subdivision located in the First District Baltimore County known as Westchester. This property was iginally purchased by a predecessor to the Appellant in 1967. e development of the property was initially to include only

FILED OCT 8 1985

single family homes. In 1970, the Baltimore County Council adopted Bill No. 100 which facilitated greater flexibility in residential development through the device of cluster development. Under this Bill, developers were allowed to take unused zoning density from one portion of a development tract and add it to the permitted zoning in another area of the tract.

The previous developer of the Westchester subdivision, the Stefanovics Corporation, utilized the provisions of Bill 100 and gained approval from the Baltimore County Board of Appeals for a development plan. This plan contained an apartment complex which was to be surrounded by single family dwellings. The Board ruled that the final development plan was valid in an order dated October 12, 1973. In 1975, the Stefanovics Corporation negotiated and received approval for a public works agreement. In 1977, an amended record plat was filed which clearly showed the 108 unit apartment complex. The public improvements were completed in October of 1978 and were conveyed to the County by Deed dated April 19, 1979. By 1978, when many of the public improvements had been placed, the single family lots were being sold. The purchasers were aware of the proposed apartment complex as it appeared in the record plat and in fact several purchasers signed a statement attesting to that knowledge.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the zoning of the Westchester property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning has created the current controversy because it raises the issue of whether the record plat of 1977 remains valid in spite of the downshift, if the development plan has vested, then it should be protected against subsequent changes in zoning. Otherwise, the downshift of 1980 renders the development plan void.

Much of the problem arising in this case stems from the developer's inability to obtain the proper sewer allocation. Because the Patapsco Watershed was experiencing a sewer deficiency during this time (the late 70's and early 80's), sewer allocations were difficult to obtain. The needed sewer allocation was granted and then withdrawn as the developer was put on a waiting list. Amidst some apparent confusion, the developer was dropped from the waiting list.

Suit was filed in 1982 in the Baltimore County Circuit Court by the developer to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. On December 1, 1982, an opinion was elicited from the Director of Planning and Zoning which declared that the subdivision development plan vested and reinstated the developer's waiting list status for sewer allocations. Relying on this opinion, Westchester purchased the property from the bankruptcy proceedings which reorganized the Stefanovics Corporation. The sewer allocations were finally obtained in June, 1983. Additionally, the developer obtained utility permits for the subdivision. Further grading work was performed and private utilities were installed under the approved permits during 1983 and 1984. Final building permits were granted to the developer on July 30, 1984. The protestants, the homeowners surrounding the proposed apartment complex, appealed the issuance of the permit to the County Board of Appeals. Although formal opinions of both the County Attorney and the Zoning Commissioner (After a special hearing) determined the subdivision plat to have vested, the County Board of Appeals ruled otherwise.

Thus, as previously stated, the issue in this case is whether the record plat filed in 1977 is vested. Appellant advances several different legal theories in support of its argument for vesting. One theory is that under common law the subdivision record plat is vested. All parties involved in the case have agreed that the proper standard to apply is found in Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972). The Court in Rockville Fuel quoted an earlier case, The Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969), for the general law in regard to 'vested rights' in an existing zoning case:

> in Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

The standard thus contains two prongs: a permit prong and what has sometimes been referred to as a substantial construction prong. In the discussion that follows the Court's quotation of the standard, it is clear that the permit required must be a building permit. Insomuch as no building permits in the present case were obtained until after the land improvements were made, the record

plat of 1977 fails to vest. It does not satisfy the permit requirement. Furthermore, the cases which discuss the substantial construction requirement as to when construction commences, all speak of the actual building or structure involved not preliminary land improvements. For these reasons, the Court agrees with the County Board of Appeals that Appellant's record plat does not vest under common law.

Appellant also argues that the plat vests under two different statutory provisions. The first statutory basis for vesting involves the question of the applicability of a provision of the Baltimore County Code, § 22-68. Section 22-68, in pertinent part, provides:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> . . .
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

There is no question that § 22-68 is currently the law in Baltimore County. The Board of Appeals observed that if the 1977 record plat was governed by § 22-68, then it would be vested. (Opinion p. 7). The Board, however, concluded that

-6-

§ 22-40 of the Code provides that § 22-68 applies only to development plats recorded after the date of the new regulations, June 11, 1982. (Opinion, p. 9.).

Section 22-40 provides:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2).

The Board of Appeals ruled that the clear and unambiguous language of § 22-40 precludes the application of § 22-68 to the Westchester development. Appellees further argue that § 22-68 does not apply because it is a subdivision regulation and thus has no bearing on a zoning question. Appellees notes that Article 3 of Title 22 of the Baltimore County Code is captioned "Zoning" whereas Article 4 (which contains both § 22-40 and § 22-68) of Title 22 is captioned "Development Regulations". Appellees thus argue that § 22-68 insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations. There is nothing implicitly or explicitly in the Code, however, to support this argument. Appellees also argue that zoning is a nondelegatable legislative function, while subdivision control is a delegated administrative function.

The Court acknowledges the differences between the concepts of zoning, planning and subdivision regualtion. See E.g. Board of County Commissioners v. Gaster, 285 Md. 233, 404 A.2d 566 (1979);

-7-

Board of County Commissioners v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 26 (1985). All these cases quote 1 E. Yokley, Zoning Law and Practice § 1-2 (4th ed. 1978) which comments:

> ...[Z]oning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.

There are three integral parts of adequate land (emphasis added). planning, the master plan, zoning, and subdivision.

The caption under Title 22 of the Baltimore County Code confirms this integration: "Planning, Zoning and Subdivision Control". Thus, while the comparison of any of these component parts of land planning may to some degree be likened to comparing apples and oranges, it is clear that they all belong in the same basket. It is thus necessary to consider the articles of Title 22 as an integrated whole, not as subdivided parts existing in isolation.

This requires a close scrutiny of § 22-40 and § 22-68. Section 22-40, captioned simply "scope of regulations", serves to make the new regulations apply to all developments except those which have taken significant steps towards development prior to the date of the new regualtions. The new regulations in these cases are thus primarily intended to be prospective only in order to provide protection to those developments. If read in isolation, however, the general decree of § 22-40 would negate the similar yet more specific protection of § 22-68. There is nothing in

-8-

§ 22-68 to indicate that the protection it offers is to be prospective only. Most importantly, the legislative history of § 22-68 indicates the contrary. It is axiomatic to state that the polestar of statutory interpretation is to ascertain and carry out the real intent of the legislature when it enacts a statute. See E.G. Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979). The legislative history of § 22-68 is thoroughly recounted in an opinion written by the County Attorney which is dated May 17, 1984. The opinion traces the history of several statutory provisions that the County, through the Office of Planning and Zoning as well as the County Council, utilized to provide protection through vesting for subdivision plats in which some steps toward development had been taken. The opinion notes that from 1955 to (at least) 1977, the Office of Planning and Zoning interpretated § 103.1 of the Baltimore County Zoning Regulations to insulate subdivision plats which had received tentative County Board approval from subsequent zoning changes. The effect of this interpretation was to vest the developer's plan. The County Council also passed the Interim Development Control Act, formerly codified at § 22-16 of the County Code, which set forth certain circumstances under which a development would vest. Finally, in 1982, the County Council repealed all previous subdivision regulations and passed the development regulations (which include § 22-68) now in effect. In his opinion, the County Attorney notes that since at least 1977 the Baltimore County Council has chosen to recognize that it takes a substantial expenditure of funds to comply with the various County regulations in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the

-9-

risk of losing his investment by changes in the zoning classification. (Opinion, p. 9). The Opinion further indicates that the County Council purposely chose to change the Maryland line of case law concerning vesting institute less stringent requirements for vesting. (Opinion, p. 9). Noting further details the legislative history of § 22-68, the County Attorney concluded that § 22-68 was intended to apply to plats recorded prior to June 11, 1982, the effective date of the new subdivision development regulations.

This Court agrees with the County Attorney's opinion. The Court finds after considering the background of legislative history and circumstances, that the County Council would not have enacted § 22-68 if it did not intend for it to apply to cases prior to the effective date of the new subdivison regulations that otherwise meet its requirements.

In addition to § 22-68, Appellant argues that § 103.1 serves as a statutory basis for the vesting of the Westchester record plat of 1977. Section 103.1 provides:

> These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Comission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prio to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Comission.
>
> Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with

-10-

> any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.
> (footnotes omitted).

The Court finds that the clear and unambigious language indicates that it was intended to apply only to cases prior to the date of its enactment, 1955. The Board of Appeals, the Zoning Commissioner, and the County Attorney all seem to concur in this assessment. The Office of Zoning and Planning for some reason, however, interpreted § 103.1 as providing vesting protection for developers for some 30 years past the date of enactment (1955). The Court agrees that § 103.1 itself does not serve to vest the record plat of 1977. Any reliance by Appellants on the County's interpretation of § 103.1 only affects the issue of estoppel. The Board of Appeals opinion correctly noted that notwithstanding the incorrect interpretation of § 103.1 by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to Appellant. (Opinion, p. 14).

Under Maryland law, equitable estoppel is defined as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have perhaps otherwise existed, either of property, of contract, or of remedy, as against another parson, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy.

Dixon v. Process Corp., 38 Md. App. 644, 382 A.2d 893 (1978) quoting 3 J. Pomeroy, A Treatise on Equity Jurisprudence § 804 (5th ed. 1941).

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Whether the doctrine is to be applied in a given case is dependent soley upon the particular facts and circumstances of that case. Rodgers v. John, 131 Md. 455, 102 A. 549 (1917). The facts of this case cry out for an application of the doctrine. The Court finds it impossible to accept the conclusion of the Board of Appeals that there was a lack of reliance and no change of position by the developer as a result of the County's assurances that the record plat of 1977 was vested. (Opinion p. 16, 17). Only after extensive negotiations and communications with the County (which concluded in the assurance that the record plat was vested), did Appellant purchase the Westchester property out of bankruptcy. The negotiations were far from casual or informal. The developer filed suit against the County in 1982 and the centerpiece of the settlement of that action was the assurance that the plat with the 108 unit apartment complex was vested. This was set forth in a formal opinion by the Director of the Office of Planning and Zoning.

It should be further noted that the property's zoning density was downshifted in 1980 with no notice to the property owner. Although notice is now required in such cases, it was not in 1980.

The Court is also unable to accept the Board of Appeals' conclusion that equitable estoppel is unavailable to Appellant because of a lack of activity in developing the property. The Board of Appeals itself noted that the sewer allocation process which prevented the developer from securing the necessary hookups "with some justification" blamed for the inactivity from sometime

-12-

in 1979 unti 1982. While the Board ultimately found that the developer did not "actively" seek the allocations, the affirmative action that the developer failed to take has not been revealed by the Board or Appellee.

While it may be true that Appellant might be able to develop the property in some other way consistent with the current zoning, it does not follow that to disallow the vesting of the plat would not still be highly inequitable. The Zoning Commissioner, after a hearing, also concluded in his opinion that the 30 year old interpretation of § 103.1 was incorrect. The Commissioner nonetheless found that Appellant acted in good faith reliance on that interpretation and other assurances by the County. The Commissioner thus ruled that under the circumstances of this case, to make the new interpretation retroactive would be "highly inequitable and oppressive". (Opinion, p. 9).

This Court conludes that in view of the considerable money and effort expended by Appellant by reason of justified, good faith reliance, coupled with the substantial change of position by the developer, the application of equitable estoppel is required in this case.

When a reviewing court examines a factual decision reached by an administrative agency, it must determine whether reasoning minds could reasonably reach that conclusion by direct proof or by permissible inference from the facts and the record before the agency. If the conclusion could be reached then it is based upon substantial evidence and the Court has no power to reject that conclusion. See E.g. Commission on Human Relations v. Washington County Community Action Council, Inc., 59 Md. App. 451, 476 A.2d 222 (1984)

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Furthermore, in applying this substantial evidence test, a court may not substitute its judgment for that of the members of the administrative agency from which the appeal is taken. Bullock v. Pelham Wood apts., 283 Md. 505, 390 A.2d 1119 (1978).

It has been noted, however, that the standard of review for a finding of law is not so limited. While the weight taken by administrative officials is strong and persuasive, it may be disregarded for strong and argent reasons. Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 76 (1985) citing Baltimore Building Construction Trades v. Barnes, 290 Md. 9, 427 A.2d 979 (1981).

For the above reasons, it is therefore ADJUDGED and ORDERED on this 8th day of October, 1985, that the Order of the County Board of appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed.

Austin W. Brizendine, Jr.
Judge

Copies sent to:
John B. Gontrum, Esquire
Malcolm Spicer, Esquire
C. Victor McFarland, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
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IN THE MATTER
OF THE APPLICATION OF
WESTCHESTER, INC.
FOR SPECIAL HEARING
RE BUILDING PERMIT AND
APPLICATION FOR PERMITS
NW/S BATHURST ROAD 95'
N. OF WESTCHESTER ROAD
1st DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
NO. 85-7-SPH
and
CBA-84-132

ORDER

After oral argument, Memoranda and further consideration of the Issues, it is this 25th day of April, 1985, ORDERED by the County Board of Appeals of Baltimore County that the Board's Order of March 28, 1985 is hereby stricken, and it is

FURTHER ORDERED that the Motion for Reconsideration by the Petitioner, Westchester, Inc., is hereby GRANTED, and that the Board will take the matter under advisement and issue a further Opinion and Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Malcolm Spicer

Patricia Phipps

...TER
...LICATION OF
...R, INC.
...L HEARING
...G PERMIT AND
...N FOR PERMITS
...RST ROAD 95'
...CHESTER ROAD

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
NO. 85-7-SPH
and
CBA-84-132

OPINION

This case comes before the Board on an appeal from the Order of the ...missioner of Baltimore County, dated July 18, 1984, which granted the ... special hearing to have a building permit issued to the Appellee, West... Also encompassed in this matter is an appeal from the issuance of ...mits by the Department of Permits and Licenses on July 30, 1984. Both, ...f the Zoning Commissioner and the issuance of the permits pertain to the ...t of that subdivision located in the First District of Baltimore County ...Westchester. The appeals were merged into one hearing before this Board ...nsolidate all relevant issues regarding this subdivision.

The property now known as the Westchester subdivision was originally ...y a predecessor to the Appellee herein in 1967. Although the plans for the ...t of the subdivision originally included only the building of single family ... January 30, 1975, the developer had executed a Public Works Agreement ...roviding for the construction of 108 apartment units. The property was ... that time as D.R. 5.5.

Under the terms of PWA #17404, the developer was required to con-

struct Bathurst Road for a distance of 630 feet, Shrewsbury Lane for a distance of 620 feet, Stoneham Court for a distance of 180 feet, and Deande Court for a ...h of 200 feet. Additionally, the developer was required to construct sewer lines, storm drains, water lines and other incidental improvements relative to these roads. The developer constructed all of these improvements in accordance with County standards and paid for all work done thereon at a cost of approximately $120,000.00. All construction was completed by October, 1979, and the above named roads and improvements were conveyed to the County by deed dated April 19, 1979.

Prior, however, to the construction of these roads pursuant to PWA #17404, the developer filed a plat detailing the proposed 108 apartment units. A slightly amended plat upon which the Appellee now wishes to proceed was recorded among the land records of Baltimore County in Plat Book EHK, Jr., 41, Folio 16 on March 14, 1977. As stated above, the zoning on the property at this time was D.R. 5.5.

Following the receipt of the necessary permits for the revised March, 1977, plat the Appellee commenced development of a portion of the property as delineated on the plat. Specifically, single family homes were constructed and sold. Buyers of these houses were advised of the nature of the recorded plat and its proposed apartments. Several buyers were even required to sign statements confirming their knowledge of the proposed apartments. However, no construction began on the

apartments during this time despite the fact that all governmental permits and approvals had been obtained.

The reason for this inaction by the developer on the apartment portion of the plat was extensively addressed at the hearing before this Board. Specifically, the President of Westchester, Inc., Walter Stefanowitz, testified that the lack of construction was because of financial difficulties of his company. These difficulties culminated in the filing for reorganization under bankruptcy in May of 1980. Westchester, Inc. purchased this property out of bankruptcy from the predecessor corporation which owned the property during this time. Mr. Stefanowitz was also a principal in that company. Despite obtaining all of the necessary permits for the construction of the single family houses shown on the plat, the developer was not ready to construct the apartment portion of the approved plat until, by his own testimony, at least December, 1979. However, by this time difficulties in reacquiring sewer permits prevented construction of the apartments.

The activities of the developer during this period from the time construction could have commenced, i.e., of 1977, until December, 1979, is of particular note. After a period of inactivity for almost two years, the developer offered this property for sale in March of 1979. However, a sale was never consummated. Additionally, the developer explored the possibility of developing this parcel for townhouses. Extensive work was done in this regard. Preliminary County approval

was obtained, plans were drawn, etc., yet final County approval was never obtained.

The lack of final County approval for the townhouse development was to prove particularly troublesome for Westchester, Inc. because of the County Council's actions of 1980. In the comprehensive map process of that year, the zoning on the property was downshifted to D.R. 3.5, with some D.R. 5.5. Because of this downshifting, when the developer attempted to revive his townhouse proposal in early 1982 he was advised by the County that the townhouse development was not allowable. The developer then swung back to pursuing his original apartment plan, which is the matter before this Board for consideration.

Unfortunately for the developer however, immediate construction of the apartments under the March, , plat was not possible because of a lack of sewer allocation. A history of this sewer allocation problem is also of particular note. In 1978, the developer had obtained County approval for sewer connections for the proposed 108 apartment unit complex. These allocations were revalidated in February, 1979, however, later withdrawn in July of that year due to the lack of substantial construction. Still later, in November of 1979, the County passed Growth Management legislation which revised the method for issuing sewer allocations. Although the developer did not apply for sewer allocations for his apartment development under this new system, he did apply for and was granted a reserved position to receive sewer connections for the proposed townhouse development. This authorization, however, expired because the proposed townhouse development was never recorded. For the

next several years, until April of 1982, there was little activity insofar as the Westchester development, and the Appellee-developer blamed this, with some justification, on the sewer allocation process which prevented him from securing the necessary hookups. Testimony was also produced that allocation may well have been obtained had the developer actively sought the needed allocations. Rather, no activity occurred because of a combination of the two factors: the developer did not pursue an allocation and the County dropped the Appellee from its allocation list. Additionally, evidence before the Board showed that although the new Growth Management legislation curtailed the amount of sewer hookups in this watershed, some sewer permit issuance continued which may have allowed the subject developer to proceed had he not been dropped from the list.

By April of 1982, the developer realized his predicament. Because of the 1980 zoning downshifting he could not proceed with the proposed townhouse construction. Likewise, because of a lack of sewer capacity and allocation, he could not commence construction on the 108 apartment units. Consequently, a suit was filed by the developer in April, 1982. This suit requested that the County be enjoined from voiding the March, 1977, apartment plat and further, asked that the County be ordered to issue the required sewer allocation permits. Rather than contest this suit in a court of law, the matter was settled by a decision of the Office of Planning and Zoning. In a letter to Appellee's counsel of December, 1982, the Director of the Office of Planning and Zoning advised that it was his view that the

plat was vested and had no expiration date. This decision was based primarily upon the work that was completed under PWA #17404 and subsequently deeded to the County. Consequently, relying on this opinion, Westchester purchased the property out of the bankruptcy proceedings which reorganized the Stefanowitz corporation. Finally, although not immediately available, the needed sewer allocations were provided in June, 1983. Later, in February of 1984, the developer obtained permits for additional water mains, storm drains and sewer lines. Building permits were granted on July 30, 1984, the issuance of which is appealed to this Board. Also, a hearing was held by the Zoning Commissioner on the issuance of said permits, after which he issued his Order of July 18, 1984, which has also been appealed to the Board.

Although the appropriate permits have been issued by Baltimore County and the Zoning Commissioner has held that the proposed apartment construction may go ahead, the Protestants herein have appealed to this Board. The Protestants who are primarily the residents in the single family homes surrounding the proposed development, have raised concern as to whether or not this development may proceed in view of the 1980 zoning downshifting.

Thus the issue in the case turns on whether the plat filed by the predecessor of Westchester, Inc. in March of 1977 is vested. Currently, the law in this area for Baltimore County is found in §22-68 of the Baltimore County Code. This section was part of Bill #56-82, which was passed by the County Council on April 19, 1982, enacted by the County Executive on April 27, 1982 and became

...ne 11, 1982. Section 22-68 provides the time limit for validity of sub... Specifically, in Subsection (a) it is provided: "A subdivision plat shall ...nvalid. . . .if such subdivision, section or parcel has not been developed, ...subsection (c), . .". Further on, in said Subsection (c) it is stated: "A ...ction or parcel thereof is hereby defined as developed if any of the ...occurred with respect to such subdivision, section or parcel: (1) Building ...been issued; or (2) substantial construction on required public or private ... has occurred on such subdivision, section or parcel pursuant to the ...gulations and requirements of the Department of Public Works." Under ... it is clear that the plat under consideration in the case before us has ...est of substantial construction on required public improvements. Clearly, ...under PWA #17404 was completed and transferred to the County in 1979, ...to the scheduled expiration date under the above legislation.

Prior to the enactment of Bill #56-82, similar legislation had been ...y the County. Specifically, on April 14, 1977, Bill #12-77 was enacted. ...was subsequently codified in §22-16 of the Baltimore County Code, 1978. ...paragraph (h) Vested rights, (3) of §22-16, the County Council provided: ...subdivision plats. . . , shall be deemed to have lapsed. . . ,where the applicable ...n section or parcel thereof remains undeveloped for a period of five (5) ... Further on, the statute defines the circumstances under which a sub... would be considered undeveloped. One of the tests under the standard is

whether there had been a lack of substantial construction on required public improvements pursuant to the applicable regulations and requirements of the Department of Public Works. The effect of this bill, which was repealed by Bill #178, 1979, was continued in its essence under Bill #61-79. This newer bill retained the same standards and test as was originally adopted under Bill #12-77. Clearly, under the language in both the current statute (§22-68) and its predecessors (§22-16 and Bill #61-79) the plat in the case before the Board is vested. Although a great deal of inactivity occurred insofar as the actual construction of the apartments, the work under the Public Works Agreement was completed. The County Attorney, in his Opinion of May 17, 1984, reached this same conclusion based upon this statute.

Notwithstanding this inescapable conclusion under the mandates of the current vesting legislation, it is this Board's conclusion that the said legislation is not controlling in this case. The Board's conclusion in this regard is based upon the current portion of the Baltimore County Code in §22-40. That Section describes the scope of the regulations which were promulgated and adopted under Bill #56-82. Bill #56-82 included new legislation encompassing §22-37 through §22-105 of the Baltimore County Code. Section 22-40 provides the scope of this legislation. It provides in part: "These regulations shall apply to all development except such development which, prior to the effective date of this Article [June 11, 1982], . . . a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of. . . [the] public works agreement

execution, . . .". Therefore, under the mandate of §22-40, §22-68 is not germane to the Westchester subdivision. Specifically, because the subdivision public works agreement was executed in 1975 and the plat recorded in March of 1977, §22-68 clearly does not apply. Likewise, as the public works agreement and plat recordation was before the first attempt by the County to legislate in this area, the above cited legislation is not applicable to this case. As we hold that §22-68 and its predecessors are not controlling in this case because of the scope of §22-40, we need not enter into the discussion by the Zoning Commissioner, in his Opinion, regarding his authority and the distinction between the Planning and Zoning functions. Instead, the case turns on the appropriate statutes and laws as were existing at the time a public works agreement was executed.

As stated above, the County's first attempt to provide a "vesting guideline" was the adoption of Bill #12-77 in April, 1977. For the status of the law prior to the adoption of this bill, one must look to the decisions handed down from Maryland's higher courts. The chief decision which has been cited by both parties to this matter and is the cornerstone of the Zoning Commissioner's Opinion is Rockville Fuel & Feed Co. v City of Gaithersburg, 266 Md. 117, 291 A 2nd 672, (1972). Quoting from an earlier decision, Richmond Corporation v Board of County Commissioners for P.G. Co, 234 Md. 244, 255 A 2nd 398 (1969), the court provided: "In Maryland it is established that in order to obtain a vested right in the existing zoning use which will be constitutionally protected against a subsequent change in the

zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use." This standard has been cited and relied upon in both prior and subsequent decisions in the Court of Appeals, See - Steuart Petroleum Co. v Board of County Commissioner of St. Mary's Co, 276 Md.435 (1975), County Council for Montgomery County v District Land Corportion, 274 Md. 691 (1975), Mayor and City Council of Baltimore v Crane, 277 Md. 198 (1976), and Washington Suburban Sanitary Commission v. T.K.V. Associates, 281 Md. 1 (1977). Clearly, under the language stated in Rockville, supra, and the other above cases, the Petitioner's plat was not vested. There was not a building permit, at least not until 1984, and no construction thereunder. Despite what we see as the clear meaning of Rockville and the other cited decisions, the Petitioner maintains that his plat was vested against the zoning downshifting. In support of this position, Petitioner notes that, amongst other factors, the public was on notice through the record plat of this apartment development; (2) the expenditure of large funds by the developer on the land itself and (3) the performance of the public works agreement and settlement of its 1982 law suit created an enforceable contract with the County to develope the land. We dismiss all of these arguments and hold that under the principles stated in Rockville and the other decisions, there was no vesting.

Although there was notice to the public in 1977 and shortly thereafter, this notice cannot continue indefinitely. There was testimony to this Board as to the little activity on this site in recent years, particularly since the completion of the public works agreement. Additionally, the attempted sale of the property in 1979 and the bankruptcy of the company could serve to cause a reasonable notice to believe that the original development plan may not be continued. As to the expenditure of funds, the Board need only note Maryland case law which provides that such expenditure is irrelevant, See - Washington Surburban Sanitary Commission v. T.K.V. Associates, supra. Finally, we find no contractural obligation with Baltimore County. The work under the public works agreement could have been used in combination with other development as was, in fact, contemplated in the aborted townhouse development. Insofar as to the settlement with the County over the 1982 law suit, we note that the Protestants herein were not parties to that suit and that the question as to the vesting of this plat was never raised, nor considered, until after the suit was settled.

Therefore, it is clear, at least to this Board's view, that the subject property was not vested under the common law guidelines. However, the Petitioner further relies upon §103.1 of the Baltimore County Zoning Regulations (BCZR) in order to vest its plat.

Subsection 103.1 of the BCZR is a part of §103 which itself is entitled "Application of Zoning Regulations". The subject section provides in part: "These Regulations shall apply as of the date of their adoption but the provisions pertaining

to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations." This provision was adopted in March, 1955, and to paraphrase, provides that zoning regulations ordinarily apply as of the date of their adoption.

As was noted in both the Opinion of the County Attorney, dated May 17, 1984, and Zoning Commissioner Jablon's Opinion of July 18, 1984, this statute had always been interpreted by Zoning Commissioners in office from 1955 through at least 1983 as providing that approval by the Planning Board was sufficient to protect, or vest, a recorded subdivision plat from subsequent zoning change even if there had been no substantial construction thereon. This view of the subject Section was verified by the Director of Current Planning, Eugene Bober, who testified before this Board as to his understanding of the Regulations' interpretation. Thus, at the time of both the zoning downshift and the filing and settlement of the law suit with the County, it was assumed by all that §103.1 did provide the necessary insulation to protect the subject site from downshifting which occurred in 1980.

Notwithstanding this agreed longstanding interpretation of the Section, Commissioner Jablon in his Opinion, stated that it was his belief that the Section was

...r upon its face and that "The conclusion is inescapable that under the plain wording ...Section 103.1, BCZR, only those plats submitted and approved by the Planning ...mmission, but with no substantial construction begun at the time of adoption of the ...55 BCZR, and plats submitted for approval to the commissioner, but not as yet ...proved at the time of the change in 1955, are protected from subsequent zoning ...hange where there has been no substantial construction." In his Opinion, the Zoning ...ommissioner delineates the reasons for his conclusion, primarily citing the clear and ...nambiguous language of the statute. Without again restating the reasons set forth ... that Opinion, we hold that the Zoning Commissioner is correct in his interpretation ...f the statute. The regulation clearly states that the language applies to those sub...ivisions, developments or parcels approved or tentatively approved "prior to the adop...tion of these Regulations". Notwithstanding the longstanding interpretation of Balti...more County, we hold that the subject Section does not insulate the subject subdivision. ...Despite this language of Subsection 103.1, the Petitioner has asked this Board to inter...pret this Section in context with other subsections of the BCZR, specifically §103.3 ...and §103.4. However, we find that not to be necessary. The Section in and of itself ...is not ambiguous and provides insulation only to subdivisions in existence prior to the ...adoption of the regulation in 1955. As the Zoning Commissioner stated in his Opinion, ...and we believe correctly so, because the language is clear and unambiguous, there does ...not exist a need to resort to contemporaneous construction as an aid to ascertain the ...legislative intention in the adoption of this statute.

The final and yet most difficult issue before the Board concerns, at least indirectly, the interpretation of §103.1. Notwithstanding the incorrect interpretation of that statute by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to the Petitioner.

Equitable estoppel has been defined by the appellate courts of Maryland in a number of cases, including Savonis v. Burke, 241 Md. 316 (1965) wherein it is stated: "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which have otherwise existed, either of property, or contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy." Insofar as it is used in the context of zoning cases, equitable estoppel has been defined as when "a landowner has relied in good faith upon an act or omission of the government, (often the issuance of a permit) and has made a substantial change of position to the land, has made substantial expenditures, or has incurred extensive obligations." Handling Zoning and Land Use Litigation: A Practical Guide - Peterson and McCarthy, Authors, §9-1 (A).

There have been a number of cases, including the one cited by the Zoning Commissioner in his Opinion (Saah v. District of Columbia Board of Zoning Adjustment, 433 A2d 1114 D.C. (1981)), where equitable estoppel has been held to estop a municipality from enforcing a zoning regulation. In these cases, a permit

has been issued and construction has taken place. Additionally, in those instances the courts have held that equitable estoppel is proper because the enforcement of regulations would make it highly inequitable or oppressive to the landowner. In spite of these holdings the courts invoke equitable estoppel only grudgingly. Also, unlike the Saah case and other cases, the developer in this matter did not obtain a permit and commence substantial construction. The permits were obtained only in 1984, well after the zoning downshifting.

Notwithstanding this lack of a permit and substantial construction, the Petitioner desires the relief provided under the equitable estoppel doctrine because of the interpretation County officials have provided of §103.1 of the BCZR. The Petitioner argues that because of the longstanding incorrect interpretation of BCZR §103.1, he is entitled to insulation (vesting) of his plat. There are few cases where estoppel is claimed because of comments made by a county employee. One of particular note is Colonial Investment Co., Inc. v. City of Leawood, Kansas, 646 P2d 1149 (1982). In that case the court held that statements made by county officials to the contrary would not estop the municipality from later enforcing zoning regulations. In our view, the matter turns on the activity, or lack thereof, of the developer. As pointed out earlier in this Opinion, although the plat was recorded in 1977 and the public works construction was completed thereafter there has been little activity on this property. Although the footprint of this property may exist and some grading has been done, there has been no above ground construction. Therefore, we

believe this matter is distinguishable from that line of cases where a permit was issued and actual construction was performed. The testimony in the case clearly shows that even after the public works improvements were deeded to the County, the developer actively planned, in his fifty-five townhouse plat, other uses for the property. The moneys which were expended for the public works construction, although earmarked for the 108 apartment complex, could be used in a variety of developments, such as the proposed townhouse development. Even today, the work done under the public works agreement was not lost or useless work but, in fact, could still serve this property if it were developed in accordance with zoning regulations presently in force.

It is also of note that we find a lack of reliance by the developer as is required by the doctrine of equitable estoppel. There was no testimony that the Petitioner inquired of County officials into the effect of the 1980 downshifting. That is, there is no testimony that the Petitioner was concerned in 1980 as to how the downshifting would affect his recorded plat. Rather, the testimony before the Board showed that at the time of the downshifting, the development of 108 apartment units was not being actively considered and the townhouse development was the top priority. Therefore, we find little in the way of reliance by the Petitioner upon the County's existing interpretation of the statute. Finally, we are unable to find that element of equitable estoppel which requires a substantial change of position to the land. The courts of this State have held that equitable estoppel will not be found where the person claiming the protection of this doctrine has not prejudicially changed position as a result of

the act or statement of the government body. Mayor & City Council of Baltimore v. Crown Cork & Seal Co., 122 F2d 385 (1956). The evidence before us was not persuasive that there had been a change in position by the developer because of the County's interpretation of BCZR 103.1.

Therefore, after due consideration of the testimony and evidence brought before this Board, legal arguments made, we hold that the subject plat is not vested and the property is bound by the zoning regulations currently in force. Therefore, we find the Opinion and Order of the Zoning Commissioner and the issuance of building permits by the Department of Permits and Licenses to be in error and will reverse same.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 28th day of March, 1985, by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner of Baltimore County, dated July 18, 1984, be REVERSED and the Special Hearing to have a building permit issued petitioned for, be and the same is hereby DENIED, and it is

FURTHER ORDERED that the building permits described herein which have been issued by the Department of Permits and Licenses of Baltimore County be and the same are hereby REVOKED.

Any appeal from this decision must be in accordance with Rules B-1

through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

LeRoy B. Spurrier

Patricia Phipps

...TION FOR SPECIAL HEARING
...Bathurst Road, 95' N of
...chester Road - 1st Election
...trict
...tchester, Inc. - Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 85-7-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

...titioner herein, Westchester, Inc., has filed this petition at the ...f the Zoning Commissioner in order to determine whether a building ...ld be issued.

...stchester subdivision, commenced in the 1960's, has single family ... built by the Petitioner surrounding it. This subdivision originally ... 108 apartment units to be constructed on the property then zoned ... The subdivision plat was in fact recorded among the Land Records of ...County in Plat Book EHK, Jr. 41, Folio 16 on March 14, 1977. After ...ation, the Petitioner began to examine alternatives to the apartments, ...uses, but abandoned the concept due to the sewer moratorium which ... abrupt halt to all development in the area. Then in 1980, the ...ncil downshifted the property from D.R. 5.5 to D.R. 3.5, with some D.R. ... comprehensive map process. Prior to the zoning change, in 1979 the ... had applied for its permits under the sewer allocation process. ...t to the Petitioner, however, it later got bumped from the list but ...nd out until after other developments which were lower on the list, ...heir permits. At the same time, the Petitioner was in reorganization ... Bankruptcy Act. It was not until 1981 that the Petitioner tried to ...financing to proceed with development. At this point, the Petitioner

-2-

...was notified by the County that it was no longer on the Section list. The ...County maintained that the development for 108 apartments, represented by the ...validly recorded plat, for which the Petitioner had received approval for ... connections in 1978, had lapsed, and it was doubtful that the Petitioner could ...qualify for an allocation under the provisions of the Growth Management legislation ...which had taken effect in November, 1979. The Petitioner was also told that the ...proposed alternative to the apartments, 55 townhouses, would not be permitted as ...there was no sewer capacity available and was no longer valid anyway inasmuch as ...the revised plat, the townhouses, has been abandoned by the Petitioner and never ...pursued to final approval. Correspondence dated March 15, 1982 from the Office ...of Planning and Zoning to the attorney for the Petitioner confirmed that the ...downshifting from D.R. 5.5 to D.R. 3.5 would prevent the townhouse proposal under ...the then current regulations due to the failure to have had the revised plat ...recorded before the zoning change. In fact, the Petitioner was told that it ...could not proceed with the townhouses because the zoning had changed and ...it it could not proceed with the 108 apartments because there was no sewer capacity ...available.

The Petitioner, for its own protection, filed suit against the County in April, 1982. Suit was initiated to have the County issue the necessary Reserve Capacity Use Permit and to declare the recorded plat vested under the Growth Management legislation then in effect and the Development Regulations, which would take effect on June 11, 1982.

The Petitioner founded its contentions on a Public Works Agreement, No. 17404, which included the subject property, and was approved by the County Executive on ...ary 24, 1975. The Agreement required the Petitioner to construct Bathurst ...for a length of 630 feet, St. Johnsbury Road for a length of 620 feet,

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...Stoneham Court for a length of 180 feet and the construction of Drawde Court for a length of 700 feet. In addition to these public roads, the Petitioner was required and did construct public water and sewer in the beds of these roads, as well as appropriate storm drains. The Petitioner also constructed a sewer line running through the proposed apartment development from Bathurst Road to Drawde Court. Sewer lines amounted to approximately 1,660 feet, water lines amounted to approximately 1,720 feet, storm drains to approximately 1,630 feet and total street paving to approximately 1,630 feet. The Petitioner constructed and paid for all these public improvements and all met County standards. Installation of public utilities was completed in October, 1978 and, with the roads referred to above, were conveyed to the County by deed dated April 19, 1979. The Public Works Agreement was completed in a timely fashion at the cost of $180,000, and accepted by the County in 1979. The Petitioner also admits that it did not proceed with the construction of the apartment units and interior private roads and utilities systems. (At the present time, the curb cuts and ramps for the interior roads are completed, the grading is done, stormwater management completed with necessary abutments to the site, public sewer and water is available to the subject property, the storm drains done, and sediment control and ponds completed - although the Protestants state that the latter is useless and is not located where it would do any good, citing County correspondence to that effect.)

After the filing of the suit, the County agreed with the Petitioner that its ...t was vested, and that the Petitioner could proceed with development subject ... the sewer moratorium, and in June, 1983, the Office of Planning and Zoning ... the necessary permit, No. 529, which allocated 32,400 gallons of sewer ...ection for 108 apartment units. This permit has no expiration date, Section ...G.5, Baltimore County Zoning Regulations, (BCZR).

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The Petitioner subsequently requested building permits to construct ...apartment units, as indicated on the recorded plat of 1977. The appropriate ...building permit has been stayed pending review of the contentions raised by the ...

Protestants that the Petitioner is not protected from the 1980 downshifting.

The Protestants argue that the 1980 zoning change prevents the Petitioner from proceeding to develop the subject property; the Petitioner had failed to vest prior to the zoning change and therefore could not now proceed notwithstanding the public improvements constructed prior to the change.

The Petitioner seeks relief pursuant to Section 500.7, BCZR, to have its building permits issued.

A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulation of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular use or structure will continue ...ad the effective date of the ordinance or amendment as a vested right. 4 Rathkopf, The Law of Zoning and Planning, 50 -2. Vested rights occur when the property owner:

1. obtains a building permit, and
2. proceeds under the permit to exercise his right on the land by a substantial beginning to construct, so that the neighborhood may be advised as to the intended land use.

Rockvill Fuel and Feed Co. v. City of Gaithersburg, 266 Md 117 (1972). Claims ...vested rights generally arise when the owner seeks to proceed in accordance ...th prior zoning despite an existing or pending amendment to the zoning ...gulations. It would accrue when

"[a] manifest commencement of some work or labor on the ground which everyone can readily see and

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recognize as the commencement of a building, or begun with the intention and purpose then found to continue the work until the completion of the building."

Rupp v. Cline and Sons, 230 Md 573, 578 (1963).

Maryland case law is clear - mere approval or even recordation of a subdivision plat, without statutory intervention, does not insulate the plat from further zoning changes. Stewart Petroleum Co. v. Board of County Commissioners of St. Mary's County, 276 Md 435 (1935); County Council for Montgomery County v. District Land Corporation, 274 Md 691 (1975); Mayor and Council of Baltimore v. Crane, 277 Md 198 (1976); and WSSC v. TKU Associates, 281 Md 1 (1977). In the latter case, the Court determined that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where there was no such statutory intervention to preserve previous approvals with regard to height, area, density, use and bulk requirements. See also Mallison v. Secretary of Health and Mental Hygiene, 357 A.2d 274.

Therefore, the issue becomes bifurcated - (1) does there exist intervening legislation sufficient to protect the Petitioner from the 1980 zoning change, and (2) if not, has the rule of law, as enunciated in Rockville, supra, been satisfied.

Section 103.1, BCZR, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. It also provides that current minimum restrictions pertaining to use, height, area, and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved ...that was, at the time of subdivision, the effective zoning regulations. A ...hetical expression. (now Planning Board), however, is used to refer to the ...te successor to the Commission, which was eliminated in 1955 with the

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adoption of Chapter 610 (Senate Bill 556) of the Public Local Law of 1955, as enacted by the General Assembly and effective June 1, 1955, which established the current form of county government. Was the intention of the legislation to extend the benefit of Section 103.1, BCZR, only to those plats submitted and approved by the Commission, or was the intent to extend its benefit to plats also approved by the Board, foreverafter?

Although prior interpretations by the Office of Law have given validity to the latter, it is the opinion of the Zoning Commissioner that the language of Section 103.1, BCZR, is clear and unambiguous and that its intent was to protect only those plats submitted for approval to the Commission and which were pending at the time the Charter was adopted.

> The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. Purifoy v. Merc.-Safe Dep. & Trust, 273 Md. 58, 327 A. 2d 483 (1974); Iceville Serv., Inc. v. Comptroller, 269 Md. 390, 306 A. 2d 534 (1973); Height v. State, 225 Md. 251, 170 A. 2d 212 (1961). Equally well settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished, Walker v. Montgomery County, 244 Md. 98, 223 A. 2d 181 (1966), and in light of the evils or mischief sought to be remedied, Mitchell v. State, 115 Md. 360, 80 A. 2d 1020 (1911); in other words, every statutory enactment must be 'considered in its entirety, and in the context of the purpose underlying [its] enactment,' Glant of Md. v. State's Attorney, 267 Md. 501 at 509, 298 A. 2d 427, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. Grosvenor v. Supervisor of Assess., 271 Md. 222, 315 A. 2d 738 (1974); Height v. State, supra. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intention of the Legislature. Purifoy v. Merc.-Safe Deposit & Trust, supra. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. Gatewood v. State, 244 Md. 609, 224 A. 2d 677 (1966). On the other hand, as

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...n Maguire v. State, 192 Md. 615, 623, 65A. 2d 299, ...9), '[a]dherence to the meaning or words does not ... or permit isolation of words from their context' ... the meaning of the plainest words in a statute may ...olled by the context...' In construing statutes, ...e, results that are unreasonable, illogical or ...nsistent with common sense should be avoided whenever ... consistent with the statutory language, with the ...islative intention prevailing over the intention ...d by the literal meaning. B.F. Saul Co. v. West ..., 250 Md. 707, 246 A. 2d 591 (1968); Banza v. ... of Censors, 245 Md. 319, 226 A. 2d 317 (1967); Height ..., supra

276 Md 416 (1975), cert den'd, 425 US 942 (1976).

...se principles to Section 103.1, BCZR, the conclusion is in... ...der the plain wording of Section 103.1, BCZR, only those plats ...roved by the Planning Commission, but with no substantial ...n at the time of adoption of the 1955 Baltimore County Zoning ... plats submitted for approval to the Commissioner, but not as ... the time of change in 1955, are protected from subsequent zoning ...e has been no substantial construction pursuant to the standards ...kville, supra.

...as the recent opinion by the County Attorney, dated May 17, 1984, ...from 1955 until at least August 1, 1983, it has been the interpretation ...Commissioners in office during those years that a subdivision plat ...eived tentative approval from the Board is protected from subsequent ...e, height, area and density accomplished by either ordinance, amend... ...comprehensive rezoning maps. It is true that the effect of this ...n has been to give a developer a vested right to proceed notwith... ...sequent zoning changes prior to the issuance of a permit and the ... of construction. Because it is the opinion here that the language ...03.1, BCZR, is clear and unambiguous, there does not exist a ...asis to resort to a contemporaneous construction as an aid in ... the legislative intention. The criteria contained in Section 103.1, ...asonably precise as the subject matter requires and is reasonably

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adequate and sufficient to guide the Zoning Commissioner and to enable those affected to know their rights and obligations. See American Power and Light Co. v. S.E.C., 329 US 90 (1946). However, the prior interpretation as cited above and contained in the letters of advice from the County Attorney, dated September 24, 1979 and February 10, 1981 must all be given great weight, although not for the reasons given therein. (See Hope II v. Baltimore County, Case No. 107030, where the County argues the opposite view that Section 103.1, BCZR, does not provide the protection from subsequent zoning changes as opined in the cited letters of advice.)

The Petitioner here, like all developers from 1955 to August, 1983 (when I assumed office), had the right to rely on past and consistent interpretations made by Zoning Commissioners in office. In 1977, at the time of recordation, in 1982, at the time the Petitioner's lawsuit was settled, the past, the present and consistent interpretations by the Zoning Commissioners, who, pursuant to the Charter and the BCZR had the sole responsibility and authority to interpret, was that approval by the Board was sufficient to protect a recorded subdivision plat from subsequent zoning change even though there was no substantial construction on the subject site. I am estopped from enforcing the change in interpretation enunciated herein on developers such as the Petitioner here who had a right to rely on this prior interpretation.

There exists to the Petitioner the defense of equitable estoppel. Estoppel always requires proof that the party against whom estoppel is claimed must do or ...something calculated or intended to induce another party to believe that ...facts exist and to act on that belief. The other party must also change ...sition in reliance on those facts, thereby causing some injury. There must ...d faith by a party acting on affirmative acts of municipality. Saah v. D.C.

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Bd. of Zoning Adjustment, 433 A.2d 1114 (D.C., 1981). In municipal zoning cases, however, estoppel may be invoked only with great caution; only when special circumstances make it highly inequitable or oppressive to enforce the regulations. 8A McQuillin, Municipal Corporations, Section 25.349 and 27.56; 3 Rathkopf, supra, 45-38. The defense of estoppel is based on a substantial burden of proof, a requirement to show that the agents of Baltimore County acted to induce reliance and that such reliance was to the owner's detriment to such an extent that enforcement of the regulations would be "highly inequitable or oppressive". Zoning Commission v. Lescynski, 453 A.2d 1144 (Conn., 1982). Whether a vested right exists is immaterial, the Petitioner's actions throughout the process were founded on the interpretation of Section 103.1, BCZR, then enforced, and the lawsuit was indeed settled based on the County and the Petitioner's belief that the plat was in fact vested. If there had been reason to believe otherwise, the Petitioner would have specifically addressed the issue. But the parties acted in good faith, and the Petitioner acted in reliance on the facts described above. To make the new interpretation retroactive would be "highly inequitable and oppressive".

The County Attorney in his May 17, 1984 opinion concludes that the language contained in the Interim Development Control Act (I.D.C.A.) and its successor, the Developments Regulations, in and by itself also provides protection to the developer, who meets the strictures contained therein, from subsequent zoning changes. The County Attorney provides an excellent summary of both the factual history of the Westchester subdivision and of the pertinent legislation affecting ...ffice it to say that I disagree with his conclusion that Bill No. 12-77, ...ed in Section 22-16, Baltimore County Code, (BCC), and later Bill No. 61-... vests a recorded plat insofar as subsequent zoning changes are concerned ...ovided the terms and conditions contained therein have been met. I further ... with his conclusion that Bill No. 56-82, which repealed all previous

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subdivision regulations and adopted the development regulations now in effect, particularly Section 22-68, et seq., BCC, creates protection for the plat recorded in accordance with the conditions delineated therein. It is uncontested that the Petitioner has met the requirements of the subdivision and development regulations. It did vest under their terms and conditions, but one must distinguish between the planning objectives contained therein and the zoning objectives contained in the BCZR. The County Attorney by intertwining the intent of the development regulations with that of the zoning regulations ignores this fundamental and legal difference and in fact combines the two contrary to the obvious intent of the Council. Does or does not the Zoning Commissioner have the authority to interpret the development regulations? If there is no such authority, then the import of the County Attorney's conclusion is to further erode the responsibility specifically assigned to the Zoning Commissioner to decide that a proposed building or use of land, building, or structure complies in all respects with the regulations then in effect with respect to zoning. Section 500.1, BCZR. In other words, who decides what is a "substantial" expenditure of funds, or if there has been "substantial construction or required public improvements"? If the authority to judge is with the Zoning Commissioner, then the County Attorney has effectively combined the development regulations with the zoning regulations. I do not think he so intends and I know the Council did not so intend.

The distinction between the planning function and the zoning function is ...comprehensive. In Board of County Commissioners of Carroll County v. Stephans, 284 Md 384, 389 (1979), the court said, "[S]ome confusion exists relative to the ... planning and zoning, which are not synonymous. Zoning is concerned with the ... of property but planning is broader in its concept."

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"Expressing the matter in another way, let us say that zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to the uses of lands and buildings, but also with respect to the streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power."

1 E. Yohley, Zoning Law and Practice, Section 1-2 (4 Ed. 1978).

"The end product of the planning function is the production of a master plan that embodies recommendations for an area's development based on predictions of needs and resources for an estimated future period. It proposes goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries. In addition, it suggests methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications. The end product of the comprehensive zoning map that establishes, through zoning classifications, the way in which land may presently be utilized and developed. The zoning function is essentially limited to the establishment of land use districts through the imposition of zoning classifications."

Howard County v. Dorsey, 438 A.2d 1339, 1345 (1982).

The courts have consistently interpreted planning broadly to include the systematic development of a community in order to promote the perceived interests of the general public, while zoning has been interpreted more narrowly to consist primarily with the use of land. Washington County Taxpayers Association v. Board of County Commissioners of Washington County, 269 Md 454 (1973).

The implementation of the I.D.C.A. and subsequent development regulations by the County Council are certainly an integral part of the planning function, not the zoning function. The fact that the Council provided the Planning Board and/or the County Review Group (C.R.G.)) with the authority to approve a subdivision plat (and not the Zoning Commissioner) underscores the difference between planning and zoning. The police power which resides with the Council to legislate uses of land does not reside with the Planning Board in its consortium of ...and responsibilities. The Planning Board is responsible for determining ...re growth and development pursuant to the Master Plan by promoting common ...terests in matters of general public interest.

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The vesting permitted under the development regulations, therefore, cannot be equated with the vesting of rights under the zoning regulations, and should there be a divergent and contrary result, it is up to the County Council to resolve it by enacting specific zoning legislation. The fact that the Council created a new maze, the C.R.G., only solidifies the view that Section 103.1, BCZR, is not the panacea to the vested rights conflict that has been assumed all these years. The C.R.G. has assumed much responsibility from the Planning Board and Section 103.1, BCZR, does not reflect this major reformation of the development process in Baltimore County. Even if the past letters of advice from the County Attorney's office are correct in their interpretation, their impact is muted and negated by the substitution of the C.R.G. for the Board in the development regulations and by the lack thereof in Section 103.1, BCZR.

It is the conclusion here that there is no intervening statute sufficient to protect a developer, who has an approved subdivision plat, from a subsequent zoning change without the securing of a building permit, and proceeding to substantial construction on the site. Since the Petitioner does not have a building permit, and there is no intervening legislation, the Petitioner would not be protected from the 1980 downshifting if this decision were to be made retroactive.

Subject to later legislation, the law as expressed in Rockville, supra, shall hereafterth be enforced on all subdivisions subsequently approved and recorded. This shall be consistent with such prior enforcement on that construction exempted or not subject to the development regulations. It must be emphasized that the protection afforded under the development regulations for approval of plats does not extend to the zoning regulations.

It is after due consideration of the testimony, evidence and legal arguments

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...it is determined that the Petitioner is entitled to its building ...

...suant to the advertisement, posting of the property and public hearing ...etition held, and for the reasons given above, the request to have the ... permit issued to the Petitioner for development as approved and recorded ... should be granted.

...erefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, ...day of July, 1984, that the Petition for Special Hearing to have the ...g permit issued be and is hereby GRANTED, subject to the following:

With good cause shown by the Protestants,

1. No building permit shall be issued until either the thirty (30) day appeal period has expired without an appeal being taken to the County Board of Appeals or, if an appeal is taken, the Board upholds this decision.

Zoning Commissioner of Baltimore County

...obert J. Romadka, Esquire
...John B. Gontrum, Esquire
...C. Victor McFarland, Esquire
...Paul L. Snyder, Jr., Esquire
...People's Counsel
...Malcolm F. Spicer, Jr., County Attorney

7/27/84

IN RE: PETITION SPECIAL HEARING
NW/S of Bathurst Road, 95' N of Westchester Road - 1st Election District
Westchester, Inc.,
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 85-7-SPH

AMENDED ORDER
FINDING OF FACTS

It is apparent that the Westchester property was zoned primarily D.R.5.5 prior to 1980, and after the rezoning occurred in 1980, the property became mostly D.R.2 with some D.R.3.5 and a very small D.R.5.5 area.

CONCLUSIONS OF LAW

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 27th day of July, 1984, that the Order dated July 18, 1984 shall be AMENDED only as follows:

1. The building permit may be issued subject to the following condition precedent:

The Petitioner has, by letter attached hereto and made a part of this Order, promised to do no construction on the subject property until after the Board of Appeals of Baltimore County has rendered its decision. If the decision hereinbefore rendered is upheld. If construction of any kind is undertaken by the Petitioner before any decision of the Board is rendered, the Petitioner shall be in violation of this Order.

Zoning Commissioner of Baltimore County

AJ/ari

Attachment

cc: John B. Gontrum, Esquire
C. Victor McFarland, Esquire
Malcolm F. Spicer, Jr., County Attorney
People's Counsel

9413 Gunview Road
Baltimore, Maryland 21236

JUL 30 AM
BALTIMORE COUNTY
ZONING DEPARTMENT

July 26, 1984

Zoning Commissioner Arnold Jablon
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

RE: Westchester, Inc.
Building permit/Special Hearing

Dear Commissioner Jablon:

Pursuant to my attorney's discussions with you, I am hereby giving my commitment not to proceed under the building permit to further work on the site commonly referred to as Westchester until such time as the Board of Appeals has rendered a favorable decision on the building permit and special hearing.

It is my understanding that based on this commitment, you will release the building permit so it may be appealed along with your decision in the special hearing, and that you will modify your Order accordingly.

Your cooperation and consideration in expediting the hearing process on this matter has been and is greatly appreciated.

Very truly yours,
Walter Stefanowicz
Walter Stefanowicz

mmw

IN THE MATTER OF
THE APPLICATION OF
WESTCHESTER, INC.
FOR SPECIAL HEARING
RE BUILDING PERMIT AND
APPLICATION FOR PERMITS
NW/S BATHURST ROAD, 95'
N. OF WESTCHESTER ROAD
1st DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 85-7-SPH
and
CBA-84-132

OPINION

This case again comes before this Board following the Board's granting of Petitioner's Motion for Reconsideration on April 25, 1985. A brief review of the procedural history of this matter is in order.

Following the Zoning Commissioner's Order of July 18, 1984, and the issuance of permits by the Department of Permits & Licenses on July 30, 1984, the matter was appealed to this Board. Several days of testimony and argument then ensued. The Board, in its Opinion and Order of March 28, 1985, reversed the Zoning Commissioner's Order and revoked the permits. The Petitioner then filed, under the purview of Board Rule 10, a Motion for Reconsideration and Speedy Hearing. A hearing was held on April 25, 1985, during which counsel for the Petitioner, Protestants and County, all presented oral argument. In view of the complex issues, lengthy argument and appeal deadline, we felt it prudent to grant the Petitioner's Motion for Reconsideration so as to enable the Board to review all of the evidence and argument. After having done so, it is the opinion of this Board that its prior Order of March 28, 1985 was correct, and we therefore adopt that Opinion and Order and incorporate it herein.

The Board granted Petitioner's Motion for Reconsideration to study two issues where mistake was alleged, namely, our interpretation of Sections 22-40 and 22-68 of the County Code and the doctrine of estoppel.

Westchester, Inc.
Case No. 85-7-SPH and CBA-84-132

2.

Insofar as those provisions of the Code, we are urged by the Petitioner to "harmonize" 22-40 and 22-68 so as to find that the language of 22-68 controls. We cannot do so. The language of 22-40 is clear and unambiguous and we believe must be interpreted as stated in our March 28, 1985, Opinion. Section 22-40 speaks of its application to "all developments". Additionally, development means subdivision (See Baltimore County Code 1978, 1983 Cumulative Supp., Section 22-39). To harmonize Sections 22-40 and 22-68 as suggested by the Petitioner, would obviate the clear meaning and language of 22-40.

Insofar as estoppel, we are again unpersuaded to reverse our earlier holding, for the reasons set forth therein.

Therefore, we find that our Opinion and Order of March 28, 1985, is correct and should be readopted and will so order.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 7th day of May, 1985, by the County Board of Appeals, ORDERED that the Opinion and Order of the Board of Appeals of Baltimore County dated March 28, 1985, be and is hereby re-adopted, and that said Opinion and Order in its entirety is incorporated herein.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure and the time for said appeal will run from May 7, 1985.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
/s/
Lawrence E. Schmidt, Acting Chairman
/s/
Roy B. Spurrier
/s/
Patricia Phipps

IN THE MATTER
OF THE APPLICATION OF
WESTCHESTER, INC.
FOR SPECIAL HEARING
RE BUILDING PERMIT AND
APPLICATION FOR PERMITS
NW/S BATHURST ROAD 95'
N. OF WESTCHESTER ROAD
1st DISTRICT

BEFORE THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
NO. 85-7-SPH
and
CBA-84-132

*** *** *** *** *** *** *** ** * ** *** *** *** *** ***

ORDER

Upon review of the aforegoing Motion for Stay, Notice to the agency, and hearing on said Notice, it is hereby ORDERED this 17 day of June, 1985, by the Circuit Court for Baltimore County that the Order of the Board of Appeals dated May 7th, 1985 in Case Number 85-7-SPH and Case Number CBA-84-132 be and the same is hereby STAYED pending final determination by this Court on Appeal.

JUDGE

True Copy Test
ELMER H. KAHLING, JR., Clerk
Per Gloria Burton
Deputy Clerk

FILED JUN12 1985

COUNTY BOARD OF APPEALS
RECEIVED
'85 JUN 13 P 1:25

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

ORDER RECEIVED FOR FILING
DATE July 15 1984
BY Mary Commerford
Administrative Assistant

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 25, 1985

J. Romadka, Esquire
Gontrum, Esquire
Eastern Boulevard
re, MD 21221

Re: Westchester, Inc.
Files #85-7-SPH & CBA-84-132

Sirs:

Enclosed herewith is a copy of the Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

sure

Westchester, Inc.
C. Victor McFarland, Esquire
Paul L. Snyder, Jr., Esquire
Malcolm F. Spicer, Jr., Esquire
Thomas J. Bollinger, Esquire
John Reisinger
Joseph Nolan
Ted Zaleski
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell

APR 26 ZONING DEPARTMENT

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING - RE BUILDING PERMIT AND APPLICATION FOR PERMITS - NW/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD - 1st DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
and
CBA-84-132

ORDER

After oral argument, Memoranda and further consideration of the issues, it is this 25th day of April, 1985, ORDERED by the County Board of Appeals of Baltimore County that the Board's Order of March 28, 1985 is hereby stricken, and it is

FURTHER ORDERED that the Motion for Reconsideration by the Petitioner Westchester, Inc., is hereby GRANTED, and that the Board will take the matter under advisement and issue a further Opinion and Order.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman
Robert O. Schuetz
Patricia Phipps

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 2, 1985

Robert J. Romadka, Esquire and
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Re: Westchester, Inc.

Gentlemen:

Attached hereto is a copy of the Amended Certificate of Notice issued today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart,
Administrative Secretary

Enclosure

cc: Westchester, Inc.
C. Victor McFarland, Esquire
Malcolm F. Spicer, Jr., Esquire
Thomas J. Bollinger, Esquire
Paul L. Snyder, Jr., Esquire
Ted Zaleski, Jr., Dept of Permits
James Howell, Office of Planning
Arnold Jablon, Office of Zoning
Eileen Hennegan, Office of Zoning

MAY 2 ZONING DEPARTMENT

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING BUILDING PERMIT AND APPLICATION FOR PERMITS - NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD - 1st DISTRICT

CASE NO. 85-7-SPH and CASE NO. CBA-84-132

WESTCHESTER, INC. - PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

AMENDED CERTIFICATE OF NOTICE

Mr. Clerk:

The County Board of Appeals has been advised by the Office of Law for Baltimore County that the Certificate of Notice issued on May 14, 1985, in the above entitled case incorrectly named Paul L. Snyder, Esquire as attorney for the Protestants, and instructed the Board to strike Mr. Snyder's name from the file. A copy of this correspondence is attached hereto and made a part hereof.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County
Room 200 Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Amended Certificate of Notice has been mailed to Robert J. Romadka, Esquire and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221, Attorneys for the Petitioner-Plaintiff, and Westchester, Inc., c/o Mr. W. Stefanowicz, 9813 Gunview Road, Baltimore, MD 21236, Petitioner-Plaintiff, and C. Victor McFarland, Esquire, 1002 Frederick Road, Baltimore, MD 21228, Attorney for the Protestants, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, and Paul L. Snyder, Esquire, Suite 606 The Penthouse, 28 W. Allegheny Avenue, Towson, MD 21204, on this 23rd day of May, 1985.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Secretary, Board of Appeals Date: May 15, 1985

FROM: Malcolm F. Spicer, Jr.
County Attorney

SUBJECT: Westchester, Inc.
CBA #84-132 & 85-7 SPH

I note from your Certificate of Notice, dated May 14, 1985, that you have incorrectly listed Paul Snyder as an attorney for the Protestants. Please be advised that Mr. Snyder did appear as an early hearing in this regard in his capacity as an Assistant County Attorney representing Baltimore County. Since that time the case has been reassigned and the only names that should appear as attorneys for Baltimore County are Malcolm F. Spicer, Jr., County Attorney and Thomas J. Bollinger, Assistant County Attorney.

Accordingly, I would appreciate your correcting your records and the Certificate.

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT

CASE NO. 85-7-SPH and CASE NO. CBA-84-132

WESTCHESTER, INC. - PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

MAY 16 ZONING DEPARTMENT

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, LeRoy B. Spurrier and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Robert J. Romadka, Esquire and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221, Attorneys for the Petitioner-Plaintiff, and Westchester, Inc., c/o Mr. W. Stefanowicz, 9413 Gunview Road, Baltimore, MD 21236, Petitioner-Plaintiff, and C. Victor McFarland, Esquire, 1002 Frederick Road, Baltimore, MD 21228, and Paul L. Snyder, Jr., Esquire, Suite 606 The Penthouse, 28 W. Allegheny Avenue, Towson, MD 21204, Attorneys for the Protestants, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County
Room 200 Courthouse, Towson, MD 21204

...TER, INC. Case #85-7-SPH

...ppellant

...BOARD OF APPEALS
...MORE COUNTY
...ND

...J. BAUMAN, et ux.

...Appellees

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
Docket 10 folio 228
File No. 85CG1483

OCT 30 OFFICE OF PLANNING & ZONING

ORDER OF APPEAL

...Clerk:

Please enter an appeal to the Court of Special Appeals on ... of the Appellees, William J. Bauman, et ux., et al., from ...orandum Opinion and Order dated October 8, 1985 by his Honor ...in W. Brizendine.

C. Victor McFarland
Attorney for the Appellees
1002 Frederick Road
Catonsville, MD 21228
788-2300 or 744-3256

I HEREBY CERTIFY that a copy of the aforegoing Order of Appeal was, on this 30th day of October, 1985, mailed to John B. Gontrum, Esq., 809 Eastern Blvd., Baltimore, MD 21221, Malcolm F. Spicer, Jr., Esq., County Attorney, Office of Law, Court House Mezzanine, 400 Washington Avenue, Towson, MD 21204, and Phyllis C. Friedman, Esq., People's Council, Room 223, Court House, 400 Washington Avenue, Towson, MD 21204.

C. Victor McFarland
Attorney for Appellees

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 7, 1985

Robert J. Romadka, Esq.
John B. Gontrum, Esq.
809 Eastern Boulevard
Baltimore, MD. 21221

Re: Westchester, Inc.
Files #85-7-SPH & CBA-84-132

Dear Sirs:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Westchester, Inc.
C. Victor McFarland, Esq.
Paul L. Snyder, Jr., Esq.
Malcolm F. Spicer, Jr., Esq.
Thomas J. Bollinger, Esq.
John Reisinger
Joseph Nolan
Ted Zaleski
Arnold Jablon
Jean M. H. Jung
James Dyer
Norman Gerber
James Hoswell
Hon. R. B. Hickernill

MAY 8 ZONING DEPARTMENT

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
No. 85-7-SPH
and
CBA-84-132

OPINION

This case again comes before this Board following the Board's granting of Petitioner's Motion for Reconsideration on April 25, 1985. A brief review of the procedural history of this matter is in order.

Following the Zoning Commissioner's Order of July 18, 1984, and the issuance of permits by the Department of Permits & Licenses on July 30, 1984, the matter was appealed to this Board. Several days of testimony and argument then ensued. The Board, in its Opinion and Order of March 28, 1985, reversed the Zoning Commissioner's Order and revoked the permits. The Petitioner then filed, under the purview of Board Rule 10, a Motion for Reconsideration and Speedy Hearing. A hearing was held on April 25, 1985, during which counsel for the Petitioner, Protestants and County, all presented oral argument. In view of the complex issues, lengthy argument and appeal deadline, we felt it prudent to grant the Petitioner's Motion for Reconsideration so as to enable the Board to review all of the evidence and argument. After having done so, it is the opinion of this Board that its prior Order of March 28, 1985 was correct, and we therefore adopt that Opinion and Order and incorporate it herein.

The Board granted Petitioner's Motion for Reconsideration to study two issues where mistake was alleged, namely, our interpretation of Sections 22-40 and 22-68 of the County Code and the doctrine of estoppel.

Westchester, Inc.
Case No. 85-7-SPH and CBA-84-132

2.

Insofar as those provisions of the Code, we are urged by the Petitioner to "harmonize" 22-40 and 22-68 so as to find that the language of 22-68 controls. We cannot do so. The language of 22-40 is clear and unambiguous and we believe must be interpreted as stated in our March 28, 1985, Opinion. Section 22-40 speaks of its application to "all development". Additionally, development means subdivision (See Baltimore County Code 1978, 1983 Cumulative Supp., Section 22-39). To harmonize Sections 22-40 and 22-68 as suggested by the Petitioner, would obviate the clear meaning and language of 22-40.

Insofar as estoppel, we are again unpersuaded to reverse our earlier holding, for the reasons set forth therein.

Therefore, we find that our Opinion and Order of March 28, 1985, is correct and should be readopted and will so order.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 7th day of May, 1985, by the County Board of Appeals, ORDERED that the Opinion and Order of the Board of Appeals of Baltimore County dated March 28, 1985, be and is hereby re-adopted, and that said Opinion and Order in its entirety is incorporated herein.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure and the time for said appeal will run from May 7, 1985.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman
Robert O. Schuetz
Patricia Phipps

IN RE: PETITION FOR SPECIAL HEARING NW/S of Bathurst Rd. 95' N of Westchester Rd.-1st Election District
Westchester, Inc. - Petitioner
Case No. 85-7-SPH

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

AUG 10 8:10 AM

ORDER OF APPEAL

Dear Ms. Clerk:

Please enter an appeal to the County Board of Appeals from the following:

(1) Order of Arnold Jablon, Zoning Commissioner, dated July 18, 1984, and written decision,

(2) Amended Order of Arnold Jablon, Zoning Commissioner, dated July 27, 1984, and written decision,

(3) This issuance of building permits for the Westchester Part of Plat 4, Sec. 2, or any other of the applicants' property in the community known as Westchester,

(4) Failure of the Zoning Commission to determine the zoning status of the property on behalf of the following aggrieved parties:

(a) William J. Bauman and Kathaleen D. Bauman, his wife, 618 St. Johnsbury Road, Catonsville, Maryland 21228,

(b) Timothy J. Kelley and Mary Kelley, his wife, 5 Drawde Court, Catonsville, Maryland 21228,

(c) Darryl Warren and Barbara Warren, his wife, 627 St. Johnsbury Road, Catonsville, Maryland 21228,

(d) Thomas A. Olear and Laurel L. Olear, his wife, 1 Reacher Court, Catonsville, Maryland 21228, and

(e) Jeffrey R. Lumianski, 3 Drawde Court, Catonsville, Maryland 21228,

(5) Failure of the Zoning Commission to hold a hearing to determine if the applicant may build condominiums and/or apartments on the land under Bill 100-1970 or any other applicable

-1-

...laws.

C. Victor McFarland
Of Victor McFarland
McFarland, Weinkam, O'Connell and Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 or 744-3256
Attorney for the Appellants

I HEREBY CERTIFY that a copy of the aforegoing Order of Appeal was mailed this 9th day of August, 1984, to Arnold Jablon, Esq., Zoning Commissioner, Office of Planning and Zoning, County Office Building, Towson, Maryland 21204; John B. Gontrum, Esq., 809 Eastern Boulevard, Baltimore, Maryland 21221; Malcolm F. Spicer, Jr., Esq., County Attorney, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Phyllis Friedman, Esq., People's Counsel, Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

C. Victor McFarland
cc: VICTOR McFARLAND

LAW OFFICES
McFARLAND, WEINKAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION
1002 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

AUG 10 8:10 AM

August 9, 1984

...oard of Appeals for
...ore County
...Courthouse
...ington Avenue
...Maryland 21204

Re: Appeal from Orders of Zoning Commissioner
Case No. 85-7-SPH
NW/S Bathurst Rd. 95' N of Westchester Rd.
1st Election District
Westchester, Inc.-Applicant

...Clerk:

...closed is an Order of Appeal and Certificate of Mailing ...eck for $85.00 representing the cost of the appeal.

...uld there be any additional cost, please advise me.

Very truly yours,

C. Victor McFarland

...nold Jablon, Esq., ... Zoning Commissioner
...hn B. Gontrum, Esq.
...lcolm F. Spicer, Jr., Esq., ... County Attorney
...yllis Friedman, Esq., ... People's Counsel

IN RE: PETITION FOR SPECIAL HEARING NW/S Bathurst Road, 95' N of Westchester Road - 1st Election District
Westchester, Inc. - Petitioner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
Case No. 85-7-SPH

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above entitled case, under date of July 18, 1984, to the County Board of Appeals and forward all papers in connection therewith to said board for hearing.

Robert J. Romadka
John B. Gontrum
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Essex, Maryland 21221
#686-8274
ATTORNEYS FOR PETITIONERS

7/30/84 11:30 AM

IN RE: BUILDING PERMITS NO. 61773, NO. 61774, NO. 61775, NO. 61776, NO. 61777
WESTCHESTER, INC.
8.11 AC. W/S BATHURST AVE.

BEFORE THE BUILDINGS ENGINEER OF BALTIMORE COUNTY

Dear Mr. Reisinger:

Please note an appeal from the issuance of the above-referenced building permits by the Department of Permits and Licenses on July 30, 1984. The appeal is to the Baltimore County Board of Appeals.

Appeal is being taken from these permits so that the issues in Zoning Case No. 85-7 SPH and the issues raised in the concurrence of the various departments with the opinion of the Zoning Commissioner can be heard at one time before the Board of Appeals rather than in separate proceedings. Zoning Case No. 85-7 has been appealed as of this date, and it is Petitioners' request that they be heard together before the Board. In the event that Petitioners do not take this appeal duplicitous proceedings may occur as well as deleterious delay to the Petioners' harm.

ROBERT J. ROMADKA

JOHN B. GONTRUM

ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Essex, Maryland 21221
#686-8274

ATTORNEYS FOR PETITIONERS

IN RE: PETITION FOR SPECIAL HEARING NW/S of Bathurst Rd., 95' N of Westchester Road 1st Election District
Westchester, Inc.,
Petitioner

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
Case No. 85-7-SPH

Entry of Appearance

Please enter my appearance as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to my office, including but not limited to hearing dates and/or preliminary or final Orders.

Arnold Jablon
Arnold Jablon
Zoning Commissioner of Baltimore County
Room 109 - 111 West Chesapeake Ave
Towson, Maryland 21204
494-3353

Certificate of Mailing

IT IS HEREBY CERTIFIED that on this 6th day of August 1984, copies of the foregoing Entry of Appearance were mailed, postage pre... by first class delivery to the County Attorney of Baltimore County, People's Counsel for Baltimore County, Petitioner(s) and/or Protestant(s) in the above captioned matter.

Arnold Jablon
Arnold Jablon

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

August 6, 1984

C. Victor McFarland, Esquire
920 Frederick Road
Baltimore, Maryland 21228

Re: Petition for Special Hearing
NW/S Bathurst Rd., 95' N of
Westchester Road - 1st Election District
Westchester, Inc. - Petitioner
Case No. 85-7-SPH

Dear Mr. McFarland:

Please be advised that an appeal has been filed by John B. Gontrum, attorney for the petitioner, from the decision rendered by the Zoning Commissioner of Baltimore County, in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: Paul L. Snyder, Jr., Esquire
Suite 606 The Penthouse
28 W. Allegheny Avenue
Towson, Maryland 21204

Phyllis C. Friedman, Esquire
People's Counsel

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NW/S Bathurst Rd., 95' N of
Westchester Ave., 1st Dist. : OF BALTIMORE COUNTY

WESTCHESTER, INC., Petitioner: Case No. 85-7-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be se... of any hearing dates or other proceedings in this matter and of the passage of any preliminar... or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 13th day of June, 1984, a copy the foregoing Entry of Appearance was mailed to Robert J. Romdka, Esqu... and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 2122... Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 131950

DATE 7/30/84 ACCOUNT 1-01-615-000
AMOUNT $85.00
RECEIVED John Gontrum, Esquire

PETITION FOR SPECIAL HEARING

1st Election District

Petition for Special Hearing

Northwest side Baltimore Road, 95 ft. North of Westchester Avenue

Thursday, July 5, 1984 at 9:30 A.M.

LING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

commissioner of Baltimore County, by authority of the Zoning Act ns of Baltimore County, will hold a public hearing:

n for Special Hearing under Section 500.7 of the Baltimore y Zoning Regulations, to determine whether or not the Zoning ssioner and/or Deputy Zoning Commissioner should approve ase of a building permit based on a record plat, found to be when the zoning classification of the plat property has changed

erty of Westchester, Inc., as shown on plat plan filed with the ment.

at this Petition is granted, a building permit may be issued within day appeal period. The Zoning Commissioner will, however, request for a stay of the issuance of said permit during this period shown. Such request must be received in writing by the date of the ove or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204

ARNOLD JABLON
ZONING COMMISSIONER

June 27, 1984

John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

Re: Petition for Special Hearing
NW/S Baltimore Rd., 95' N of Westchester Road
Westchester, Inc. - Petitioner
Case No. 85-7-SPH

Dear Mr. Gontrum:

This is to advise you that $51.50 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 131911

DATE 7-5-84 ACCOUNT 01-615-000
AMOUNT $51.50

RECEIVED John B. Gontrum
FOR Petition for Special Hearing
Case #85-7-SPH

VALIDATION OR SIGNATURE OF CASHIER

Robert J. Romadka, Esquire
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

NOTICE OF HEARING

Re: Petition for Special Hearing
NW/S Baltimore Rd., 95' N of Westchester Avenue
Westchester, Inc. - Petitioner
Case No. 85-7-SPH

TIME: 9:30 A.M.

DATE: Thursday, July 5, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: Mr. Timothy Kelloy, Vice-President
The Westchester Improvement Association, Inc.
5 Drewde Court
Baltimore, Maryland 21228

The Honorable Donald P. Hutchinson
County Executive

The Honorable Ronald B. Hickernell
County Council

Malcolm F. Spicer, Esquire
County Attorney

Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 10583

DATE 6/1/84 ACCOUNT R01-615-000
AMOUNT $50.00

RECEIVED Robert Romadka
FOR Charge for Item 337
Westchester

THE JEFFERSONIAN

Publication Office
111 West Chesapeake Ave.
Towson, Md. 21204

June 14 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on June 14 19 84.

THE JEFFERSONIAN

Publisher

Cost of Advertising

85-7-SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1st
Date of Posting 6-15-84
Posted for: Special Hearing
Petitioner: Westchester, Inc.
Location of property: NW/S Side Baltimore Rd. 95' N of Westchester Ave.
Location of Signs: 1 sign NW/S side of Baltimore Rd. 110' N of Westchester Ave. & 1 sign on post E/S of Side St. Johnsbury Rd. approx. 40' from Baltimore Rd.
Remarks:

PATUXENT
Publishing Corp.
Columbia, MD 21044

June 14 19 84

THIS IS TO CERTIFY, that the annexed advertisement of

PETITION FOR SPECIAL HEARING 56407

was inserted in the following:

☒ Catonsville Times
☐ Arbutus Times

weekly newspapers published in Baltimore County, Maryland, once a week for one successive weeks before the 12 day of June 19 84, that is to say, the same was inserted in the issues of

June 14, 1984

PATUXENT PUBLISHING CO.
By

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY

Plaintiff

vs.

Defendant

CERTIFICATE OF PUBLICATION OF

LAW OFFICES
McFARLAND, WEINKAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1002 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

C. VICTOR McFARLAND
LOUIS A. WEINKAM, JR.
THOMAS A. O'CONNELL
KENNETH H. MASTERS

TELEPHONE
AREA CODE 301
788-3200

July 6, 1984

ZONING DEPARTMENT

Arnold Jablon, Esquire
Zoning Comission of Baltimore
County, Maryland
County Office Building
Towson, Maryland

Re: Petition for Special Hearing
Sec. 500.7
Westchester Part of Flat 4, Sec. 2
The Stefanowicz Corporation

Dear Mr. Jablon:

Enclosed is a copy of the Defendants' Memorandum of Points and Authorities dated August 18, 1981, filed in Hope vs. Baltimore County, filed by the Office of Law and signed by the County Solicitor and John Austin, Assistant County Solicitor. I referred to and read from pages 6, 7 and 8.

At the hearing, I intended to read from the enclosed treatise that is not titled and unsigned, given to me by the late Giles Parker, member of the Board of Appeals. I wanted to read pages 2 and 3 as part of my argument, until I saw the newspaper reporter taking notes. I did not get the appendix referred to from Mr. Parker.

The point in the treatise is that the Office of Zoning and Planning has been considering zoning matters as subdivision matters. In spite of Bill 100 referring to itself 11 times as a zoning regulation, the only hearing in DR Zones is before the CRG despite the fact that it is a "floating zone".

This interpretation keeps lawyers and Courts out of what they consider their domain.

...Counselors at Law

...squire

...that they have construed Section 301.1 over ...rs in a certain way must be considered in light ...e toward zoning, lawyers and Courts. The fact ...hanged a zoning regulation Bill 100 into a sub- ...ion should be a beacon as to the direction their

Very truly yours,

C. Victor McFarland

...maka, Esq.
..., Esq.
...a

DANIEL HOPE, JR., M.D., et al * IN THE
Plaintiffs * CIRCUIT COURT
v. * FOR
BALTIMORE COUNTY, MARYLAND, et al * BALTIMORE COUNTY
* IN EQUITY
Defendants * 152/318/107030

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES

Baltimore County, Maryland and the Baltimore County Council, Defendants, by Leonard S. Jacobson, County Solicitor and John A. Austin, Assistant County Solicitor, their attorneys, submit the following Memorandum to assist the Court in its consideration of the issues raised by the Memorandum submitted on behalf of the Plaintiffs in these proceedings. These issues arise from the preliminary motions filed on behalf of these Defendants, pursuant to Rule 322 of the Maryland Rules of Procedure, and the issues presented by said motion have also been raised in a demurrer filed on behalf of the remaining Defendants, Victor Frenkil, Walden Associates and Victor Development Company. This Memorandum will address the issues presented in the same order as they were presented in the Plaintiffs' Memorandum.

1. Can an agency of the county government be named as a party and defendant other than Baltimore County, Maryland.

The Plaintiffs' Memorandum fails to address the direct holdings of the Court of Appeals in the case of County Council for Montgomery County v. Supervisor of Assessments of Montgomery County, 274 Md. 116 (1965). In that case the Court of Appeals dismissed a suit filed in the name of the County Council for Montgomery County in the following language:

"Accordingly, we conclude that it is the corporate entity of Montgomery County, Maryland, so known in its charter, which is vested with the right of appeal under Article 81, Section 256(a) in lieu of the prior corporate entity, the County Commissioners of Montgomery County. .... For purposes of

-2-

this opinion we need go no further than to say that it is necessary that the appeal be maintained in the name of the corporate entity. Since the County Council is not the corporate entity an appeal may not be maintained in its name."

Like Montgomery County, Maryland, Baltimore County, Maryland has adopted the charter form of government, and in its charter, specifically Section 103, it is stated that the corporate name shall be Baltimore County, Maryland. The powers of local home rule as established by the voters of Baltimore County in Section 101 of the Charter vested the powers in the name of the body corporate and politic, Baltimore County, and delegated the exercise for those powers pursuant to Section 102 to the appropriate agencies as set forth in the Charter. However, the Charter does not establish any separate entity known as the County Council but simply designates the County Council as the legislative agency of the body corporate. Accordingly, the County Council of Baltimore County at all times exists only as an agency of the body corporate which has no existence independent and apart of the body corporate itself. Further, for the purposes of the instant litigation, a declaratory decree directed to Baltimore County, Maryland would afford the Plaintiffs full and complete relief in that such an order could hardly be disregarded by the agents or elected officials of Baltimore County. For these reasons it is respectfully submitted that the inclusion of Baltimore County Council as an additional party is unnecessary and improper in that the County Council does not have a legal existence separate and apart from that of the body corporate and politic, Baltimore County, Maryland.

2. Standing

Baltimore County, Maryland, based upon a subsequent review of the exhibits attached to the original Bill of Complaint, acknowledges that the Petitioners, in the Bill of Complaint, have met their burden of establishing

-3-

standing as a prima facie matter, sufficient to entitle them to go forward to the merits of the case. Baltimore County does not, however, concede that the Plaintiffs can establish at trial all of the required elements of standing sufficient to entitle them to the relief which they seek. Such matters, however, are properly left to the merits of the instant case and need not be considered further by the Court at this time.

3. The instant case is barred by the doctrine of res judicata.

The previous case of Daniel Hope v. Baltimore County, et al, 288 Md. 656 (1980) was a final decision which determined that the Plaintiffs had incorrectly relied upon the provisions of Section 22-38 of the Baltimore County Code in noting a direct appeal to the Circuit Court for Baltimore County from an adverse decision of the Planning Board of Baltimore County. Having failed to preserve their right to appeal to the Board of Appeals, as the Court of Appeals decided that they must do, the Plaintiffs were barred from challenging the decision of the Planning Board in approving the subdivision plat of the developer. Thus, it is respectfully submitted that this decision cannot be collaterally challenged in an equity proceeding such as has been presented in the instant case. This point was clearly decided by the Court of Special Appeals in the case of Davis v. Frederick County Board of County Commissioners, 25 Md. App. 68, 334 A.2d 165 (1975). In that decision Judge Davidson, speaking for the Court, discussed in detail the subject of res judicata in the following language:

"The doctrine of res judicata is designed to insure that litigation is brought to an end and to prevent harassment of an adversary by a multitude of actions. In Maryland the doctrine of res judicata, or estoppel by judgment, consists of two branches, direct estoppel by judgment and collateral estoppel by judgment. Stirling v. Local 433, 207 Md. 132, 140, 113 A.2d 389, 393, cert. denied 350 U.S. 875, 76 S. Ct. 119, 100 L.Ed. 773 (1955). The doctrine of direct estoppel is predicated upon the policy of the English common law that once a given matter becomes the subject of litigation

-4-

in and of adjudication by a court of competent jurisdiction, the parties must bring forward their whole case and may not subsequently reopen the same subject of litigation in respect of another matter which might have been but was not brought forward". (Citing cases).

The Court in Davis went onto hold that the appropriate test for comparing causes of action for the purposes of res judicata is whether there has been a "single wrongful invasion of a single primary right." Applying this test to the facts of that case, the Court of Special Appeals held that:

"It is apparent that either the passage of the Enabling Act, if improper, or the passage of the P.U.D. Ordinance, if improper, or a combination of both, if improper, constituted a single wrongful invasion of the homeowner's primary right to be free from the intrusion of an unlawfully established planned unit development adjacent to their homes. Whether the harms suffered by the homeowners was due to the alleged invalidity of the Enabling Act or to the alleged invalidity of the P.U.D. Ordinance or to both, the harm for which they sought redress was the same... The same cause of action in both suits being the same, the doctrine of direct estoppel by judgment is applicable. The judgment in the original suit constitutes an absolute bar to the second and is conclusive, not only as to matters which were litigated in the earlier case, but as to all matters which would have been litigated."

Applying this holding to the case at bar, it is clear that the homeowners in the instant case, all of whom are identical to the Plaintiffs in Hope I, believe to be their primary right to be free from the proposed intrusion of the garden apartment development as set forth in the original subdivision plat. In this suit they are seeking exactly the same relief from exactly the same harm, and thus in the case at bar, like the Davis case, the doctrine of direct estoppel by judgment is applicable. The Plaintiffs have presented no other authority which suggests that a different result should obtain.

The Plaintiffs have, however, suggested that the doctrine of res judicata, and the subdoctrines outlined in the Davis case should not apply to the decision of an administrative agency. In so doing, the Plaintiffs concede that the purpose of this law suit is to seek to relitigate the question

-5-

of the propriety of the Planning Board's approval of the subdivision plat in question. This is precisely what the decision in Hope I said that they could not do, having failed to properly appeal from the Planning Board's decision. What was finally adjudicated in Hope I was the question of their right to seek a review of the Planning Board's action, and it is irrelevant whether or not the merits of the Planning Board's decision was ever reached by the decision in Hope I, for the result is unchanged. The Defendants dispute that the Court's ruling in Hope I was only on a preliminary matter, but rather it went to the fundamental jurisdiction of the Circuit Court for Baltimore County to hear the appeal under the provisions of Section 22-38 of the Baltimore County Code. Further, the Court of Special Appeals of Maryland has clearly decided that an unreversed final decision of a zoning board passed in the exercise of its discretion based upon issues of fact or mixed issues of law and fact are fully binding upon the parties to the cause as to all issues determined therein. See Board of County Commissioners of Cecil County v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975). The Planning Board's decision in approving the subdivision plat was made in the exercise of its discretion based upon mixed issues of law and fact, and having now become an unreversed final decision is not subject to collateral attack in these proceedings. See Board of County Commissioners v. Racine, supra. The mere fact that the Plaintiffs earnestly sought appellate review of the Planning Board's decision and chose the incorrect forum in which to present their case, although lamentable, is not a ground for allowing them to relitigate in an Equity proceeding, the same issues that were resolved in Hope I. It is respectfully submitted that the res judicata effect of Hope I is sufficient to completely bar the Plaintiffs from receiving any of the relief sought in the instant Bill of Complaint.

4. The re-zoning of the subject property has rendered the issues raised by the Plaintiffs moot.

-6-

The Comprehensive Zoning Map of 1980 reclassified all of the subject property, and a substantial portion of the property surrounding it, to a ... zoning classification of DR 2. See Exhibit A attached. This re-zoning "downshifted" the previous zoning on the property which previous zoning permitted a higher density of development (DR 3.5 and 5.5). It is under these prior zoning classifications that the Planning Board granted its approval of the subdivision plan, and the number of units designated on said plan were based upon computations resulting from the then existing zoning classification. The current zoning classification, which permits a fewer number of units to be developed on the property, obviously requires the submission of new development plans in that the same total number of units can no longer be developed consistent with the new zoning classification. It is beyond question that a landowner enjoys no vested rights to a particular zoning classification unless and until he has taken appropriate steps to vest his right to the uses permitted under the zoning classification. The test for vesting has been stated many times by the Court of Appeals, most succinctly in Steuart Petroleum Company v. Board of County Commissioners of St. Mary's County, 276 Md. 435 (1975), wherein the Court stated the test to be that which it had previously enunciated in People's Counsel for Baltimore County v. Public Service Commission, 259 Md. 409, 270 A.2d 105 (1970) and Rupp v. Earl H. Cline & Sons, 230 Md. 573, 188 A.2d 146 (1963) as follows:

"[A] manifest commencement of some work or labor on the ground which everyone can readily see and recognize as a commencement of a building...begun with the intention and purpose then formed to continue the work until the completion of the building".

Specifically, in the Steuart Petroleum case the Court rejected the argument that the acquisition of permits, the expenditure of large sums of money on architectural and engineering designs and even the pouring of concrete footings was not sufficient to vest the zoning for a refinery that

-7-

would cost approximately $160,000,000 to construct. Similarly, the Court of Appeals held in County Council for Montgomery County v. District Land Corporation, 274 Md. 691 (1975) that,

"...A building permit creates no vested right in an existing zoning classification unless substantial construction had been undertaken in reliance thereon (citing cases) and that possession of a building permit, taken together with the payment of a high price and reliance on existing zoning, and with substantial expenditures for architectural fees creates no vested right in the absence of actual construction (citations omitted)."

Applying these holdings to the case at bar it is clear that the developer has acquired no vested rights to his previous zoning classification (DR 3.5 and 5.5) and if the property is to be developed it must be developed under its current zoning classification. Because this downzoning will permit fewer apartment units than those designated on the subdivision plat previously approved by the Planning Board, the developer will be required to submit a new subdivision plan to the Planning Board for its approval. Whether or not the developer in such a case would have a need to exercise the options given to him under the provisions of Bill No. 100 or any other provisions of the subdivision rules and regulations of Baltimore County, will be a matter left up to the developer. Accordingly, whether or not any of the challenged provisions of Bill No. 100 will in any way be utilized in the future in a way that will injure the Plaintiffs, is a matter that at this point, is speculative, at best, and one which is not yet ripe for a judicial determination. For these reasons, it is respectfully submitted that unless and until the developer determines to submit for approval a new subdivision plan requiring the use of the clustering concepts available under the provisions of Bill No. 100, the propriety of such provisions is a matter that is not before the Court at this time and, therefore, should not be decided. Because the developer can no longer use the subdivision plan that was approved by the Planning Board it is not necessary for this Court to adjudicate the legal correctness of the Planning Board's decision in approving

-8-

such a plan.

The Plaintiffs go on to argue that the developer may, at some future point in time, try to argue that the provisions of Section 103 of the Zoning Regulations of Baltimore County will in some way "grandfather" or vest his right to develop under the previously approved subdivision plan. A copy of Section 103 is attached hereto as Exhibit B, and nothing contained therein in any way gives a developer vested rights to develop under a plan approved under a previous zoning classification. To the contrary, Section 103 merely provides that those persons who had secured subdivision approval prior to the adoption of the regulations themselves, many years ago, could continue to develop under the previously existing zoning regulations. There is no language in Section 103 nor any of the other zoning regulations of Baltimore County that would extend to a developer the right to develop under a previously approved subdivision plan in the face of a downzoning of the property. Further, even if such language were contained in Section 103 it could not stand in the face of the clear holding of the Court of Appeals concerning vesting set forth above. In summary, the Plaintiffs' fears concerning Section 103 simply will not be realized in that the developer failed to meet the test for vesting, as set forth by the Court of Appeals and, therefore, must develop their property in conformity with the restrictions placed upon it by the current zoning classification and not by the zoning classification under which their original subdivision plat was approved.

5. The Plaintiffs are not entitled to maintain this case in its current posture.

The last three issues raised by the Plaintiffs, when taken together, consists of arguments in support of the proposition that the Plaintiffs should be entitled to present, in a bill in Equity, the complaints that should have properly been presented to the Board of Appeals. In order to establish jurisdiction, the Plaintiffs additionally argue that their prayers for declar-

-9-

atory relief on constitutional grounds are sufficient to vest jurisdiction in this Court to adjudicate the factual correctness of the Planning Board's action. As has been argued previously herein, judicial review of the merits of the Planning Board's decision has been foreclosed by the decision of the Court of Appeals in Hope I. It is respectfully urged, therefore, that the res judicata effect of the decision Hope I, therefore, bars this Court from granting the prayers for relief set forth in subparagraphs b, c, d, e, h, i and j of the Plaintiffs' Bill of Complaint. These prayers for relief seek a judicial review of the Planning Board's decision, which for the reasons previously presented herein, is foreclosed by the decision in Hope I.

The Plaintiffs' additional prayers for declaratory relief are contained in paragraphs a, f and g of the Bill of Complaint and it is respectfully submitted that these prayers for declaratory relief have been rendered moot by the downzoning of the property that occurred with the adoption of the Comprehensive Zoning Maps of 1980. With respect to the claims for injunctive relief contained in Paragraph k, this relief is not necessary in view of the fact that the developer cannot now use building permits for sewer allocations which were issued as a result of the previous subdivision plat. Accordingly, the downzoning of the property has rendered moot the request for declaratory and injunctive relief sought by the Plaintiffs in that these requests all relate to the previous subdivision plan that was based upon the previous zoning. Further, in order to have standing to seek the declaratory relief prayed in connection with Bill No. 100, the Plaintiffs must show that they will be adversely affected by the provisions of Bill No. 100 in question. This they cannot do because the particular characteristics of the previous subdivision plan which relied on Bill No. 100, may or may not be utilized again in any future development plan that is submitted with respect to the subject property. Rather than undertake a review of the constitutionality

-10-

of Bill No. 100 in the face of a hypothetical application of its provisions to a development that may never be pursued, this Court should dismiss these proceedings until such time as a proper case is presented to this Court for its determination.

Section 3-409 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, part of the Declaratory Judgment Act, specifically provides in Subsection (a) as follows:

"...A court may grant a declaratory judgment or decree in a civil case if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if: (1) an actual controversy exists between contending parties; ..."

Clearly, this section contemplates the existence of an actual ongoing controversy between the contending parties to the declaratory judgment proceedings. It has been held, however, that the courts have discretion to refuse to grant declaratory relief where it would not serve a useful purpose or terminate a controversy. See Hamilton v. McAuliffe, 277 Md. 353 A.2d 643 (1977), Mayor and City Council v. Seabolt, 210 Md. 199, A.2d 207 (1956), Brohawn v. TransAmerica Insurance Company, 276 396, 347 A.2d 842 (1975). Further, it has been consistently held that discretionary denial of declaratory relief is proper when there was no justiciable issue or controversy, where the factual foundation for such declaratory relief was speculative, and where the requested declaration might never be necessary. See Hamilton v. McAuliffe, supra, Lucas Mercantile Safe Deposit and Trust Co., 29 Md. App. 633, 350 A.2d 15 (1976). Therefore, it is clear that it is appropriate for a court to decline to render a requested declaration when there exists no actual controversy between the parties and when the factual basis for the declaratory relief is, as is in the case at bar, speculative or hypothetical. In the instant case the requested declarations concerning Bill No. 100 seek a declaration of those provisions that relate to a subdivision plan that cannot now be

-11-

subject of future development. Any future plans for development of the property cannot be undertaken under the old plan, and future use or development of the property has not yet been formulated by the developer. Accordingly, the instant litigation does not present to this Court an actual controversy between the Plaintiffs and the developer or Baltimore County, and, therefore, in the exercise of the discretion vested in this Court under Section 3-409 the requested declaratory relief should properly be denied.

CONCLUSION

For the reasons stated the Defendants Baltimore County, Maryland and the Baltimore County Council respectfully request that the Motion Raising Preliminary Objection be granted and that the within Bill of Complaint be dismissed with costs to be assessed against the Plaintiffs.

Respectfully submitted,

LEONARD S. JACOBSON
County Solicitor

JOHN A. AUSTIN
Assistant County Solicitor
Messanine - Court House
Towson, Maryland 21204
494-4420
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this 18th day of August, 1981, copies of the foregoing Defendants' Memorandum of Points and Authorities were mailed, postage prepaid, to C. Victor McFarland, Esquire, 920 Frederick Road, Catonsville, Maryland 21228, Attorney for Plaintiff, and to Mark Pollak, Esquire, 1100 Charles Center South, Baltimore, Maryland 21201 and to Joel I. Rainberg, Esquire, 36 South Charles Street, 1100 Charle...

-12-

IN THE
CIRCUIT COURT
FOR
OF APPEALS
COUNTY
BALTIMORE COUNTY
AT LAW
UNAN, et ux.
Docket 10 folio 229
File No. 85CG1483
ees

ORDER OF APPEAL

rk:

e enter an appeal to the Court of Special Appeals on
e Appellees, William J. Bauman, et ux., et al., from
um Opinion and Order dated October 8, 1985 by his Honor
rizendine.

Victor McFarland
Attorney for the Appellees
1002 Frederick Road
Catonsville, MD 21228
788-2300 or 744-3256

REBY CERTIFY that a copy of the aforegoing Order of
on this 25th day of October, 1985, mailed to John B.
, 809 Eastern Blvd., Baltimore, MD 21221, Malcolm F.
Esq., County Attorney, Office of Law, Court House,
600 Washington Avenue, Towson, MD 21204, and Phyllis
Esq., People's Council, Room 223, Court House, 400
venue, Towson, MD 21204.

Victor McFarland
Attorney for Appellees

CIVIL GENERAL

DOCKET 10 PAGE 218 CASE NO. 85CG1483 CATEGORY Appeal

IN THE MATTER OF
THE APPLICATION OF WESTCHESTER, INC. ET AL
FOR SPECIAL HEARING
FOR BUILDING PERMIT AND APPLICATION
FOR PERMITS NW/S BATHURST ROAD 95'
N. OF WESTCHESTER ROAD,
1st DISTRICT

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

ATTORNEYS
Romadka, Gontrum, Hennegan & Foos
John B. Gontrum
809 Eastern Blvd. (301)686-8274

Central Assignment

10985 Ok to docket Sent

(1) May 15, 1985 Appellants' Appeal from decision of County Board of Appeals of Baltimore County & Petition fd.
(2) May. 14, 1985 - Certificate of Notice fd.
(3) May 17,1985- Plaintiff's Motion for Stay fd.
(4) May 23, 1985 - Amended Certificate of Notice fd.
(5) June 4, 1985 - Ruling by Judge Pines: The Motion for Stay (paper # 3) is held pending receipt of a copy of the Board of Appeals Decision dated May 7, 1985. Even though the Motion is not opposed, the court feels the opinion of the Board of Appeals should be reviewed by the court.
(6) June 7,1985- Copy of Opinion and Order of the County Board of Appeals of Baltimore County
(7) June 12, 1985 - Transcript of Record fd.
(8) June 12, 1985 - Notice of Filing of Record fd.
(9) June 12, 1985 - Order of Court that the Order of the Bd. of Appeals dated May 7, 1985 in Case # 85-7-SPH and CBA-84-132 is affirmed pending final determination by this Court on Appeal fd. (JER)
(10) July 31, 1985 - Appellant's Memorandum fd.
(11) September 5,1985- Memorandum of William J Bauman Et ux et al and Exhibits fd.
Sept. 17, 1985 Hon. Austin W. Brizendine. Hearing had. Opinion to be filed.
(12) Oct 8, 1985 - Memorandum Opinion and Order of Court that the Order of the County Board of Appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed fd. (AWB)

CV EXP. COSTS 857483 #
CV CLK $5.00
E. LINT $3.00
CKDKEING TL $5.00
839595 C001 R02 T15:24
05/13/85

COUNTY BOARD OF APPEALS
RCS OCT 10 P 1:28

DOCKET 10 PAGE 218 CASE NO. 85 CG 1483

CIRCUIT COURT FOR BALTIMORE COUNTY
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Md. 21285-6754
Phone No. 887-2601

In the matter of the Application of Westchester, Inc.
IN THE CIRCUIT COURT
County Board of Appeals of Balto. Co.
FOR
BALTIMORE COUNTY
Docket 10 Folio 218
Case No. 85CG1483

NOTICE OF FILING OF RECORD

TO: John B. Gontrum
Romadka, Gontrum, Hennegan & Foos
809 Eastern Blvd Balto, Md. 21221

Edith T. Eisenhart
Co. Bd. of Appeals of Balto.Co.
Mail Stop 2205

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on June 12, 1985.

Clerk

FILED JUN 12 1985

855.

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT
CASE NO. 85-7-SPH and CASE NO. CBA-84-132
WESTCHESTER, INC. PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER, THE DEPARTMENT OF PERMITS AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, LeRoy B. Spurrier and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the Office of Planning and Zoning and the Department of Permits and Licenses of Baltimore County:

No. CBA-84-132

Mar.	6, 1984	Five (5) applications for building permits (#61773-61777) filed by Westchester, Inc.
"	9	Sediment Control Division "check list" noting conditions to be met sent to Westchester, Inc.
"	16	Plans Review Check List filed
"	21	Plans Review Comments sent to Richard E. Martin Associates
"	30	Copy of Sec. 305 filed
Apr.	4	Reply to Plans Review Comments filed by Martin Associates
"	9	Additional Comments of Plans Review sent to Martin
"	10	Fire Prevention Comments sent to Martin Associates

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner Date May 14, 1985
Office of Planning and Zoning
FROM William T. Hackett, Chairman
County Board of Appeals
SUBJECT Certified copies of zoning documents - case #85-7-SPH, Westchester, Inc.

Attached please find the necessary documents from the Zoning Commissioner's file which must be certified as True Tost copies for the Circuit Court.

Please certify these documents and return some to this office.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

MAY 16 AM
BALTIMORE COUNTY MARYLAND
ZONING DEPARTMENT
By

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT
CASE NO. 85-7-SPH and CASE NO. CBA-84-132
WESTCHESTER, INC. PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

AMENDED
CERTIFICATE OF NOTICE

County Board of Appeals has been advised by the Office of Law for ...unty that the Certificate of Notice issued on May 14, 1985, in the above ...incorrectly named Paul L. Snyder, Esquire as attorney for the Protestants, ...ucted the Board to strike Mr. Snyder's name from the file. A copy of this ...pondence is attached hereto and made a part hereof.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County
Room 200 Courthouse, Towson, MD 21204

I HEREBY CERTIFY that a copy of the aforegoing Amended Certificate of ...has been mailed to Robert J. Romadka, Esquire and John B. Contrum, Esquire, ...stern Boulevard, Baltimore, MD 21221, Attorneys for the Petitioner-Plaintiff, and ...ster, Inc., c/o Mr. W. Stefanowicz, 9413 Gunview Road, Baltimore, MD 21236, ...er-Plaintiff, and C. Victor McFarland, Esquire, 1002 Frederick Road, Baltimore, ...228, Attorney for the Protestants, and Malcolm F. Spicer, Jr., Esquire, County ...ey, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Office of Law, ...use, Towson, MD 21204, Attorneys for Baltimore County, and Paul L. Snyder, ...Suite 606 The Penthouse, 28 W. Allegheny Avenue, Towson, MD 21204, on this ...day of May, 1985.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Edith T. Eisenhart, Administrative Secretary - Board of Appeals Date May 15, 1985
FROM Malcolm F. Spicer, Jr., County Attorney
SUBJECT Westchester, Inc. CBA #84 132 & 85 7 SPH

I note from your Certificate of Notice, dated May 14, 1985, that you have incorrectly listed Paul Snyder as an attorney for the Protestants. Please be advised that Mr. Snyder did appear at an early hearing in this regard in his capacity as an Assistant County Attorney representing Baltimore County. Since that time the case has been reassigned and the only names that should appear as attorneys for Baltimore County are Malcolm F. Spicer, Jr., County Attorney and Thomas J. Bollinger, Assistant County Attorney.

Accordingly, I would appreciate your correcting your records and the Certificate.

Malcolm F. Spicer, Jr.
County Attorney

MFSJR:gh

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 23, 1985

Robert J. Romadka, Esquire and
John B. Gontrum, Esquire
809 Eastern Boulevard
Baltimore, MD 21221

Re: Westchester, Inc.

Gentlemen

Attached hereto is a copy of the Amended Certificate of Notice issued today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart,
Administrative Secretary

Enclosure

cc: Westchester, Inc.
C. Victor McFarland, Esquire
Malcolm F. Spicer, Jr., Esquire
Thomas J. Bollinger, Esquire
Paul L. Snyder, Jr., Esquire
Ted Zaleski, Jr., Dept of Permits
James Hoswell, Office of Planning
Arnold Jablon, Office of Zoning
Eileen Hennegan, Office of Zoning

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT
CASE NO. 85-7-SPH and CASE NO. CBA-84-132
WESTCHESTER, INC. PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, LeRoy B. Spurrier and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Robert J. Romadka, Esquire and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221, Attorneys for the Petitioner-Plaintiff, and Westchester, Inc., c/o Mr. W. Stefanowicz, 9413 Gunview Road, Baltimore, MD 21236, Petitioner-Plaintiff, and C. Victor McFarland, Esquire, 1002 Frederick Road, Baltimore, MD 21228, and Paul L. Snyder, Jr., Esquire, Suite 606 The Penthouse, 28 W. Allegheny Avenue, Towson, MD 21204, Attorneys for the Protestants, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County
Room 200 Courthouse, Towson, MD 21204

2.

WESTCHESTER, INC. - 10/218/85-CG-1483

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Robert J. Romadka, Esquire and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221, Attorneys for the Petitioner-Plaintiff, and Westchester, Inc., c/o Mr. W. Stefanowicz, 9413 Gunview Road, Baltimore, MD 21236, Petitioner-Plaintiff, and C. Victor McFarland, Esquire, 1002 Frederick Road, Baltimore, MD 21228, and Paul L. Snyder, Jr., Esquire, Suite 606 The Penthouse, 28 W. Allegheny Avenue, Towson, MD 21204, Attorneys for the Protestants, and Malcolm F. Spicer, Jr., Esquire, County Attorney, and Thomas J. Bollinger, Esquire, Assistant County Attorney, Office of Law, Courthouse, Towson, MD 21204, Attorneys for Baltimore County, on this 14th day of May, 1985

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT
CASE NO. 85-7-SPH and CASE NO. CBA-84-132
WESTCHESTER, INC. PLAINTIFF

BEFORE THE CIRCUIT COURT FOR BALTIMORE COUNTY
DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

ORDER FOR APPEAL

DEAR MR. CLERK:

Please enter an Order for Appeal from the County Board of Appeals of Baltimore County in the above referenced case.

John B. Gontrum
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

Attorney for Westchester, Inc., Appellants

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT
CASE NO. 85-7-SPH and CASE NO. CBA-84-132
WESTCHESTER, INC. PLAINTIFF

BEFORE THE CIRCUIT COURT FOR BALTIMORE COUNTY
DOCKET NO. 10
FOLIO NO. 218
FILE NO. 85-CG-1483

PETITION FOR APPEAL

NOW COMES WESTCHESTER, INC. by and through ...ttorney, John B. Gontrum and ROMADKA, GONTRUM, HENNEGAN & FOOS, ...ts attorneys, and files this Petition for Appeal from the decision ...and Order of the County Board of Appeals of Baltimore County, ...ppeals dated May 7, 1985, and in support thereof says as follows:

1. That the Board of Appeals entered an Order on ...Petitioner's Petition for Special Hearing and Petition for Building ...Permit and Application for Permits in the above-entitled matter ...Report of March 28, 1985, a copy of which Decision and Order is ...Order dated May 7, 1985 (Corrected Order), a copy of which ...is attached hereto and made a part hereof.

2. That the Board of Appeals committed error of law in ...Petitioner's Petition for Special Hearing and Petition for Building ...Permit and Application for Permits in that the Petitioner's ...Exhibits and Permits submitted in support of the Petition ...Board of Appeals committed error of law in their interpretation ...Section 102 of the Baltimore County Zoning Regulations, ...that the Board of Appeals committed error of law in that ...misinterpreting the common law decisions of the Courts of ...development regulations as official plans

Baltimore County Code and previous Baltimore County Development Regulations contained in Baltimore County Council Bill Number 12-77 and Bill Number 61-79.

4. That the Board of Appeals committed error of law by misinterpreting the common law decisions of the Courts of Appeals of the State of Maryland with respect to the vesting of residential subdivision property against subsequent zoning changes.

5. That the Board of Appeals committed error of law by failing to recognize the contractual relationship between Baltimore County and the Appellant, and by further failing to enforce the settlement agreement entered into between Baltimore County and the Appellant in settlement of this ...

6. That the Board of Appeals committed error of law ...on the basis of res judicata in rejecting the Petitioner's ...Petitioner's Petition for Special Hearing and Petition for ...Agreement between the Appellant, Westchester, Inc. and ...Circle, and Baltimore County.

7. That the Board acted arbitrarily and capriciously ...in failing to interpret the Rule of Law of Baltimore County ...with respect to vesting of subdivision against subsequent ...social change for the previous Petitioner, Westchester and the ...Section 102 of Baltimore County Zoning Regulations ...terms of those decisions as part of the law for subdivision ...Section 1B01.1 of Baltimore County Zoning Regulations

8. That the Board acted arbitrarily and capriciously in failing to recognize the estoppel arising from Appellant's reliance on agreements reached with Baltimore County on which Appellant had a right to rely to Appellant's severe detriment ...Appellant's rights ...said agreements are not enforced.

9. That the Board of Appeals acted arbitrarily ...capriciously and without substantial basis and law or fact to apply new law regarding subdivision vesting in Baltimore County retroactively to Appellant so as to deprive Appellant ...due process rights.

WHEREFORE, Appellant prays the Opinion and Order of the Board of Appeals of March 28th, 1985, be reversed and that the Board of Appeals of March 28th, 1985, be reversed and that the building permits decision be affirmed in their entirety, and for such other and further relief as the nature of the relief and the circumstances of the case may require.

John B. Gontrum
ROMADKA, GONTRUM, HENNEGAN & FOOS
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274
Attorneys for Appellant, Westchester, Inc.

LAW FIRM
ROMADKA, GONTRUM, HENNEGAN & FOOS
ESSEX, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of May, 1985, a copy of the aforegoing Order for Appeal and Petition for Appeal was served pursuant to Maryland Rule of Procedure B-321 on the County Board of Appeals of Baltimore County, Court House, Towson, Maryland 21204.

John B. Gontrum

COUNTY BOARD OF APPEALS
RCS MAY 13 P 3:30

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

April 12, 1985

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

HEARING ON MOTION FOR RECONSIDERATION

CASE NO. 85-7-SPH AND CASE NO. CBA-84-132	WESTCHESTER, INC. WESTCHESTER, INC. NW.S Bathurst Rd. 95' N. of Westchester Road 1st District
	RE: BUILDING PERMITS

THURSDAY, APRIL 25, 1985 at 9:30 a.m.

ASSIGNED FOR:

cc: Robert J. Romadka, Esquire	Counsel for Petitioner
John B. Gontrum, Esquire	" " "
Westchester, Inc.	Petitioner
C. Victor McFarland, Esquire	Counsel for Protestants
Paul L. Snyder, Jr., Esquire	" " "
Malcolm F. Spicer, Jr., Esquire	County Attorney
Thomas J. Bollinger, Esquire	Assistant County Attorney
John Reisinger, Bldgs. Engineer	Dept. of Permits & Licenses
Joseph Nolan, Asst. Bldgs. Eng.	" " "
Ted Zaleski, Jr., Director	Zoning Commissioner
Arnold Jablon	Deputy Zoning Commissioner
Jean M. H. Jung	
James E. Dyer	
Norman E. Gerber	
James G. Hoswell	

Edith T. Eisenhart, Adm. Secretary

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 85186
DATE 5/20/85
ACCOUNT 01-212
AMOUNT $ 20.00
RECEIVED John B. Gontrum, Esquire
FOR Certified copies of documents from file #85-7-SPH and file #CBA-84-132
VALIDATION OR SIGNATURE OF CASHIER

THE
STCHESTER,
HEARING
MITS AND
PERMITS
AD 95'
ROAD

* BEFORE THE
* COUNTY BOARD OF APPEALS
* NO. 85-7 SPH
* CBA #84 132

MOTION FOR RECONSIDERATION

County, Maryland by Malcolm F. Spicer, Jr.,
moves the Board of Appeals of Baltimore County
s Opinion and Order dated March 28, 1985 in
ed case for the following reasons:
ard of Appeals by its decision dated March 28,
that the provisions of §22-68 relating to time
ity of subdivision plats did not apply to the
ivision. The Board's conclusion was based
ons of §22-40 of the Baltimore County Code.
that the Board misconstrued the impact and
22-68 and that the clear legislative intent
is applicable to all subdivision plats whether
o or subsequent to the effective date of
his clear legislative intent is found in the
2-68(a)(1) which is clearly indicative of the
that both the lapsing provisions and the
ons of this Section should apply to all plats,
date of recordation.
impact of the Board's decision is substantial
e a great impact on the validity of all

subdivision plats filed prior to June 11, 1982, the effective date of Bill #56-82.

3) The provisions of §22-40 and §22-68 can be read in harmony and §22-40 should not be interpreted to strip the County of its clearly legislated authority to deal with not only the issue of the vesting of plats but also the lapsing of plats. The general provisions of §22-40 should give way to the specific requirements of §22-68. The legislative intent in adopting the provisions of §22-68 is clear to the extent that it was to have application to all plats irrespective of date of recordation.

4) The result of the Board's decision in the above-entitled case is to determine that the lapsing provisions of §22-68 have no application to plats previously recorded.

5) In the alternative, if the provisions of §22-68 do not apply by virtue of the application of §22-40 then the provisions of either Bill #12-77 or Bill #61-79 should be interpreted to have application to plats previously recorded.

6) And for such other and further reasons as may be shown at the time of any hearing hereon.

WHEREFORE, it is respectfully requested that this Board schedule a prompt hearing and grant the Motion for Reconsideration of its decision dated March 28, 1985.

Malcolm F. Spicer, Jr.
County Attorney

Douglas P. Sachse
Assistant County Attorney
Mezzanine - Court House
Towson, Maryland 21204
494-4420

Certificate of Service

I HEREBY CERTIFY, that on this 1st day of April, 1985 a copy of the aforegoing was mailed, postage prepaid, to C. Victor McFarland, Esquire, 1002 Frederick Road, Catonsville, Maryland 21228, Attorney for Protestants and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221.

Douglas P. Sachse
Assistant County Attorney

RECEIVED
COUNTY BOARD OF APPEALS
'85 APR 2 P 2:42

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS N/S OF WESTCHESTER ROAD 1st ELECTION DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 85-7-SPH and CBA 84-132

ANSWER TO MOTION FOR RECONSIDERATION AND FOR SPEEDY HEARING

NOW COME the Appellants, WILLIAM J. BAUMAN, et ux., et al., by C. Victor McFarland, McFarland/Weinkam, O'Connell & Masters, their attorneys, and in Answer to the Motion for Reconsideration and for Speedy Hearing represent:

1. That the Rules of the Board of Appeals, Rule 10 "Revisory Power of the Board" makes no provision for the board revising its decision except for fraud, mistake or irregularity.

2. That the Maryland Rules do not apply to the Board of Appeals since all rules must be approved by the County Council as provided in 603 "Rules of Practice and Procedure" of the Charter of Baltimore County, Maryland.

3. That the Appellee's motion does not allege fraud, mistake or irregularity.

4. That the motion filed by Westchester attempts to reargue the arguments as presented to the Board orally and in its 28 page memorandum.

A. That the Board in it's Opinion adequately covered the statutes discussed (BC2R 103.1, Bill 56-82, 12-77 Section 22-68, 22-40, 22-16 and 22-77 of the Baltimore County Code,

RECEIVED
COUNTY BOARD OF APPEALS
'85 APR 22 A 11:0

B. That Westchester fails to present any new arguments or law that were not considered by the Board in reaching its Opinion of March 28, 1985.

5. That Westchester invokes the doctrine of "Stare Decisis" but fails to cite any decisions of the Board that its Opinion of March 28, 1985 might conflict.

6. Westchester fails to cite authority for the assumption that the Board of Appeals should be bound by an interpretation of an ordinance of the County Council by an administrative agency, which conflicts with the obvious "plain meaning of a statute".

7. That Westchester fails to cite authority wherein the Court of Appeals has applied the doctrine of "Stare Decisis" or Res judicata to administrative hearings (quasi judicial).

8. That Westchester fails to cite any statute or case giving to the Director of Zoning and Planning and/or the Office of Law the power to determine the rights of Westchester, Baltimore County and the rights of the unsuspecting public, as to vesting of recorded plats contrary to an express ordinance of the legislative branch of government.

WHEREFORE, the Appellants request that for the aforegoing reasons and those to be set forth at the hearing on the Appellee's motion that the motion be denied.

C. Victor McFarland
McFarland, Weinkam, O'Connell
& Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 and 744-3256
ATTORNEY FOR APPELLANTS

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS N/S OF WESTCHESTER ROAD 1st ELECTION DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-7-SPH AND CBA 84-132

POINTS AND AUTHORITIES

1. Rules of Practice and Procedure of County Board of Appeals.
2. Section 603 of the Baltimore County Charter.
3. "..No department of the government may exercise the powers properly belonging to the other two departments. When any of the three branches of government takes unto itself powers denied to it or those strictly within the sovereignty of another branch, the courts must step in and declare such encrachment to be constitutionally prohibited." Cases citod, 5M.L.E.272 Constitutional Law 891.

See Report to the Voters of Baltimore County contained in "Proposed Home Rule Charter for Baltimore County" entitled "Separation of Powers".

"At the present time all executive powers of our local government, and also certain limited legislative and judicial powers, are vested in the Board of County Commissioners. The Baltimore County Charter which we propose will separate those powers. All legislative powers now discharged by the County Commissioners and all those additional ones acquired by Home Rule will be exercised by an elected County Council. The executive powers will be vested in an elected chief officer to be known as the 'County Executive'. And the judicial functions now performed by the County Commissioners will be assigned, together with other quasi-judicial functions, to a County Board of Appeals."

See also 1M.L.E.170 53, "Separation of Administrative and Other Powers".

4. Res judicata does not apply, Gaywood Community Ass'n v. Metropolitan Transit Authority, 1967, 227 A.2d 735, 246 Md. 93, Redding v. Board of County Com'rs for Prince George's County, 1971, 282 A.2d 136, 263 Md. 94, Cert. den. 92 S.Ct. 1791, 406 U.S. 923, 32 L.Ed.2d 124.

...e of Mind Rule" Montgomery County v. Supervisor of ...ent of Montgomery County, 1975, 337 A.2d 679, ...58.

Respectfully submitted,

C. Victor McFarland
McFarland, Weinkam, O'Connell
& Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 or 744-3256
ATTORNEY FOR APPELLANTS

CERTIFICATION OF MAILING

...BY CERTIFY that on this 1st day of April, 1985, ...he aforegoing Answer to Motion for Reconsideration ...ruedy Hearing and Points and Authorities was mailed to ...Gontrum, 809 Eastern Boulevard, Baltimore, Maryland ...Attorney for Appellee.

C. Victor McFarland, Esquire

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS N/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-7-SPH and CBA 84-132

JUDGMENT OF THE BOARD

After having read and considered the Motion For Reconsideration and For Speedy Hearing and Answer thereto, and hearing legal arguments advanced by the Appellants and Appellee Westchester,

IT IS THE JUDGMENT of this Board, this day of 1985, that the Motion for Reconsideration and For Speedy Hearing be and is hereby denied.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

by LAWRENCE E. SCHMIDT,
Acting Chairman

LeROY B. SPURRIER

PATRICIA PHIPPS

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS N/S BATHURST ROAD 95' N. OF WESTCHESTER ROAD 1st DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 85-7-SPH and CBA-84-132

MOTION FOR RECONSIDERATION AND FOR SPEEDY HEARING

NOW COMES WESTCHESTER, INC., by and through its attorneys, John B. Gontrum, Robert J. Romadka and ROMADKA, GONTRUM, HENNEGAN & FOOS, and pursuant to the revisory power of the Board of Appeals of Baltimore County over its decisions, moves this Board to reconsider its Opinion and Order dated March 28th, 1985, in the above referenced case and for that says as follows:

1. The Board in its decision held that County Council Bill #56-82, the current Development Regulations of Baltimore County, is not applicable to this case based upon the current Baltimore County Code Section 22-40. The Board interpreted that section to render the current Development Regulations inapplicable to the Westchester subdivision. By so interpreting Section 22-40, they failed to harmonize it with Section 22-68. Both sections describe plats and plans filed prior to the enactment of Bill #56-82. It is a rule of statutory interpretation that sections contained in the same enactment

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should be read in such a way as to harmonize the Act. It is presumed that the legislators and the enactment of the Bill meant to harmonize all sections.

It seems clear that the current development regulations were not meant to apply to the subdivision plats recorded prior to the enactment of Bill #56-82, that is the intent of Section 22-40. However, the Board's interpretation of Section 22-40 in its March 25th Opinion means that Section 22-68 has no validity when it describes plats which have been filed prior to the effective date of the Regulations. In this case the plat very clearly was filed prior to the effective date of the Regulations and its expiration date unless otherwise vested, as described in Section 22-68, must be considered to be valid. Consequently, the vesting provisions contained in the same section must also be considered pertinent. In its Opinion the Board found that had Section 22-68 applied to the current subdivision, the plat and the plan indeed would have been vested and the building permits issued would have been proper. We would urge the Board to reconsider this portion of their Opinion in order to harmonize Sections 22-40 and 22-68 and find the recorded plat vested under the current Development Regulations.

2. Even if the Board's interpretation of Section 22-40 is correct such that Bill #56-82, the current subdivision Regulations for Baltimore County, are not applicable to this subdivision, Bill #12-77, the original Interim Development

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Control Act codified in the Baltimore County Code, 1978 edition, Section 22-16 (b) must certainly apply to the Westchester subdivision. That Act also spoke to prior recorded subdivision plats, and again gave a five (5) year life to said plats unless they were vested. The Board in its Opinion found that the Westchester subdivision met the vesting test contained in Section 22-16 (b) and would have been vested under Bill #12-77. However, there Opinion failed to relate the Westchester subdivision to the Interim Development Control Act. On page 9 of the Board of Appeals Opinion they failed to describe what effect if any the retroactivity section of subsection (b) of Section 22-16, might have had on the previously recorded subdivision plat, subdivision plan and public works agreement. We believe that if the current Development Regulations are not applicable to the Westchester subdivision then certainly the Interim Development Control Action, Section 12-77 and its vesting clause must have been pertinent to the Westchester subdivision, in which event the Westchester subdivision would have been vested under the Interim Development Control Act and vested, therefore to this day under subsequent enactments. We would urge the Board to reconsider the applicability of the Subdivision Regulations, specifically the Interim Development Control Act as codified in Section 22-16 of the 1978 Baltimore County Code and to uphold the vesting of the Westchester subdivision.

3. In its Opinion the Board felt that Section 103.1 of the Baltimore County Zoning Regulations was so clear as not to need interpretation. The Board, furthermore, found that Section 103.1 was intended only to apply to zoning in effect in 1955. The Board however, failes to address the impact of the thirty (30) years of interpretation of this section. The Board on Page 12 of its Opinion acknowledges the long standing practice of both the Zoning Commissioners and of the Planning and Zoning Department in interpreting Section 103.1 as vesting those subdivisions who have record plats from subsequent zoning changes. The Board however, failed to give this long standing interpretation any weight. This flies in the face of a rule of law known as Stare Decisis, this means "to abide by or adhere to decided cases." It is a "doctrine of policy grounded on theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified, or overruled is within court's discretion under circumstances of case before it". Black's Law Dictionary (4th Edition).

In this case we have a long standing interpretation of Section 103.1 which may or may not be correct in today's review of the Section. However, as was pointed out by Eugene Bober and acknowledged by the Board in its decision, there has been a long standing interpretation that 103.1 vests record plats

against subsequent zoning changes of any kind. To apply the Board's decision retroactively, as they have done in the Westchester case, to a subdivision filed in 1977 and to say that Section 103.1 has no validity as the Board did in this case, not only voids the Westchester subdivision record plat, but also, holds open all other record plats against any subsequent zoning change whether it be by change in the zoning classification or by change in the zoning regulations. Essentially, it says that there were no plats protected after 1955. This has extremely far reaching consequences since it now renders not only non-conforming, but illegal, many subdivisions and many building projects in Baltimore County. We do not believe that this was intended by the Board in its decision. It is one thing to change the law and apply it prospectively. This has no effect on the rights of those who have previously relied on an interpretation of the law now held to be erroneous. It is another to apply such a ruling retroactively. We believe that law is meant to be a living not a static thing that changes as conditions and information is brought to life. However, it is grossly unfair to apply new interpretations retroactively to subdivisions where reliance has been upon a well established interpretation.

In this case the Board of Appeals acknowledged the reliance of the developer on the long standing interpretation of Section 103.1. The Board accepted as a fact that the developer was reliant on Section 103.1. However, the Board by

changing the long standing interpretation of 103.1, failed to take into account the depravation of rights not only to the petitioner in this case, but to all others similarly affected by changes in the zoning law after their subdivision plats have been recorded. Again, we wish to point out that if the Board's interpretation is correct, and if, more importantly, their retroactive application of the decision is correct, not only subdivisions subject to zoning reclassifications are called into question, but also any development subject to any changes in zoning regulationsprior to building actually having occurred on a site are subject to violation.

We would urge the Board to reconsider this portion of their decision and either (1) reconsider their interpretation of Section 103.1 so as to conform it to the long standing rule developed by decisions or (2) apply their new interpretation prospectively and not to petitioner or to other developers who have acted similar situations either by change of zoning classification or by change in the zoning Regulations.

4. We would also urge the Board to reconsider their decision on the collateral estoppel on this case. As we cited in the immediately preceding paragraph, the Board's interpretation works a tremendous hardship on the Petitioner. We believe that the Board in reviewing whether or not collateral estoppel applied to this case, failed to take into account the reliance of Petitioner on the settlement between Petitioner's

predecessor in title and Baltimore County in the lawsuit. Clearly, the Office of Law acts as the legal agent for Baltimore County. It has the right to settle suits, as well as to maintain and defend actions on behalf of Baltimore County. In this case a lawsuit was settled between Petitioner's predecessor in title and Baltimore County with a result that the subdivision was found to be vested. The developer had a right to rely on that vesting at that time. In reliance on that vesting, Petitioner expended tremendous amounts of money, including purchase of the property out of bankruptcy and thousands of dollers in improvements in the ground, prior to being told that he needed a Special Hearing in order to obtain the building permits. We believe that it is that period of time, as much as any other, between 1982 and 1984 in which the doctrine of collateral estoppel should be reviewed.

We do not wish to say that we agree with the Board that there was no collateral estoppel due to the Public Works agreement or the recordation of the record plat. We do believe that the County was estopped because of these actions. However, we believe that the Board placed most of its attentions on those acts and not on the settlement of the case and the activity after 1982. There, indeed, we believe the County entered into an agreement with the contractor on which the contractor had a right to rely and on which the contractor did rely to its detriment. All of these elements create an estoppel which we believe should not be enforced in this

particular action. It works an undue hardship, and makes an agreement with Baltimore County essentially worthless where a development is concerned.

A developer should have the right to rely upon an agreement with Baltimore County, and where the developer goes out, obtains letters from Baltimore County, as was done in this case, attesting to the validity of the subdivision and in reliance on those letters obtains hundreds of thousands of dollars in financing, and places tens of thousands of dollars of improvements in the ground, as was done in this case, that the developer should be allowed some consideration when it comes down to whether or not he was justified in relying on the settlement agreement. We would urge the Board to reconsider the portion of their Opinion dealing with collateral estoppel and consider more particularly the estoppel which we believe arose as a result of the agreement in 1982 between Baltimore County and Petitioner's predecessor in title.

5. We would respectfully urge the Board to grant a Speedy Hearing on our Motion for Reconsideration. Since the Board's Opinion was issued on March 28th, the time for Appeal runs to April 27th. On or before April 27th, Petitioner will have to make a decision whether or not to Appeal the Board's decision to the Circuit Court. After that time the decision of the Board of Appeals either becomes enrolled or will be Appealed to the Circuit Court for Baltimore County. We would respectfully ask for a hearing date several days in advance of

April 27th so that the Board may hear the Arguments advanced by the Petitioner and others, and possibly reconsider their decision.

WHEREFORE, Petitioner, Westchester, Inc., respectfully requests the Board of Appeals of Baltimore County to reconsider its decision of March 28th, 1985, in the above referenced case, and to find in favor of the Petitioner and uphold the building permits issued in this case by the Department of Permits and Licenses of Baltimore County.

Respectfully submitted,

John B. Gontrum
809 Eastern Boulevard
Baltimore, Maryland 21221
Phone No.: 686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of April, 1985, a copy of the aforegoing Motion for Reconsideration and Speedy Hearing was delivered to the Baltimore County Office of Law, Court House, Towson, Maryland 21204; and to C. Victor McFarland, Esquire, 1002 Frederick Road, Catonsville, Maryland 21228, Attorney for Protestants.

John B. Gontrum

...F THE APPELLANT * BEFORE THE BOARD OF APPEALS

... Ruman etur, et. al. * FOR BALTIMORE COUNTY

* Case No. 85-7-SPH

* * * * * * * * * * * * * * * * * *

STATEMENT OF FACTS

...chester property was purchased by the Cardinal Construction ... 13, 1967. The subdivision plans for the area included ... single family, detached houses (Protestant's exhibit 3). Not ...ll 100 was enacted in 1970 did the developer submit a plan to ...tments. The plan containing apartments was approved on ... 1971 for Westchester section 2, plats 2 and 3 (Petitioner's ... Prior to this date, many families had moved into the community ... single family houses to be built. At least 27 of those ... live in Westchester and have borne the burden for 14 years of ...onstruction of apartments within their midst.

... 30, 1975 Public Works Agreement 17404 (Protestant's exhibit 9) ...nd the plat for Westchester, section 2, plat 4 (Petitioner's ...ived final county approval. This plan called for the ... 20 single family, detached houses and 108 apartments on 18.9 ... t time, the zoning for this area was DR 5.5 and all other ...hin the immediate area were single family, detached houses. ...calculation for this development of 128 units on 18.9 acres of ...sted by the developer, during testimony before the Board of ...ember 1984, neither a corporation officer nor a county official ...e of Planning and Zoning could explain how the calculation was

completed. Mr. Bober promised to provide this information following the Board of Appeals hearing. As of this date, no explanation has been received.

On February 28, 1975 the State of Maryland issued sewerage permit 875-22:24-0111 to the developer for 128 units. This permit was valid for three years. Now in possession of a Public Works Agreement, an approved plat, and sewer allocations, the developer needed only building permits to begin construction of the houses and apartments in section 2, plat 4. On January 27, 1977, the developer filed for building permits (Protestant's exhibits 4A through 4E). During the application review, the county requested a slight shift of some of the buildings (Protestant's exhibit 4F). Following this change, the new plat was recorded on March 14, 1977 (Protestant's exhibit 1). Using the new plat, the developer filed for building permits on March 21, 1977 (Protestant's exhibits 5A through 5E), cancelling the applications of January 27, 1977. Following the receipt of these permits, the developer cleared and rough graded the area, began installing utilities in accordance with the Public Works Agreement, and began building the 20 single family houses. By 1978, all 20 single family houses had been constructed but, despite possessing the required permits and sewer allocations, no construction had begun on the planned apartment units. The land had been cleared of trees and some grading had taken place, but no physical construction had begun, no additional roads had been built, no utilities for specifically servicing the apartments had been installed, and there was no visible evidence of what was planned for the property.

On June 23, 1978 the Baltimore County Office of Law approved a new policy for issuing sewer allocations. The effect of this policy was that anyone desiring allocations, even those already possessing current valid allocations, had to re-apply by December 31, 1978. Under this policy, which preceded the

passage of Bill 178-79 by the County Council, the developer was granted the requested 108 allocations on February 28, 1979. These allocations were valid for the first six months of 1979 and were subject to review and cancellation if no substantial construction had taken place. Such a review took place in mid-1979 and, because no substantial construction had occurred, these allocations were cancelled.

During 1979 several events transpired that indicate that the developer no longer intended to build 108 apartment units in Westchester. On March 20, 1978 the land was offered for sale (Protestant's exhibit 2). On May 28, 1979 the developer allowed building permit applications applied for on March 21, 1977 to lapse and be cancelled. Rather, on June 18, 1979 he filed a preliminary plat for 55 townhouses. On July 6, 1979, since he no longer intended to build apartments and because no substantial construction had taken place, the developer allowed the 108 sewer allocations granted in February 1979 to expire. The plat for the townhouses received tentative county approval on August 17, 1979 (Protestant's exhibit 7). In November of 1979, the Baltimore County Council passed Bill 178-79, which changed the county system of issuing sewer allocations. Under provisions of this bill, the developer applied for Reserve Capacity Use Certificates (RCUC) on December 4, 1979 for the plat for the 55 townhouses that was tentatively approved on August 17, 1979 (Protestant's exhibits 6A and 6B). The applicant was given a position of number 4 on the RCUC waiting list on December 19, 1979 (Protestant's exhibit 6C).

By this date, the developer clearly had abandoned his intention to build apartments, thus negating his stated intentions of 1978 to schedule 108 sewer hookups to begin in 1980 (Petitioner's exhibit 3). Also at that time, the developer was not meeting all of his financial obligations (Protestant's

exhibits 24A through 24J). These financial difficulties caused the developer to file for bankruptcy on May 8, 1980.

During the last month of 1979 and the first six months of 1980, development continued in Baltimore County, even in the sewer-deficient Patapsco sewershed. Sewer allocations were being granted and used, building permits were being issued, and plats were receiving final approval. Between November 1979 and June 1980, there were 39 applications made for Reserve Capacity Use Certificates. As of July 1980, only 12 had not received their requested capacity. For the first six months of 1980, 96 residential plats received final approval. Catonsville, Woodlawn, and Lansdowne, three areas in the Patapsco sewershed, received building permits for 196 units in 1980. Clearly, there was construction activity in the Patapsco sewershed in late 1979 and into 1980. In fact, contrary to the common terminology, there was no long-term moratorium on development in the Patapsco area but only a possible delay in the receipt of RCUC's. The only true moratorium in the Patapsco sewershed area occurred from January 1, 1983 to June of that year (Protestant's exhibit 28).

Further, Bill 178-79, which specified the procedure for applying for Reserve Capacity Use Certificates, clearly states the requirements for remaining on the RCUC waiting list. The applicant must secure the allocations within nine months by either (1) funding and executing a public works agreement or (2) completing "substantial construction" on the site. In the Westchester case, the applicant did not pursue final approval of the townhouse plat (the plat for which the sewer applications were requested), did not seek a public works agreement for this plat, and did not attain substantial construction on the site so as to notify the neighbors as to what type of construction was to take place. Since he did not meet the clearly stated

condition required by Bill 178-79, he was dropped from the RCUC waiting list. His own inactivity brought on by his financial difficulties caused him to lose the sewer allocations for the tentatively approved plat for 55 townhouses. There are no provisions in the bill requiring the county to notify a developer when he has been dropped from the waiting list for non-compliance with the provisions of the bill.

In 1980, during Baltimore County's comprehensive rezoning process, the zoning of the property was changed from DR 5.5 to mostly DR 2.0, with some DR 3.5 and a very small portion of DR 5.5. Prior to this zoning change there had been no substantial construction on the 8.1 acres of land to vest the zoning of the property at the pre-1980 density (see the aerial photographs dated prior to 1980, Protestant's exhibits 13 and 14). Indeed, if substantial construction had occurred, the county would not have dropped the applicant from the RCUC waiting list. Also, prior to the zoning change, not all provisions of the previous public works agreement (Protestant's exhibit 9) had been fulfilled. One of the fire hydrants had never been installed and the sidewalk along Bathurst had never been constructed (Protestant's exhibits 22A through 22D). Also during 1980, the developer filed for Chapter 11 bankruptcy.

In April 1982, realizing that the plat was about to expire due to lack of construction, the owner filed suit against Baltimore County. This suit was filed in an attempt to "vest" the plat and force the county to issue 108 sewer allocations, despite the fact that 108 sewer allocations had never been applied for, the owner had allowed earlier building permits to expire, a zoning change had occurred in 1980, and all provisions of the public works agreement had not been carried through to completion. This case was never heard in a court of Law. Instead, it was settled administratively based on a

decision by the Director, Office of Planning and Zoning. The county's decision to vest this plat in effect voided the zoning change that had been legislated by the County Council and approved by the County Executive; was based on erroneous data concerning water, sewer, and storm drain construction; did not include input from the effected citizens; and, most importantly, was made by a county official who had no authority to make the decision to vest the zoning. Further, much of the decision to vest the plat was based on the judgement of "substantial construction" to the property when, in fact, in testimony before the Board of Appeals in November 1984, Mr. Bober, an official of the county Planning and Zoning Department, stated that no guidelines currently exist for the determination of "substantial construction".

No substantial construction occurred prior to 1980, or even prior to 1982, to vest the Westchester plat. Prior to the suit against the county, the developer had never applied for sewer allocations for the 108 apartments. This fact is attested to by Mr. Bober in his letter of March 15, 1982 and Mr. Gerber in his letter of December 1, 1982 (Protestant's exhibit 6D).

In February 1984, the developer obtained permits for the installation of water mains, storm drains, and some sewer lines. The faulty information that Mr. Gerber had earlier received stated that this work was already 100% complete as of 1982 (Protestant's exhibit 8C). The water main, storm drain, and some sewer installation was performed in 1984 and should not have been credited to the developer in the 1982 vesting decision. The appearance of construction equipment in 1984 to perform utility work was the first knowledge that the community had that apartments were still planned for this site. After the 1980 down-zoning, the community thought that the 108 apartments could not be built. As Mr. Lumianski testified before the Board in November, even officials in the Current Planning department thought this was so, and

...formation to the public.

... 1984 the developer applied for building permits for 108 ... The Westchester Improvement Association sought a legal ...county concerning the planned construction in view of the ... 1980. On May 17, 1984, in an opinion that was exactly ...earlier verbal opinion that had been given to two members of the ...March 22, 1984, Mr. Spicer stated that the apartments could be ...of, or perhaps because of, this opinion the Zoning ...ermined that a hearing should be held on the matter. In his ...of July 18, 1984, Mr. Jablon pointed out that Mr. Spicer had ...development regulations and the zoning regulations and that ...elopment regulations do not vest the zoning of a plat. Mr. ...d that section 103.1 BCZR was not intended as intervening ...could not be applied to vest the zoning of a plat. However, ...not make his interpretation retroactive to include the ...ear's case. Also, as part of his decision, Mr. Jablon initially refused ...uance of the building permits. However, the permits were illegally ...on July 30, 1984 at the written request of the developer so that both ...miss...ner's decision and the issuance of the permits could be appealed ...same time, thus saving the developer time in the administrative ...h issues, the Commissioner's decision and the issuance of the ...g permits, are the subject of the appeal now before this Board. The ...were illegally issued based on the zoning prior to the 1980 ...and a zoning map. The zoning Commissioner was bound to act in ...nce with the comprehensive zoning map and deny approval of the permits. ...Nov...ber 13, 1984 the County Council re-affirmed the low density ...of the Westchester sites, thus emphasizing their intention that this

property not be used for high density development. This affirmation took place despite the developer's request and attempt to change the zoning density of the property to DR 10.5 or DR 16. If the apartment units are built, the real density of the property will become more than 13 units per acre, clearly not the intent of the County Council as evidenced by their last two votes (1980 and 1984) in the comprehensive rezoning process!

Finally, without arguing the constitutionality of Bill 100 in this document, an important aspect of that bill is being mis-applied in this case. One stated intention of the bill is to provide for more open space. In this instance, a majority of the open space remaining in the community is being used to cluster 108 apartment units on only 8.1 acres of land. Open space is not being preserved, but rather it is being removed.

Argument

1. Are Maryland Zoning Laws Retroactive?

Zoning Laws in Maryland are retroactive unless the developer makes substantial expenditures in improvements to his property before the Zoning Law becomes effective. See Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, (1972) 266 Md. 117, 291 A.2d 672, 50 ALR 583.

> "In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.'" (Quoting from Richmond Corporation v. Board of County Commissioners for Prince George's County, (1969) 254 Md. 244, 255 A.2d 398.)

In Ross v. Montgomery County, (1969) 252 Md. 497, 250 A.2d 635, the property owner obtained a building permit to construct a then permitted apartment hotel, poured one building footing in an attempt to retain the building permit, but later filled in the excavation and it was held he acquired no "vested right to protect him against a subsequent amendment to the applicable zoning ordinance."

In Malmar Associates v. Board of County Commissioners for Prince George's County, (1971) 260 Md. 292, 272 A.2d 6, the property owner planned to develop his apartment project in three sections when the zoning ordinance was amended requiring a special exception. A special exception was acquired for

section two. At the time the zoning text amendment was adopted, the owner had expended (prior to 1971) $118,542.20 for surveys, soil test, architectural designs and engineering work on the remaining third section. After the special exception was denied on section three, the court held that the text amendment was effective against section three.

> ". . .As a matter of dicta, some courts have stated that the amendment of the ordinance constitutes, ipso facto, a revocation of any permit for a use or structure prohibited by the Amendment.'" Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, supra, at page 677 (emphasis supplied).

See the cases listed by the County Attorney and Zoning Commissioner in their Opinions for substantial construction.

Not only are zoning statutes retroactive, but an issue on appeal can become moot if the underlying zoning ordinance is changed. Yorkdale Corporation v. Powell, (1964) 237 Md. 121, 205 A.2d 269.

2. Are the Board of Appeals and/or the Zoning Commissioner authorized to issue a permit or approve a subdivision that conflicts with a Comprehensive Zoning Map?

> "Most zoning enabling acts authorize and provide for, and most zoning ordinances create, an administrative board variously called a 'board of adjustment,' 'a board of appeals,' or 'a board of review'. The term used in the Standard State Zoning Enabling Act, and the most commonly used, is 'board of adjustment. . ."
>
> "Boards of adjustment are vested with broad powers, and most such boards have and exercise jurisdiction of the following main areas: (1) the hearing of appeals from decisions of administrative officials in zoning matters, (2) the hearing of, and decisions on, applications for special permits or exceptions as provided for in the ordinance, and (3) varying the application of zoning regulations in particular cases, subject to specific limitations. . . ." 82 Am.Jur.2d 789 §254.

Neither the Zoning Commissioner nor the Board of Appeals may question the Comprehensive Map of 1980 or 1984.

> "Rezoning, or the amendment of a zoning ordinance, is the same as an original zoning enactment, a legislative act or function representing legislative judgment and the exercise of police power." 82 Am.Jur.2d 414 §18.
>
> "In some states, a zoning ordinance may be amended or property may be rezoned only if some mistake in the original ordinance or a change of circumstances or in the neighborhood is shown and where this is the rule, it is generally held that the proponent of the amendment must show the mistake or change." 82 Am.Jur.2d 417 §20 Change or mistake as prerequisite to rezoning. Cited are DePaul v. Board of County Com'rs., 237 Md. 221, 205 A.2d 805; Wells v. Pierpont, 253 Md. 554, 253 A.2d 749; Howard Research & Development Corp. v. Zoning Board of Howard County, 263 Md. 380, 283 A.2d 150, and VonLusch v. Board of County Com'rs., 24 Md.App. 383, 330 A.2d 738.

The official Zoning Maps of Baltimore County since 1980, including the new Comprehensive Zoning Map of Baltimore

County, designate the property as DR 3.5 and DR 2. The only method available to Westchester, Inc. to change the zoning back to conform to its recorded plat is (1) a reclassification or (2) proceedings in the Circuit Court for Baltimore County based on substantial construction or that the Zoning Ordinances of 1980 and 1984 contained a saving clause exempting the developer's property from its provisions.

However, it is now too late because limitations would apply to the proceedings with regard to substantial construction and a saving clause for two reasons--(1) because the developer knew more than three years ago that his property had been down-shifted from DR 5.5 to DR 3.5 and DR 2 and (2) the County Council's passage of the 1984 Comprehensive Zoning Map of 1984 again confirmed that his property in this case is DR 3.5 and DR 2.

The new Comprehensive Map ". . . is itself a comprehensive plan designated to cover a substantial area and to supersede the old zoning maps throughout the area. When such a map is adopted, it is entitled to the same presumption that it is correct as is an original zoning." McBee v. Baltimore County, 221 Md. 312, 157 A.2d 258.

Neither the Zoning Commission nor the Board of Appeals are able to amend the zoning map. They must assume it to be correct.

The same presumption of correctness attaches to a comprehensive zoning amendment as attaches to a comprehensive zoning plan. See VonLusch v. Board of County Com'rs., supra.

No power is granted the Zoning Commissioner to amend the

...ning map except perhaps by special exception. Original jurisdiction in reclassification cases now resides in the Board of ...peals and with its hearing on appeal of special exceptions, ...may amend the Comprehensive Zoning Map. No other authority ...as been delegated by the charter or the County Council of its ...legislative power to amend zoning maps.

The Zoning Commissioner was correct in holding the hearing ...by virtue of 500.1 of the Baltimore County Zoning Regulations ...but incorrect in determining that substantial construction and ...statutory intervention (saving clause) did not insulate the ...developer's property but that construction with estoppel did ...insulate the developer's pre-1980 zoning of DR 5.5 against the ...downshift to DR 3.5 and DR 2 on the 1980 and 1984 Comprehensive ...Zoning Maps.

It must be remembered that Mr. Spicer's Opinion and Mr. Jablon's Opinion cannot be taken as factual because the facts were not the result of testimony under oath and subject to cross-examination. At the hearing in this case before the Board, Baltimore County conceded that no investigation was made as to the County's interpretation of Sec. 103.1 of the Baltimore County Zoning regulation insulating a subdivision against a downshift after its recording.

Mr. Eugene Baker testified that his office, Current Planning, interpreted it as insulating the plat against changes in the subdivision regulations for 7 or 9 years. He did not know how the Zoning Office interpreted it.

In short, there is no evidence of a long-standing interpretation by Baltimore County of Section 103.1 that the recording

of a plat insulates a subdivision against a downshift.

> "In the absence of a statute providing otherwise, the mere approval of a subdivision plat does not preclude the local zoning authority from re-zoning or changing the zoning laws." 82 Am.Jur.2d 671 §164--Effect of approval with regard to future zoning changes

The law is clear the recording of a plat together with substantial construction was the law when the developer was granted the permits. Mr. Gerber, Director of Zoning and Planning, decided that the plat of the developer had vested because of substantial construction.

At this moment if the Board visited the site, it would become immediately apparent that construction does not meet the test laid out by the Court of Appeals. Only some utilities have been installed and rough grading done. No construction of improvements has been made to the extent that the neighbors could be put on notice that the developer intends to erect apartment houses on the site. No foundations have been started.

The improvements made in early 1984 were made with the knowledge of the pending 1984 Comprehensive Zoning Map.

There was no testimony that the grading and utility costs were not usable for development under the current zoning. There is no evidence of Mr. Gerber's authority to bind Baltimore County to such a conclusion. Mr. Gerber's act was unauthorized and cannot bind Baltimore County. The developer was represented by counsel in the matter and charged with knowledge of the law and Mr. Gerber's lack of authority.

> "Everyone dealing with the officers and agents of a municipality is charged with the knowledge of the nature of their duty and the

extent of their powers and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority." Lipsitz v. Parr, 164 Md. 222, 164 A. 743.

3. Does a statutory intervention in addition to substantial construction insulate a subdivision plat against a subsequent downshift?

It is clear that the only statutory intervention would be in the form of a "saving" clause in the law that causes the downshift. The enactment of the downshifting zoning amendment would void any previous inconsistent law because the new ordinance applies specifically to the downshifted property.

82 Am.Jur.2d 762 §237--Valid building permit previously issued, states:

> "In numerous cases the courts have considered the problem of the retroactive effect of a zoning regulation or change on a building permit previously validly issued. In some instances the zoning law itself contains a saving clause as to such permits, but more frequently it does not. In the absence of such a saving clause, the rule generally supported or recognized by the vast majority of the courts is that revocation of a validly issued building permit may not be based on a zoning regulation enacted or becoming effective after the issuance of the permit, if the permittee, in reliance on the permit or on the existing zoning, has made substantial expenditures or otherwise committed himself to his substantial disadvantage." Cited, among other cases, Malmar Associates v. Board of County Com'rs., 260 Md. 292, 272 A.2d 6.

In Martin v. Mayor and Aldermen of Annapolis, et al., (1968) 248 Md. 551, 237 A.2d 728, 49 ALR3d 1138, after a permit was issued for a hotel, the city enacted a zoning ordinance which included a saving provision declaring the ordinance inapplicable to construction for which a permit had been sought prior to enactment. The court allowed the construction of the hotel even though its plan changed after issuance of the permit because the change was not substantial

enough to deprive the permitee of the benefits of the saving provision.

49 ALR3d 1152 contains authority for the protection of property for property owners who have taken a position inconsistent to the new zoning regulations.

> "To avoid the uncertainty involved when a municipality seeks to rezone land for which a building permit has already been applied for or issued, and on which construction may already have begun, many jurisdictions have enacted--usually as part of a new zoning law--provisions offering protection to persons who apply for or receive a building permit prior to a zoning change. . . . . .their provisions, they have uniformly been upheld. . ." 49 ALR3d 1154

If the County Council of Baltimore County had intended to save subdivisions upon plat approval, Section 22-68 should have said so. However, even if Section 22-68 amounts to statutory intervention, that section would have been repealed because the ordinance creating the 1984 Comprehensive Zoning Map did not contain a "saving and excepting" clause.

In Howe Realty Co. v. Nashville, (1940) 176 Tenn. 405, 141 SW2d 904, a permit was issued hours before the adoption of the new zoning ordinance and was held to not be saved by a "saving" clause.

Westchester's permits should have been revoked in this case after the County Council adopted the 1984 Comprehensive Land Use Map for Baltimore County even though issued by the Zoning Commissioner.

> "Although there are major exceptions, the rule followed in most jurisdictions is that a newly adopted prohibitory zoning regulation may ordinarily be applied with retroactive effect to bar issuance of a building permit that was duly applied for prior to the adoption or the effective date of the new regulation." 50 ALR3d 602

See Board of Commissioners of Anne Arundel County v. Snyder, (1946) 186 Md. 342, 46 A.2d 689; Malmar Associates v. Board of County Commissioners, supra (recognizing rule); Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, supra.

No case in the limited time I could research this case could be found to involve a subdivision regulation (concerned only with fixing the sundown regulations or other regulation applicable to subdivisions) that was applied to vest a subdivision against a subsequent zoning regulation or comprehensive zoning map. The only cases involving a statutory intervention were those zoning amendments that contained a saving clause.

There are two kinds of saving clauses--(1) saving clauses that except certain regulations from the effects of a change in the zoning text and (2) saving clauses that except certain types of situations from a comprehensive zoning map. Section 103.1 is of the first type limited to the 1955 zoning text amendment.

4. Is Title 22 Section 68 of the Baltimore County Code 1978 Edition, 1983 Supplement, a Subdivision or Zoning Regulation?

Clearly the provisions of Section 22-68 apply only to the life of a subdivision which has not been effected by rezoning. If the County Council had meant it to apply to zoning, it simply would have said so.

The distinction between zoning, planning and subdivisions is set forth in Board of County Commissioners of Carroll County v. Stephens, (1979) 286 Md. 384, 408 A.2d 1017.

Title 22 of the Baltimore County Code is titled "Planning, Zoning and Subdivision Control." Title 22 is divided into Planning Sections 12 to 28, Zoning Sections 19 to 36 and Subdivision Control Sections 37 to 140. General matters are contained in Sections 1 to 11. The statutes that Westchester claim amount to statutory intervention are contained under subdivision control sections 37 to 140.

Comprehensive zoning is a legislative act; subdivision regulations are administrative functions.

82 Am.Jur.2d 484 §62--Delegation of power to board or official, states:

> "Consonant with the general constitutional principles forbidding the delegation of legislative powers to nonlegislative authorities, the courts in zoning cases have united in recognizing, directly or by implication, that the basic legislative power to zone may not be delegated to executive or administrative officials. The universal acceptance of this principle does not mean, however, that no zoning powers or functions may be so delegated, since the courts are equally united in recognizing that merely administrative zoning functions may be entrusted to nonlegislative bodies or officials. The practical problem presented is the determination of which particular zoning powers are 'legislative,' and so non-delegable, and which 'administrative,' and

...Jur.2d 477 864--Sufficiency of standards supplied...

"As a general proposition, in delegating ... to a zoning administrative agency, the ... lative body must spell out its policies ... fficient detail to enable those to whom ... is to be applied to reasonably deter- ... their rights thereunder and to prevent ... y arbitrary discretion on the part of ... inistrator."

...he local laws cited by Mr. Spicer as constituting ... intervention are subdivision regulations and, therefore, ...ect the provisions of zoning regulations unless ...y the zoning regulations. A comprehensive zoning ...on-delegatable legislative function; subdivision ... a delegated administrative function.

...e searched in vain among the array of local laws ... by Mr. Spicer to equal a theory labeled "statutory ...on" for the words zoning, comprehensive map or a ... facsimile thereof--without any success. The only ...s reference by implication, but I can find no basis ... theory.

...es Section 22-68 insulate an approved subdivision ...ownshift?

...swer is no. The Council certainly was aware of ...ent Opinion of Arnold Jablon, Zoning Commissioner, ... 18, 1984, to the contrary. It is my understanding ...uncil was divided as to which legal theory applied-- ... construction or statutory intervention--before ... of the 1984 Comprehensive Map. If the Council ...ave the developer's property from the effects of ...ensive Maps of 1980 or 1984, they could have passed ...lause no matter which legal theory applied. The ...at there is no doubt what the Council intended for ...rty, not once but twice.

Change the difference between planning and zoning in Baltimore County?

As stated in Murray v. Director of Planning, Zoning Commissioners, et al., (1978) 217 Md. 381, 143 A.2d 85:

"From the beginning the line of demarcation between planning and zoning always has been an enigma." See Lynn v. Goldman, 14 Md. 1958, 141 A.2d 172, Finn v. Board of Zoning Appeals 1955, 207 Md. 355, 361, 114 A.2d 614."

"...zoning powers and planning powers exercised by Baltimore County are separate and distinct as the derivation of those powers as stated in Murray, supra:

"The zoning powers of the County were derived from certain public local laws enacted by the General Assembly from time to time between 1939 and 1955, rather than through the State Enabling Act, now codified as Code (1957), Art. 66B. See Chapter 715 of the Acts of 1939; Chapter 247 of the Acts of 1941; Chapter 877 of the Acts of 1943; and the Code of P.L.L. of Baltimore County (1955), Title 30. On the other hand, the County Commissioners chose to exercise the planning [powers under the Enabling Act (Code (1939 and 1951), Art. 66B) until 1955, when the General Assembly enacted a public local law regulating planning and subdivision control in the County. See Chapter 610 of the Acts of 1955 and the Code of P.L.L. of Baltimore County (1955), Title 25. The Zoning Commissioner, whose office was created by Chapter 247 (1941), had broad powers over original zoning and rezoning but was considered to be a subordinate officer in the Department of Public Works. The Department of Planning, however, was a separate governmental agency until 1955 when Chapter 610 (1955) placed the Director of Planning under the executive span of control as was the Zoning Commissioner. Nevertheless, each had no official connection with the other. The defects of this awkward arrangement were manifest in Lynn v. Goldman, (1958) 141 A.2d 172, where the Department of Planning approved a subdivision plat which allegedly violated certain zoning regulations. (Emphasis supplied)

...the Charter Board, created a Home Rule Charter pursuant to the provisions of Article XI-A of the Constitution of Maryland, known as the Home Rule Amendment. One of its chief planning concerns was the consolidation of many of the separate agencies of the county government. However, because planning and zoning was in a state of flux, the Charter Board decided to let to the County Council the problem of consolidating and reorganizing the planning and zoning functions.

"...The Zoning Commissioner and the Deputy Zoning Commissioner were removed from the Department of Public Works and placed in a new office of Planning and Zoning established by Section 522 of the Charter. In the tentative draft of this section, the Director of Planning was also named as the 'head of the Department,' a term which would have carried with it the right to appoint the subordinate officers of the agency, including, of course, the Zoning Commissioner and his Deputy. In the final draft, however, this provision was eliminated, and the new agency was left without a departmental head, more correctly, it was in effect given three heads--a Director of Planning, a Planning Board and a Zoning Commissioner. . . . (Emphasis supplied)

"In enacting the Bill, the County Council...accomplished two objectives. First, it changed the status of the Zoning Commissioner from that of a co-department head to that of a subordinate officer, and made the Director of Planning--renamed the Director of Planning and Zoning--the sole administrative head of the office. . .

". . . The Bill is not a 'planning' or 'zoning' law since it does not alter existing planning and zoning regulations or procedures. . ." Murray v. Director of Planning, Zoning Commissioners, et al., supra.

Title 22 of the Baltimore County Code to this day by its structure preserves the distinction between zoning, planning and subdivision. The separation of powers is also preserved thereby, legislative in zoning, executive in planning and subdivision.

...1955 ...ply and insulate subdivisions against a zoning downshift.

...82 Am.Jur.2d 671 §160--Effect of approval with regard to future zoning changes; states:

"In the absence of a statute providing ...otherwise, the mere approval of a subdivision plat does not preclude the local zoning ... authority from rezoning or changing the zoning ... laws."

The answer is a resounding no. There was no provision for comprehensive rezoning every four years at the time it was adopted in 1955.

The proposed Section 103.1 was to avoid the new 1955 zoning regulations and subsequent maps from affecting uses that were contrary to the zoning regulations, i.e. Section 104 Nonconforming Uses, property used for public uses if later changed to private, Section 103.2 and subdivisions and proposed buildings from being objected to the new zoning regulation's Section 103.1.

These sections have been carried since 1955 because these nonconforming uses, subdivisions, buildings and converted public properties still exist and do not conform to the post 1955 zoning regulations. For this reason they are still carried in the present zoning regulations.

This saving clause provided by Sections 103.1, 103.2 and 104 applied to the zoning text amendment of 1955. There is no evidence of a saving clause in any Comprehensive Zoning Map enacted in Baltimore County. Saving clauses may apply either to Zoning Regulations (text) and/or a Comprehensive Zoning Map.

Any interpretation ... visions approved after 1955 is against the plain meaning of the statute. The phrase "new Planning Board" was a gratuitous comment added at a later date because the change to Planning Board did not occur until years after 1955. The regulations were probably not published until after the change to Planning Board took place.

Any legislative history using 103.1 as the seminal ordinance providing for statutory intervention to insulate subdivisions against downshifts is grossly mistaken. Sections 103 and 104 of the 1955 regulation were "saving and excepting" provisions as referred to in 49 ALR3d 1154 and Martin v. Mayor and Aldermen of Annapolis, supra, and apply only to Zoning Regulations (text) at most.

If the County Council had intended 22-68 or the ordinances cited by the Plaintiff to insulate subdivisions against downshift, the comprehensive map ordinances could have excepted them from the effect of the ordinance as occurred in the 1955 zoning regulations (text).

If Section 22-68 did insulate the Plaintiff's property against a downshift and was intended by the County Council as claimed by the Plaintiff, then the Council retiring the issue was a nullity and a hoax against an unsuspecting public.

The zoning boundaries were drawn in Baltimore County for the first time on January 2, 1945, with the passage of the first zoning regulations. See Temmink v. Board of Zoning Appeals of Baltimore County, (1954) 205 Md. 489, 109 A.2d 85, and again in 1955 through 1957 with the passage of the zoning

Episcopal Church v. Doub, (1959) 219 Md. 387, 149 A.2d 779; Hewitt v. County Commissioners of Baltimore County, (1959) 220 Md. 48, 151 A.2d 144; Trustees of McDonogh Ed. Fund and Institute v. Baltimore County, (1960) 221 Md. 559, 158 A.2d 637.

The first comprehensive zoning maps did not start until October 15, 1971. Before 1971, the Comprehensive Zoning Maps were by Election Districts, the Ninth Election District on, from November 15, 1955, to September 6, 1966, upon the completion of the 15th Election District Map. There is no evidence that these maps or subsequent Comprehensive Zoning Maps contained saving clauses.

Section 103.1 of the zoning regulations of 1955 was passed along with its sister sections, 103.2 and 104.1, as a saving clause enacted to protect the property owners from a revision of the zoning regulations (text) of 1955 and the Comprehensive Maps that were enacted thereafter. The Comprehensive Maps after 1971 involved only issues on specific properties. Those properties that were not made issues were not changed. The Council on those maps zoned specific properties either singularly or in groups. When the Council retired the Westchester issue and affirmed the 1980 Comprehensive Zoning Map, it downshifted the Westchester property and enacted the Comprehensive Zoning Map of 1984, confirming the action taken on the 1980 map.

How can you exempt a property that the County Council specifically downshifted to conform with adjacent zoning except by previous ordinance of general application to subdivisions? The enactment of an ordinance revokes all previous ordinances that are inconsistent therewith.

Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 494-95, 287 A.2d 242, 248-49 (1972)."

The basis of the Court's opinion was stated ". . .while the Cranes acquired no vested right, in the usual sense, we are prepared to hold that they acquired a vested contractual interest, which was derived from their acceptance of the offer. . . and their compliance with its terms." ". . .

There is no question that the doctrine of equitable estoppel may be asserted against a municipal corporation in circumstances like those here."

No "highly inequitable or oppressive circumstances" have been given by the Appellee developer in this case. No evidence has been produced that the work done is not also useable under the current zoning applicable to the developer's property.

The only change made by the 1980 and 1984 Comprehensive Maps is density.

8. Was Section 22-68 repealed by the enactment of the Comprehensive Map of 1984?

A statute, or a provision thereof, may be repealed by implication by the enactment of a later statute. Beall v. Southern Maryland Agr. Ass'n of Prince George's County, (1920) 136 Md. 305, 110 A. 502.

The enactment of the 1984 Comprehensive Zoning Map applied to specific properties in Baltimore County that were made issues by members of the public, property owners or Baltimore County. Hearings were held on these properties which were assigned item numbers and each case was addressed. All other properties in Baltimore County were unchanged unless made a specific issue. The Plaintiff's property was one of those specific issues. Despite the efforts of the Plaintiff from the beginning of the process, its property was downshifted. The Plaintiff was represented at the Planning Board hearing as well as the hearing before the County Council and stated its reasons why the property should not be changed.

Assuming for the sake of argument that the Plaintiff's contention that the recording of the plat insulated it is true, once the ordinance creating the 1984 Comprehensive Map was passed, it repealed by implication Section 22-68 at least as far as the Plaintiff's property is concerned.

In Beall v. Southern Maryland Agr. Ass'n, supra, which involved the state general law which conflicted with a prior local law of Prince George's County, the Court held:

". . . The enactment of one law is as much a repeal of all inconsistent laws as if those inconsistent laws had been repealed by express works." (Quoting from the case of Albert v. White, 33 Md. 297)

11. Is the distinction between zoning and subdivision control a purely academic exercise?

The distinction between zoning and planning and subdivision control lies at the very heart of the separation of power. Clarke v. County Commissioners for Carroll Cty., (1973) 270 Md. 343, 311 A.2d 417, at page 420:

". . . As we have already suggested, the answer here does not lie in distinguishing between those two functions in the abstract, but turns on whether approval of the plan had the result of allowing in the 'A' Agricultural District a use not provided for in the zoning ordinance. If it did, the commission acted incorrectly, and thus, in effect, engaged in zoning, which is clearly a legislative function. Prince George's Co. v. McBride, 268 Md. 522, 528, 302 A.2d 620 (1973); Scull v. Coleman, 251 Md. 6, 246 A.2d 223 (1968); Ark Readi-Mix v. Smith, 251 Md. 1, 246 A.2d 220 (1968), that is committed to local legislative bodies and municipalities, and not to planning commissions. Prince George's Co. v. McBride, supra. (Emphasis supplied)

"Sections 5.02 et seq. of Art. 66B expressly provide that county planning commissions shall have jurisdiction over subdivision plans and plats, which are to be approved by them in accordance with validly enacted regulations. . . ."

The Court determined that the approval of a subdivision was not an invasion of the zoning function. Mr. Gerber in holding that the subdivision of the developer in this case vested against the Comprehensive Map of 1980 involved a zoning function or a judicial function requiring an amendment of the Comprehensive Map restoring the pre-1980 zoning of the property.

12. Is Bill 100 a proper delegation of legislative power and is it a subdivision regulation?

The subject tract containing a density of 13.33 dwelling units per acre is just 1.7 dwellings short of equaling the highest density allowed under the Baltimore County Zoning Regulation of DR 16. The Appellants proffered testimony that the Appellees proposed density constituted a change in the character of the neighborhood and would adversely effect the value of their property.

Bill 100 is a zoning regulation administered improperly by Baltimore County as a subdivision regulation. The choice of whether to proceed with a lot-size subdivision or a cluster development is the right of the developer. No standards are set forth in Bill 100 to avoid arbitrary and capricious administering of that statute.

The purpose of Bill 100 was to allow a more creative development of land but in reality we have traded urban sprawl for apartment sprawl.

In Prince George's County v. M. & R. Construction Corp., 267 Md. 338, 297 A.2d 683 (1972), sufficient standards were set forth in the ordinance to constitute a proper delegation of legislative power but in Bill 100 sufficient standards and procedures are not set forth.

"[The (r)esolution, which was enacted by county commissioners and which provided for cluster development as a permitted use in certain residential zones and left to planning board determination of whether or not the cluster development should be permitted within provisions relating to that permitted use, contained ample guides and standards to guide planning board, and did not constitute unlawful delegation of legislative power to the planning board."

9. What is the proper procedure to amend a Comprehensive Zoning Map?

The procedure is to bring an action for declaratory decree or injunction based on substantial construction.

In Rockville Fuel and Feed Co. v. Gaithersburg, 266 Md. 117, 291 A.2d 672, 50 ALR3d 583, a declaratory relief action was brought.

The Court of Appeals in Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 262 A.2d 499 (1970), determined that Appellant was entitled to construct and operate its concrete batching plant located in a I-2 zone and that the Board of Appeals was not justified in denying the special exception.

Subsequent to the above decision, the Mayor and City Council of Gaithersburg enacted a text amendment to the zoning ordinance removing a "concrete or cement products manufacturer" as a permitted use in the I-2 zone and made it a prohibited use. Rockville Fuel was, therefore, denied a permit to proceed.

Rockville then filed suit in equity for declaratory relief and an injunction seeking a declaration of its rights. The lower court found that the denial of the permit was justified.

The plaintiff filed a site-development plan application in accordance with the requirements of the zoning ordinance as did the developer in the case at bar filed a recorded plat in 1977.

The Court found, at page 404:

"In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the

zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use." (Emphasis supplied)

The Protestants in the case at bar could have properly assumed that the developer's efforts on the subject property were in conformance to the 1980 Comprehensive Map and been legally correct. No proceeding as in Rockville Fuel has been instituted to change the Comprehensive Zoning Maps of 1980 and 1984.

Also note that Rockville Fuel had spent funds to apply for the permit, plans, drawings and a successful appeal in the first case with its costs and attorney's fees.

In Board of County Commissioners v. Snyder, 186 Md. 342, 116 A.2d 689 (1946), an order directing the issuance of a mandatory injunction to require county officials to issue the building permit was reversed and dismissed. The proposed building was shown in the plans and specifications, complied in every respect to all requirements, but the proposed use violated the applicable zoning regulations which were adopted eleven days after the application for a building permit. The Court held that no permit had been issued and even if it had no rights vested and estoppel did not apply.

In Shender v. Zoning Board of Adjustments, 388 Pa. 265, 131 A.2d 90, the Court held that even though the applicant had no notice or knowledge of a contemplated zoning amendment, the municipality properly refused a building permit for construction that was permissible under existing law, but was not allowed by an amendatory ordinance that was introduced one

Bill 100 allows the developer as a matter of right to cluster. No hearing is required to determine if clustering should be allowed. The only hearing is to determine if the subdivision complies with the subdivision regulations.

The Appellants attempted to inquire into the question as to whether the Appellee should be allowed to cluster and were denied the opportunity by a ruling of the Board.

13. Was it proper for the Board to allow the Zoning Commissioner and Baltimore County to be parties to the proceeding before the Board?

There is ample law that neither the Zoning Commissioner or Baltimore County are proper parties to a proceeding before the Board. Baltimore County would have the right to file an appeal if the decision of the Board was adverse to its interes One of the reasons that they should not be parties became apparent when the Assistant County Attorney, who was the legal adviser of the Zoning Commissioner and the Board, counseled with the Board in its ruling on the introduction of evidence with regard to Bill 100 by the Appellant.

14. Was the Board incorrect when it required the Protestants to bear the burden of proof?

The Appellees Westchester were requesting the permits based on zoning that had been downshifted and had the burden of proof to prove they were entitled to the permit. The hearing before the Board is de novo and the position of the parties before the Board should have been the same as before the Zoning Commissioner. The burden of proof did not shift because the permits were illegally granted by the Zoning Commissioner.

month after the permit application was filed and enacted into law six weeks later.

10. Does estoppel apply to the case at bar?

The Court of Appeals in the case of City of Baltimore v. Chesapeake Marine Ry. Co., (1964) 233 Md. 559, 197 A.2d 821, citing with approval Gontrum v. Mayor & City Council of Baltimore, 182 Md. 370, 35 A.2d 128, said:

"The Court denied relief saying that the employee in the sewer department and McAllister's predecessor in charge of real estate matters in the City Solicitor's Office were 'subordinate City officials' and that '[i]t is a fundamental principle of law that all persons dealing with the agent of a municipal corporation are bound to ascertain the nature and extent of his authority' (182 Md. p. 375, 35 A.2d p. 130). The Court added, in answer to the claim that the City was estopped:

'Generally, no estoppel as applied to a municipal corporation can grow out of dealings with public officers of limited authority where such authority has been exceeded, or where the acts of its officers and agents were unauthorized or wrongful. No representation, statement, promises or acts of ratification by officers of a public corporation can operate to estop it to assert the invalidity of a contract where such officers were without power to enter into such a contract on behalf of the corporation. * * *

'In Reese on Ultra Vires, par. 192, it is stated: 'Every person is presumed to know the nature and extent of the power of municipal officers, and therefore cannot be deemed to have been deceived or misled by acts done without legal authority.'"

The Court further states, at page 832, ". . .Where the knowledge of both parties is equal, an estoppel will not be held to have arisen. . ."

Although the subject case involved real estate, it does not effect the principles involved. Chesapeake Homes was represented by counsel.

Mayor and City Council of Balto. v. Crane, (1976) 277 Md. 198, 352 A.2d 786.

There are a number of findings in this case that are applicable to the case at bar.

(1) ". . . A city attorney has no greater power to bind the municipality than a private attorney has to bind his client, Gontrum v. City of Baltimore, supra."

(2) This case did not involve either a vested right or contract or conditional zoning, as those terms are generally used in zoning cases. ". . . What was involved was a City ordinance, neither enacted for the benefit of the Cranes, nor especially tailored to their needs, but presenting an open-ended offer to any developer who would give a portion of his tract 'for the purpose of establishing, extending or widening a street or alley abutting the lot or tract involved,' to have the land contributed added, for the purpose of density restrictions, to the tract retained, provided the developer obtained the concurrence of the Planning Commission. The Cranes accepted the offer, conveyed the 4.6-acre parcel and received Planning Commission approval for the construction of 180 units on the remaining 6.5 acres."

In discussing the issues in the case, the Court said, at page 790:

". . . Normally, a property owner acquires no vested right to build in reliance on an existing zoning classification or under an outstanding permit unless he has materially altered his position, usually by the commencement of construction, before the zoning classification is changed or the permit revoked. The property owner may not even rely on estoppel if construction is commenced in reliance on an illegally issued permit, Virginia v. Parr, 164 Md. 232, 164 A. 743 (1933), or on official assurances given by officials who exceed their authority, City of

The claim of statutory intervention by Westchester is only a facade because the underlying local laws that are claimed to forge a link to each other are not contained in any kind of saving clause. If there is a link between these unconnected statutes it is only because they concern subdivision control and development. The statutes do not refer to each other but some do supersede others. None of the statutes could be considered a saving clause except Section 103.1 of the Baltimore County Zoning Regulations, part of a Zoning Text Amendment of 1955, carried in the Baltimore County Zoning Regulations since then to continue to protect those properties and improvements saved for Zoning Text Amendment of 1955, not to act as a saving clause for subsequent zoning text amendments. If 103.1 was so intended, why does it carry the name of the predecessor of the Planning Board, the Baltimore County Planning Commission to this day?

Only the County Council through a saving clause could except the landowners in the same situation as Westchester from the effect of a Comprehensive Map.

It must be remembered that the comprehensive mapping proceedings involved public hearings, advertisement of the hearings and testimony from the property owners and neighbors in this case. The County Council after its deliberation specifically downshifted this property in 1980 and confirmed that downshift in the Comprehensive Map of 1984.

THEREFORE, the Board has no alternative but to revoke the building permits issued by the Zoning Commission and to ... that it has no power to amend a comprehensive zoning map that would be necessary to issue the building permits legally.

Conclusion

The Zoning Commissioner properly held a hearing to determine if the permits applied for by Westchester should be approved by him as meeting zoning requirements. However, he was bound to deny the permits because the property was and is zoned DR 3.5 and DR 2.5 on the Comprehensive Zoning Map. No amendment had been made to the zoning map by a reclassification or order of court changing the zoning of the property to the density required on the permits.

Even if the Appellees could prove substantial construction or statutory intervention (saving clause), an administrative agency is not the proper forum because that is a judicial function. The only other alternative is to file for a reclassification. A suit based on substantial construction or statutory intervention would be barred by limitations.

The only effect of the downshift under Bill 100 reduces the density and does not change the right of the developer to build apartments in a residential zone. No testimony was offered to show what proportion of the expenses are made useless because of the downshift. The grading, roads, curbs, sidewalks and utilities are certainly still useful.

The builder's construction has not progressed to a point involving foundations for apartments that would advise the neighbors of his intention. That is the substantial construction test in Maryland and has not been met by Westchester.

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BEFORE THE

BOARD OF APPEALS

FOR

BALTIMORE COUNTY

Case No. 85-7-SPH

STATEMENT OF FACTS

...ng the 1960's the Stefanowicz Corporation began ...ment of a large subdivision known as Westchester. ...zoning on the subject tract was generally D.R. ...family homes using a much lower density were ...ically in the subdivision. After Bill 100 was ...the County Council in 1970, plans were formulated ...elopment of the balance of the tract. A final ...plan was filed in 1971 (Pet. Ex. 10). This final ...plan indicated single family dwellings surrounding ...t complex of 108 units. Except for certain road ...that final development plan has not been changed ...nt plan before the Board.

...icle 1B, Section 1B00 of Bill 100 sets forth the ...of findings and purpose of the Bill. Part of the ...the Bill was to provide for a greater variety of ...es within future residential developments and to ...e open space by clustering development. Accord- ...tion 1B01.2 provides for clustering of unused

...to the paragraph indicate that it was enacted on ... A second paragraph was appended in 1970, but ...as not changed.

...ther subsections to Section 103 of the B.C.Z.R. ...nt in interpreting Section 103.1. Section 103.3 ...75 was contained in a Bill establishing the rural ...(R.C.) zones. It refers to the continuing ... Section 103.1 by stating that that section shall ... open recorded plats in R.C. zones, but shall ... lot lines have been designated and densities ...e the zoning classifications of R.C. were not ...until after passage of Bill 98-1975, and since ...operties were reclassified after that, Section ...nacted to limit the continuing scope of Section ...dating recorded subdivisions against subsequent ...zoning.

...ction 103.4 also attests to the continuing validity ...103.1. This Section was enacted as part of Bill ...and links the development regulations contained i ...f the Baltimore County Code (hereinafter sometime ... as the "code") to the B.C.Z.R. That Section say ...act that if a subdivision plan has lapsed underith ...ision provisions of Title 22, then it is deemed to ha ...also under the provisions of Sections 103.1 and 103 ...B.C.Z.R. and may not be developed. Certainly,

...w a permit was obtained and the owner, in good faith, has ...re needed with such construction under it as will advise the ...ublic that the owner has made a substantial beginning to ...truct the building and commit the use of the land to the ...ission granted." 291 A.2d 672 at 677. The case also cited ...approval from 2 Rathkopf, The Law of Zoning and Planning ...ed.) Ch.57, Section 3, at 57-6 to 57-7 as follows:

> ...the majority rule, which can be synthesized from the multitudinous decisions in this area, may be stated as follows: A landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and continue a use despite a restriction contained in an ordinance where, prior to the effective date of the ordinance, in reliance upon a permit theretofore validly issued, he has, in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations..." 291 A.2d 672 at 676.

...e case repeatedly makes the point that two elements to ...ing are necessary: a valid permit or right to go on the ...nd to make changes and such change as will give notice to ...e public.

Obviously, the mere approval of a record plat without ...re is not sufficient to obtain common law vesting absent ...gislation. Something more is necessary. The intent of the ...ditional change of position depends on what is sufficient to

converse is implied by the legislation that if a subdivision has not lapsed under the development regulations then it is still protected by Section 103.1 of the B.C.Z.R. It seems obvious, therefore, that the County Council in adopting subsequent subsections to Section 103 felt that Section 103.1 had continuing validity in protecting valid subdivision plans against subsequent zoning changes.

Bill No. 77-12 (The Interim Development Control Act) was the first piece of County subdivision legislation to specifically place a time limit on the validity of record plats. That Act established a five (5) year protection period for record plats from the date of the Act's passage or the recordation of the plat whichever was later. (1978 Baltimore County Code, Section 22-16 (h) (3). A plat could be declared vested, however, if substantial construction on required public improvements had occurred. That Act was subsequently repealed by Bill No. 178-1979. The current development regulations are contained in Bill No.56-1982, codified in the Baltimore County Code Section 22-37 et seq. Many of the stated purposes of the current legislation were contained in earlier subdivision legislation but two of the added provisions were as follows:

give notice of intent to build and of the intent to put the land to the purpose. The Board of Appeals has ruled, for instance, in the past that mere grading may be sufficient. See Transcript at 111.

In this case there is first the valid record plat. The existence of the record plat in this case distinguishes it in an very important way from Rockville Fuel from Steuart Petroleum Co. v. Board of County Comm'rs., 276 Md. 435 A. 2d 854 (1976), and from the other major development cases cited by the Zoning Commissioner and by the County Attorney. It is the record plat which gives notice to the public, especially to those in the community who bought lots, whether a resident bought a lot from the Stefanowicz Corporation or from a successor in title, the deed called to the record plat which clearly indicated the intended use of a 108 unit apartment complex in the designated location. The above cited cases did not have record plats from which people purchased their properties. They were concerned for the most part with commercial projects proceeding under building permits where the only notice was the actual construction. In this case there was something more. The public knew from the inception of the developer's intent and reliance on the record plat.

Of course, as was clearly demonstrated by the evidence there was tremendous reliance on the record plat. Under grading permits the site was substantially changed and as the

the validity of record plats against subsequent zoning changes. In reading the opinions dealing with B.C.Z.R. Section 103.1 and in listening to the arguments and the interpretive credos used in propounding various conclusions as to its meaning one can only come to the conclusion that we attorneys can confuse any issue. The Zoning Commissioner states that the wording is unambiguous and that therefore but for subsequent interpretation over the last thirty years the regulation pertains only to pre-1955 matters. See Zoning Commissioner's Opinion at 6. If it is so clear and unambiguous why does he then spend the next several hundred words of his opinion interpreting it? The answer is more clear than the reasoning and is simply that the regulation on its face does not limit itself to pre-1955 matters.

The County Attorney states that Section 103.1 of the B.C.Z.R. may once have been ambiguous but that the long standing practice in the County to apply it to current development has made it more clear. Both the Zoning Commissioner and the County Attorney acknowledge that the long standing interpretation of Section 103.1 was to apply it ...divisions that had obtained Planning Board

initial enactment of Section 103.1. Certainly, it is no less justified today. The Director of Current Planning Eugene Bober even testified as to his understanding of the regulation's interpretation (Tr. 114) which had been derived from the zoning office's longstanding interpretation vesting record plats against subsequent changes.

In one sense both opinions are correct - both are wrong. Section 103.1 is clear and unambiguous. It says that record plats are vested against subsequent changes in use, height, area and density enactments. It does not restrict itself to any one period in time but rather to particular conditions. The longstanding practice has been in exact conformance with what the words say. Section 103.1 has been amended and augmented in recent years, but no changes have been made. If there were ambiguity in it, common sense indicates that it too would have been amended. Sections 103.3 and 103.4 enacted in recent years both refer to it as if it had on-going validity. Clearly, the County Council thought it had relvance to on-going plat approvals as they connected it to the newly enacted subdivision regulations in Section 103.4.

Interestingly the "nonconforming use" provisions were enacted at the same time, but no one has ever dared suggest

In March, 1977 an amended record plat was filed in ...with all necessary agency ... (Protestant's Ex. 1). This ...record plat was prepared for the purpose of ...proving ...(the proposed apartments. No change was made ...approving in the ...number of units or in the basic footprint of the buildings ...from the previously filed record plat.

As Petitioner's Exhibit 2 indicates, different lots were being sold in 1978 off the 1977 record plat, alternatives were being considered on the balance of the tract. The Stefanowicz Corporation investigated both the sale of the property and the building of townhouses on the site instead of apartments. Extremely high interest rates during the latter 1970's were a factor in rejecting these options.

At the same time, however, the County was imposing restrictions of its own in the area. The property was located in the Patapsco watershed which had a sewer deficiency. Initially, the owner was asked for a proposed schedule for the building of the apartments. The owner indicated the latter part of 1979 and after as the likely building time frame. By that time, however, the County had withdrawn its previous sewer allocation to the property. The owner was in a "no-build" situation since building permits could not be issued without the sewer allocations (Pet. Ex. 3). The owner was placed on a waiting list for sewer allocations, and nothing further was heard from the County.

Sec. 22-38

(e) To protect and conserve the value of property throughout the county and value of buildings and improvements upon the land and to minimize the conflicts among the uses of land and buildings.

(m) To simplify and clarify the development review and approval process.

The Act called for the approval of various departments on subdivision plans including the directors of the department of public works and of planning and zoning.

Section 22-40 of the Code, however, specifically exempted from the act all development for which an executed public works agreement existed, " all of which development shall be governed by the subdivision regulations in effect at the time of said...public works agreement execution...." In this case the public works agreement was executed on the subject property in the mid-1970's when no time limit on the expiration of subdivisions existed. The testimony was uncontroverted to the extent that the public works agreement was valid and that compliance had been fully achieved. Pursuant to Section 22-40 of the current County Code the existing development has been grandfathered.

aerial photographs of Protestants (Prot. Ex. 13, 14A, 15A, and 16) all indicate the footprints of the proposed apartment buildings are clearly delineated on the site as per the record plat. The grading must be viewed in conjunction with the record plat, for it is clear that had there been no record plat and merely a grading permit, the grading alone of the property would not have been sufficient to have given the requisite notice. In addition to the grading done under permit there is the matter of the public works. All public improvements were done to the subject site prior to any change in zoning. An examination of the site shows curb cuts at the end of cul-de-sacs leading to the vacant land, an extension of Bathurst Road with curb cuts into it showing the entrance of Rumford Road as proposed in the record plat, and fire hydrants and sewer and storm drains all along Bathurst Road adjacent to the proposed building site. (See Pet. Ex. 7) There is no controversy over the existence of any of these improvements or over what there intent was. It represented a tremendous and expensive change in position of the landowner in reliance on the record plat. Even Mr. Bauman of the Protestants indicated that in 1977 he signed an acknowledgment of awareness as to the intended use of the property. (T. 135, 136) He simply did not like it. Unlike the facts in the cited case law, therefore, there was actual notice of the use of the property apart from any actual construction. The actual coming out of

opinion admits, and for that reason he believed it should not apply to this case. In that alone we can agree with his opinion. It certainly is a radical departure from the clear statement of the words and from the interpretation given them by all including the County Council and by the Office of Zoning over the last thirty years on which this developer had the right to rely.

The Zoning Commissioner's primary argument appears to be that advanced on page 10 of his opinion wherein he suggests that if the County Attorney's reasoning is correct with respect to the applicability of Section 103.1 or of the subdivision regulations then the power of the Zoning Commissioner under Section 500.1 is eroded. He simply says without giving rationale that that could not have been the intent. The Zoning Commissioner's opinion though impressive in its reasoning leading from that point assumes an incorrect premise. To the extent that Section 103.1 relieves a developer with a recorded plat from subsequent changes in zoning regulations, it does modify the Commissioner's powers. He can only interpret whether the plan as approved was in conformance with existing regulations at the time. That indeed is his function in the subdivision process which has codified Section 103.1 through Section 103.4. The review is

of the subdivision regulations and to the protections of Section 103.1 as modified by the subdivision regulations. The problem as the Zoning Commissioner apparently conceives it is that his opinion can be overruled in the subdivision process by others, but that too is subject to appeal. The Zoning Commissioner never had the power to invalidate a record plat when subsequent changes in zoning occurred. No Zoning Commissioner has ever attempted to exercise said power. To indicate a loss of power now through interpretations of the subdivision regulations as the Zoning Commissioner now does is to assume an additional, ultimate authority which the County Council never has granted the Zoning Commissioner in the subdivision process. Consequently, the Zoning Commissioner's opinion as the "clear meaning" of Section 103.1 is in error, for we believe that having a "clear meaning" the words "any development" in Section 103.1 should be interpreted as "any development".

We agree substantially with the opinion of the County Attorney, particularly with his interpretation of the subdivision enactments. Clearly, the subdivision enactments attempted to vest certain subdivisions where substantial development had occurred and valid public works agree-

...re that the waiting list status of the sewer allocation ...rmits had been withdrawn and that during the land comprehe- ...sive zoning map process the property's zoning had changed from ...D.R. 3.5 on the bulk of the tract to only a small portion of ...D.R.1515 and larger portions of D.R.2 and D.R. 3.5 on the ...balance of the tract.

Suit was filed in early 1982 to protect the record plat and to require issuance of the sewer allocation permits which Petitioner felt had been wrongly withheld. As the correspondence attached to the County Attorney's Opinion (Prot. Ex. 11) indicates, the public works agreement had been completed earlier in 1979. The Public Works Department in their letter dated October 28, 1982 to Norman Gerber, Director of Planning and Zoning, felt that the subdivision met the grandfather requirements of the Baltimore County Code and that the record plat was valid.

Subsequently, on December 1, 1982, the Director of Planning and Zoning issued an opinion also declaring the subdivision grandfathered and reinstated the waiting list status for sewer allocation with the understanding that allocations would be made within the next several months. The lawsuit against the County was dropped (Pet. Ex. 6) as part of

Section 22-68 of the Act as codified also contains grandfathering provisions. Section 22-68 (c) states:

> A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
> (1) Building permits have been issued; or
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

Accordingly, if a subdivision qualifies as developed then the subdivision plans can not lapse.

DISCUSSION

I. ISSUANCE OF BUILDING PERMITS.

This case arises out of the appeal by Protestants to the issuance of building permits for the Westchester subdivision by the Department of Licenses and Permits. There is no contest that all required County approvals were given to the project, but there is contest over whether some of the approvals were properly given. There also is no contest that these permits are merely the last of a long series of County approvals that have been necessary to develop the subject subdivision. These permits, however, and the initial development plans have been the only permits contested. The

the ground that was found necessary to give notice in Steuart Petroleum was not necessary here. The case of Rupp v. Earl H. Cline & Sons, Inc., 230 Md. 573, 188 A. 2d 146 (1963) cited in the earlier opinions simply is not on point as it is not at all concerned with zoning law but rather when a mechanics lien attaches to a building. Its citation in this context is meaningless.

The case of Mayor and City Council of Baltimore v. Crane, 277 Md. 198, 352 A. 2d 786 (1976), cited in the previous opinions concerning this case, is of interest in reviewing the facts before the Board but not because it pertains to notice or even to stage of completion of the development. Its citation in the previous opinions on those issues was inapt. Crane, however, does deal with fundamental common law rights of a developer dealing with government. In Crane a developer, who owned a tract of land capable of development of 180 units conveyed a certain portion pursuant to City ordinance to the city and by ordinance was permitted to maintain the same density. Subsequently under the comprehensive map process the property was downshifted, but the City Solicitor gave the developer an opinion stating that the property was unaffected due to the contract established with the city for the conveyance of the land. Since the developer achieved no additional rights by the conveyance than that which he had previously enjoyed the Court found that this was not

impermissible contract zoning. The ordinance was much like county ordinances dealing with public works agreements. The Court held that because of the substantial change of position of the developer in reliance of the maintenance of his zoning, that the doctrine of equitable estoppel was present. This is in part the argument advanced by the Zoning Commissioner in this case but for different reasons.

Crane is pertinent to this case because like the developer in Crane the developer executed and performed under a public works agreement which required not only tremendous expenditure but also the placement of numerous public improvements and the dedication of those improvements including land and roadways. This places the developer in a permissible contractual position with the County and entitles the developer to rely on his record plat. The Court distinguished Crane from Steuart Petroleum, and from Rockville Feed, because of the agreement made with the City. 352 A. 2d 786 at 792. The delay of the developer in the building of the development until after the zoning change was held not to affect its vested and contractual rights.

In this case Westchester, Inc. has common law contractual rights with the County both from the executed public works agreement which had been fully completed and from the settlement of its case with Baltimore County. The Courts have held repeatedly that the settlement of cases creates a

developer has been allowed without protest to expend large sums of money in reliance on previous County opinions and approvals and allocations (Pet. Ex. 9) all without protest.

It is obvious that the issuance of the permits must be deemed prima facie correct and that the burden of proof is on Protestants to show that the issuance of the permits was due to error in law or fraud. Fraud has not been alleged at any stage in the proceedings, and certainly there has been no proof offered indicating its presence. Consequently, the issue before the Board is whether there was a sufficient showing of error in law in the issuance of the permits to overturn the Director of the Licerses and Permits and the other County officials and agencies who signed the permits.

In this case Protestants have put forward two (2) issues where they believed error occurred. First, they contend that the subdivision plat calling for cluster zoning is invalid because no special hearing was held on its validity. Second, they contend that the 1977 record plat can not be held to have survived subsequent zoning changes. The amount of work done on the site has not been contested, only its effect. These issues will be dealt with in reverse order.

the Bill as codified in Section 22-38 of the Code and noted above speak of the necessity of conserving the value of the land and of simplifying the process. What value does a developer have in going through the process and in achieving a five (5) year grant or an eight (8) year grant if all that can be wiped out every four (4) years? What financing institution would lend money for a development even with a recorded plat if the threat of its extinction through the map process existed prior to termination of its award? The answer speaks for itself. To accept this conclusion flies in the very face of the intent behind the subdivision regulations and Section 103.1.

The clear intent of the subdivision regulations as enunciated by the County Attorney is in total harmony with common law interpretations regarding vesting and contract rights. It merely makes clear what the Court in Crane stated with respect to a developer's rights when he expends large sums or gives substantial consideration in terms of rights, money or labor to the County in exchange for development permission. For all of the reasons stated in the County Attorney's opinion as well as those less artfully presented above, we believe that the various legislative enactments of the County Council encompassed in the subdivision and zoning

of 1980 in reliance on the 1982 comments of Planni... Public Works prior to any controversy.

The case now comes before the Board on Prote... appeal for the Special Hearing and from issuance ... Building Permits.

APPLICABLE LAW

Section 103.1 of the Baltimore County ... Regulations (hereinafter referred to as the "B.C.Z.R.... been cited several times throughout the proceeding... pertinent part that section states:

> 103.1 - These Regulations shall apply ... of the date of their adoption but ... provisions pertaining to use, height, area ... density of population shall not apply to ... development, subdivision or parcel of land, ... preliminary plan for which was originally ... submitted to the (then) Baltimore Coun... Planning Commission, (now Planning Board) ... approved or tentatively approved (including ... approval made subject to any condition ... conditional) under the then existing offic... procedure in Baltimore County, prior to ... adoption of these regulations. The so... regulations applicable to any such developme... subdivision or parcel of land as aforesa... shall be the zoning regulations in effect ... the time such plan, as aforesaid, ... originally submitted to the Baltimore Coun... Planning Commission.

II. VALIDITY OF RECORD PLAT.

A. COMMON LAW VESTING.

The Westchester record plat containing the ... apartment units is valid and vested for several reason... First, it is vested under the common law. Even if there w... no statutory intervention, the project complies with t... requisites for vesting given the substantial amount of wo... done on the site so as to give notice as to the proj... proposed.

As the opinions of the Zoning Commissioner and of ... County Attorney state, absent statutory intervention a reco... plat is not vested against subsequent zoning change unle... there has been substantial work done on the site so as to g... notice to all as to the work proposed. This is the one (... perhaps the only) proposition of law with which all parties ... this case are in agreement. The cases cited by these opinio... in no way, however, indicate that Westchester has not done t... work requisite to common law vesting.

The Court of Appeals decision in Rockville Fuel & Fe... Co. v. City of Gaithersburg, 266 Md. 117, 291 A. 2d 6... (1972), reviews previous zoning decisions in Maryland as we... as leading zoning authorities to arrive at the followi... conclusion: "Such a 'vested right' could only result when

contractual situation fully binding on both parties. In ... case the developer dismissed its suit against the County ... agreed to again be placed on a waiting list for a... allocation in exchange for the formal declaration of ves... and for a promise of priority on the waiting list with ... reasonable expectation that it would be soon. Contracts ... settlement are mutually enforceable. See e.g. Clark v. El... 286 Md. 208, 406 A. 2d 922 (1979).

Consequently, under the common law the Westche... record plat is vested because of the notice given to ... public, the reliance of the developer on the approvals of ... County and his subsequent change of position with respect ... the land, the obvious expenditure of funds on the land itsel... the execution and performance of the public works agreeme... which gave the developer contractual rights to develop, a... the settlement agreement with the County as represented by th... Office of Law. There is more than a mere substantial basis ... the record justifying the common law vesting of the recor... plat. Protestants have offered nothing denying the work don... or funds expended in reliance on the record plat.

B. Statutory Vesting.

Even if the record plat were not deemed to be vested ... because of its common law status, it would surely be vested ... under the legislation enacted in Baltimore County dealing with

Finally, under the provisions of Bill No. 35-19... record plat has been graudfathered. This Bill pertains ... part to record plats and developments subject to deficienci... in sewer service. The testimony clearly indicated that th... Patapsco watershed in which this development is located d... indeed have a sewer service deficiency. Although at one ti... the developer could have obtained permits for sewer servi... shortly after the record plat was accepted, he at that ti... was under no obligation to build and indeed notified t... County that not until 1979 - 1980 prior to the rezoning did h... intend to develop. There is no question that at that time h... was on a waiting list for sewer allocation permits. There ... also is no question but that without his knowledge he wa... dropped from the waiting list by the County, which occurrence ... formed one of the bases for his legal action against the ... County. Consequently, had not the deficiency occurred, it... might have been possible for the property to have been ... developed. Bill 35-84 was enacted specifically for the ... purpose of extending the life of such developments and exten... them in spite of intervening zoning changes. So... amendments to the Bill excepting zoning map ... were

SUITABLE ESTOPPEL.

Zoning Commissioner in his opinion felt that of the current interpretation that he placed on the d subdivision regulations that the Westchester t should proceed based on the doctrine of equitable

Briefly, that doctrine states that if an individual relies on interpretations and approvals given such hanges his position drastically as a result that reinterpretations can not be used to his extreme

For that reason when courts place new interpretn enactments which had long been interpreted ly, they apply their decisions prospectively and not ely.

If the Board were to apply the interpretation of the missioner retroactively so as to include Westchester Westchester but countless other subdivisions would be

The developer in this case who has spent many of thousands of dollars in reliance on approvals and s granted by the County and who has entered into and settlements based on those approvals and s would unfairly, inequitably and oppressively be would many others be treated unfairly. The had the right to rely on the interpretations which to him. At no time did anyone question their

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validity. They had been of long standing duration, and there has been absence of any impending change as would have occurred with legislative enactment.

Legislative enactments are rarely if ever applied retroactively, yet adoption of the new interpretation of the by the Zoning Commissioner would have the same effect. We would certainly hope that the Board would consider the equities in applying the case retroactively if it saw fit to adopt that portion of the Zoning Commissioner's order reinterpreting the regulations, and would concur in his opinion also that to apply it to this case would be a grave injustice.

II. Bill 100-1970.

In this specific case the Board of Appeals has had the opportunity to review the proposed development in a previous case with respect to Bill 100-1970. At that time the Board found that the development plan which called for the transfer of density to the proposed apartments was valid. At that time Protestants in Case 72-151-SPH had the opportunity to raise whatever issues they deemed appropriate and relevant. No appeal was taken. That case can not now be reopened. Whatever concerns Petitioners have today with Bill 100, and

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they appear to be the same concerns raised in 1972, either can not now be reopened especially since the Petitioner seeks to be held same or similar standard as in 1972.

In any event Bill 100 has been interpreted consistently as having a valid purpose in allowing cluster zoning. Many developments in the county have been developed under its guidance, and this developer like many others has relied on the consistent and unchanging interpretation given to it. To apply any different interpretation now, retroactively, would work a grievous harm to almost every residential subdivision built in the last fifteen (15) years. We would respectfully suggest, therefore, that given the previous special hearing granted in this matter and the decision in that case as well as the retroactive effect of Protestants' arguments on this issue, that Protestants' arguments be disallowed.

CONCLUSION

In conclusion, therefore, Westchester Inc. contends that Protestants have failed to meet their burden of proof in showing that the building permits were improperly allowed and that they were issued without substantial basis to justify validating the record plat. We would ask the Board of Appeals to uphold the validity of the building permits and dismiss the

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Protestants and award such other and further relief as the nature of our case may merit.

Respectfully submitted,

JOHN B. GONTRUM
Romadka, Gontrum, Hennegan & Fox
809 Eastern Boulevard
Baltimore, Md. 21221
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 1985 a copy of the aforegoing Memorandum was mailed postage prepaid to C. Victor McFarland, Esq., 1002 Frederick Road, Catonsville, Maryland 21228, Attorney for Protestants; Douglas Sachse, Assistant County Attorney, Courts House, Towson, Maryland 21204; and Arnold Jablon, Zoning Commissioner, County Office Building, Towson, Maryland 21204.

JOHN B. GONTRUM

28

ROMADKA, GONTRUM & HENNEGAN
ATTORNEYS AT LAW
SUITE 809 EASTERN BOULEVARD

RECEIVED
COUNTY BOARD OF APPEALS
1985 JAN 29 P 3:34

DOUGLAS T. SACHSE
Assistant County Attorney
Mezzanine - Courthouse
Towson, Maryland 21204
494-3420

WILLIAM J. BAUMAN, et ux, et al. * BEFORE THE
Appellants * COUNTY BOARD OF APPEALS
vs. * OF BALTIMORE COUNTY
WESTCHESTER, INC. * WESTCHESTER, INC.
Appellee * Case No. 85-7-SPH
* CBA-A84-132

MOTION TO QUASH

Baltimore County, Maryland by its attorneys, Malcolm F. Spicer, Jr., County Attorney and Douglas T. Sachse, Assistant County Attorney, moves the County Board of Appeals to quash the Subpoena hereinbefore issued on behalf of the Appellants and for reasons says:

1. The Appellants have requested that Malcolm F. Spicer, Jr., Esquire, County Attorney, appear and produce various files from the County Office of Law concerning Westchester, Inc. and Walter F. Stefanowicz. Further, the Subpoena requests the production of papers and memoranda applicable to the decision of the Office of Law concerning Section 103.1 of the Zoning Regulations of Baltimore County.

2. The documents that the Appellants have requested constitute work product and are not properly the subject of Subpoena.

3. The production of the documents requested would be unduly burdensome, especially in light of the fact that the Subpoena was not filed until November 6, 1984 and not served on the Office of Law until November 8, 1984.

WHEREFORE, Malcolm F. Spicer, Jr., Esquire, County Attorney, respectfully requests that the Board of Appeals quash the Subpoena issued on behalf of the Appellants on

laws.

C. VICTOR McFARLAND
McFarland, Weinkam, O'Connell and Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 or 744-3256
Attorney for the Appellants

I HEREBY CERTIFY that a copy of the aforegoing Order of Appeal was mailed this 7th day of August, 1984, to Arnold Jablon, Esq., Zoning Commissioner, Office of Planning and Zoning, County Office Building, Towson, Maryland 21204; John B. Gontrum, Esq., 809 Eastern Boulevard, Baltimore, Maryland 21221; Malcolm F. Spicer, Jr., Esq., County Attorney, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Phyllis Friedman, Esq., People's Counsel, Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

C. VICTOR McFARLAND

IN RE: PETITION FOR SPECIAL HEARING NW/S Bathurst Road, 95' N of Westchester Road - 1st Election District
Westchester, Inc. - Petitioner
* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 85-7 SPH

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from your decision in the above entitled case, under date of July 18, 1984, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

Robert J. Romadka

John B. Gontrum

ROMADKA, GONTRUM, HENNEGAN
809 Eastern Boulevard
Essex, Maryland 21221
686-8274

ATTORNEYS FOR PETITIONERS

JUL 30 AM

RECEIVED
COUNTY BOARD OF APPEALS
PRO NOV -8 P 1:34

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 85-7-SPH
Towson, Maryland

District 1st
Date of Posting August 10-84
Posted for: Appeals
Petitioner: Westchester, Inc.
Location of property: N.W/S Bathurst Rd. 95' N of Westchester Ave.
Location of Signs: Facing N.W. S/S of Bathurst Rd. 40'± N/E of Westchester Avenue & facing east side of Mt. Debonay Approx. 400' from Rd.
Remarks:
Posted by A. J. Clarke
Date of return: 8-17-84
Number of Signs: 2

1"=100'

PETITIONER'S EXHIBIT 3

"DUPLICATE"
CERTIFICATE OF PUBLICATION

TOWSON, MD., June 14, 1984

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on June 14, 1984.

THE JEFFERSONIAN,

Publisher

Cost of Advertising $22.00

IN RE: PETITION FOR SPECIAL HEARING W/S Bathurst Rd., 95' N of Westchester Rd. - 1st Election District
Westchester, Inc., Petitioner
* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 85-7-SPH

ORDER OF APPEAL

Dear Mr. Clerk:

Please note an appeal to the County Board of Appeals from the following:

(1) Order of Arnold Jablon, Zoning Commissioner, dated July 18, 1984, and written decision;

(2) Amended Order of Arnold Jablon, Zoning Commissioner, dated July 27, 1984, and written decision;

(3) the issuance of building permits for the Westchester Part of Plat A, Sec. 2, or any other of the applicants' property in the community known as Westchester;

(4) Failure of the Zoning Commission to determine the zoning status of the property on behalf of the following aggrieved parties:

(a) William J. Bauman and Kathaleen D. Bauman, his wife, 618 St. Johnsbury Road, Catonsville, Maryland 21228;

(b) Timothy J. Kelley and Mary Kelley, his wife, 3 Granada Court, Catonsville, Maryland 21228;

(c) Barry L. Warren and Barbara Warren, his wife, 627 St. Johnsbury Road, Catonsville, Maryland 21228;

(d) Thomas A. Clear and Laurel L. Clear, his wife, 3 Rancher Court, Catonsville, Maryland 21228, and

(e) Jeffrey R. Lemlein, 3 Granada Court, Catonsville, Maryland 21228,

(5) Failure of the Zoning Commission to hold a hearing to determine if the applicant may build condominiums and/or apartments on the land under Bill 100-1970 or any other applicable

PROTESTANT'S EXHIBIT 1

Law Offices
McFARLAND, WEINKAM, O'CONNELL & MASTERS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1002 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228-5029

C. VICTOR McFARLAND
LOUIS A. WEINKAM, JR.
THOMAS A. O'CONNELL
KENNETH H. MASTERS

TELEPHONE
788-2300
744-3256

August 9, 1984

AUG 10 AM

County Board of Appeals for
Baltimore County
Room 200 Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Appeal from Orders of Zoning Commissioner
Case No. 85-7-SPH
NW/S Bathurst Rd. 95' N of Westchester Rd.
1st Election District
Westchester, Inc.-Applicant

Dear Ms. Clerk:

Enclosed is an Order of Appeal and Certificate of Mailing and a check for $85.00 representing the cost of the appeal.

Should there be any additional cost, please advise me.

Very truly yours,

C. Victor McFarland

CVMcF/lr
Enc.

cc: Arnold Jablon, Esq.,
Zoning Commissioner
John B. Gontrum, Esq.
Malcolm F. Spicer, Jr., Esq.,
County Attorney
Phyllis Friedman, Esq.,
People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
1984 AUG 20 P 1:14

WILLIAM J. BAUMAN, et ux, et al
Appellants
vs.
WESTCHESTER, INC.
Appellee
* BEFORE THE COUNTY BOARD OF APPEALS
* WESTCHESTER, INC.
* Case No. 85-7-SPH
* CBA 84-132

SUBPOENA

DEAR MRS. CLERK:

Please issue a subpoena for the following witnesses to appear on November 14, 1984, at 9:30 a.m., and to testify before the Board of Appeals:

(1) Norman E. Gerber, Director of the Office of Zoning and Planning, County Office Building, Towson, Maryland 21204, and to produce the following:

A. Current Planning and Development File I-129,

B. RCVC application file's list,

C. Planning Board Minutes concerning the subject property from 1979 to 1985 maintained by Frank Schearer,

D. Zoning Commission's microfilm for Case 72-151-SPH and

E. Land Development file.

11:30 AM
COST $ 5.00
SUMMONED 11-8-84 19
NOT SERVED 19
REASON NOT SERVED

SHERIFF
OF BALTIMORE COUNTY
J. EDWARD MALONE

C. Victor McFarland
McFarland, Weinkam, O'Connell & Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 or 744-3256

Mr. Sheriff:

Please issue the above summons.

Jane Holmen, Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
1984 NOV -5 A 11:20

WILLIAM J. BAUMAN, et ux, et al
Appellants
vs.
WESTCHESTER, INC.
Appellee
* BEFORE THE COUNTY BOARD OF APPEALS
* WESTCHESTER, INC.
* Case No. 85-7-SPH
* CBA-A84-132

SUBPOENA

Please issue a subpoena for the following witness to appear
, 1984, at 9:30 a.m., and to testify before the
f Appeals:
olm F. Spicer, Jr., Esq., County Attorney, Court
Maryland 21204,
oduce the following:
Office of Law files on Westchester, Inc. (1-84) and
anowicz or predecessor companies, and
. Papers and memoranda applicable to its decisions on
03.1 of the Zoning Regulations.

5.00
19 84
19

C. Victor McFarland
McFarland, Weinkam, O'Connell & Masters
1002 Frederick Road
Catonsville, Maryland 21228
788-2300 or 744-3256

Please issue the above summons.

Jane Holmen, Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
1984 NOV -5 A 11:20

PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NW/S Bathurst Rd., 95' N of Westchester Ave., 1st Dist. : OF BALTIMORE COUNTY
WESTCHESTER, INC., Petitioner: Case No. 85-7-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 13th day of June, 1984, a copy of the foregoing Entry of Appearance was mailed to Robert J. Romadka, Esquire and John B. Gontrum, Esquire, 809 Eastern Boulevard, Baltimore, MD 21221, Attorneys for Petitioner.

Peter Max Zimmerman

IN RE: PETITION FOR SPECIAL HEARING W/S of Bathurst Rd., 95' N of Westchester Road 1st Election District
Westchester, Inc., Petitioner
* BEFORE THE BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 85-7-SPH

Entry of Appearance

Please enter my appearance as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to my office, including but not limited to hearing dates and/or preliminary or final Orders.

Arnold Jablon
Zoning Commissioner of Baltimore County
Room 109 - 111 West Chesapeake Avenue
Towson, Maryland 21204
494-3353

Certificate of Mailing

IT IS HEREBY CERTIFIED that on this 6th day of August 1984, copies of the foregoing Entry of Appearance were mailed, postage prepaid, by first class delivery to the County Attorney of Baltimore County, People's Counsel for Baltimore County, Petitioner(s) and/or Protestant(s) in the above captioned matter.

Arnold Jablon

Vic - McFarland. Copy.

OFFICE COPY - DO NOT REMOVE

County Council of Baltimore County
Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman
(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications; to provide for establishment and regulation of "Residence" zoning classifications; to provide for the establishment and regulation of "Business" zoning classifications; to provide for the application of such zoning regulations to certain proposed or previously established subdivision plans; to establish Mixed and Mixed-Use-Arena zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) District; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing accessory uses; to revise the regulations governing certain special exception uses; to provide for certain area and bulk regulations; to provide for the continuing validity of special exceptions granted for elevator-apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 102.1.A.2.f) by adding to Section 101 Subsection 101AA; by adding and by repealing Subsection 101.1; by repealing Article 13 and by repealing designation 105.1(b), "Article 3-Zones and Districts: Use, Height and Area Regulations," and its regulations, "R-40 Zone-Rainbow, One-Family" and enacting in lieu thereof, a new designation and title as follows:

Vic McFarland
Zoning Commissioner, Co. Md.

From Clerk of Bd. of Appeals
Room 200 Co. Courthouse

DATE 7/30/84

Please enter an appeal in the above-entitled matter to the Board of Appeals from the decision rendered in the above-entitled matter on July 18, 1984 and the Amended Decision rendered July 27, 1984.

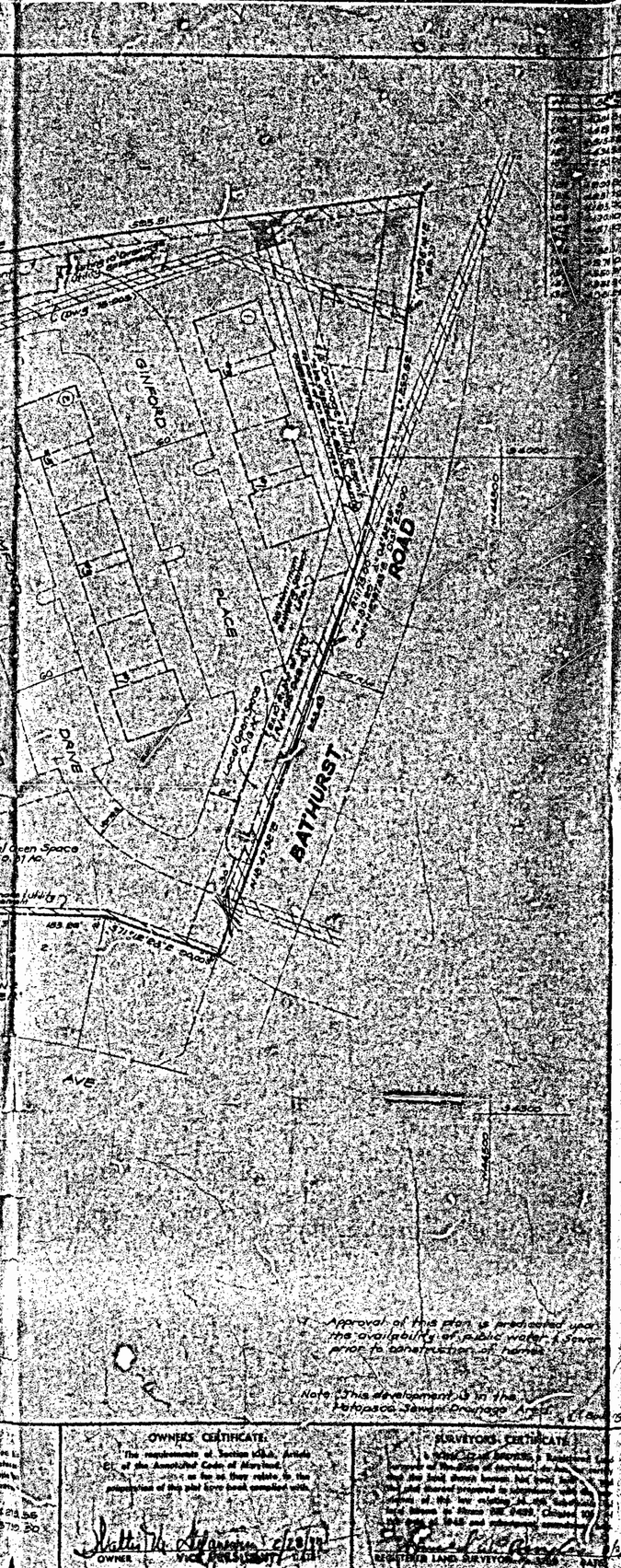
Clerk

THIS COPY FOR PERSON ADDRESSED

SIGNED DATE







COORDINATES			
	West	North	South	West
	45418.80	2442	45418.80	44660.37
	45348.80	2442	45348.80	44727.63
	45280.00	2517	45424.85	44662.48
	45668.26	2380	45611.46	44827.52
	45823.37	2490	45581.21	44727.60
	45298.37	2541	45298.37	44727.60
	45295.00	2488	45381.72	44660.00
	45228.00	2488	45381.72	44660.00
	45165.00	2443	45487.72	44660.00
	45068.00	2443	45487.72	44660.00
	44908.78	2443	45487.72	44660.00
	44908.78	2388	45382.44	44660.00
	44907.22		45382.44	44660.00
	44907.22			
	44709.07			



DENSITY CALCULATIONS

		PLAT 2
1. Gross Area		18.5 Ac.
2. Permitted Density (Cm.5.0)		1.93 Ac.
3. No. Number of units allowed		104
4. Total number of units proposed		88
5. Total number of units (Lots) approved		80
6. Total number of units (Lots) proposed		88
7. Largest Open Space required	8.0 Ac.	1.34
8. Local Open Space proposed	8.1 Ac.	3.60
9. Parking required	400	1.888
10. Parking provided	1.923	1.888

PETITIONER'S EXHIBIT

ENTERED AT FOLIO 16

MAR 14 1977

AMENDED PLAT OF A PORTION OF PLAT 4 SECTION 2 "WESTCHESTER"

Election District
Scale 1" = 50'

Baltimore Co. Maryland
March 1, 1977

Revised May 2, 1977

The Reasonable Doubt
Case Town Road
Southerville, Maryland 21204

Approval of this plat is predicated upon the availability of public water & sewer prior to construction of homes.

Note: This development is in the Patapsco Sewer Drainage Area (Drainage Area Protected)

APPROVED: BALTIMORE COUNTY PLANNING BOARD
DATE: 3/14/77 DIRECTOR

APPROVED:
DATE: 3/14/77 DEPUTY STATE & COUNTY HEALTH OFFICER
DATE: 3/14/77 COUNTY ROADS ENGINEER

NOTE:
STREETS and/or ROADS shown hereon and dedication thereof is made for the purpose of this partition only, and the same are not intended to be dedicated to public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.

NOTE:
COORDINATES and BEARINGS shown hereon are based on the system of Coordinates established in the Baltimore County Metropolitan District and are based on the following two stations:
1. 7973 N 5'-6458.97 W 4483.56
2. 7974 N 5'-6422.81 W 4378.20

OWNERS' CERTIFICATE:
The requirements of Section 1[illegible] Article [illegible] of the Annotated Code of Maryland, as to the preparation of this plat have been complied with.

OWNER
VICE PRESIDENT

SURVEYORS' CERTIFICATE:
[illegible] Surveyor, hereby certify that the plat shown hereon is correct; that it is a subdivision of all of the land conveyed by [illegible] to [illegible] by deed dated [illegible] and recorded among the Land Records of Baltimore County in Liber [illegible] Folio [illegible] and that it was surveyed by me or under my supervision and that monuments and lot markers are correctly shown and described hereon as required by the Baltimore County Subdivision Regulations.

REGISTERED LAND SURVEYOR
DATE

MCA ENGINEERING CORPORATION
1020 CROMWELL BRIDGE ROAD
BALTIMORE, MARYLAND 21204