

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
FROM R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS
AVENUE, 467' AND 1507' NORTH-
WEST OF CAVES ROAD
4th ELECTION DISTRICT
CONSERVATION ASSOCIATES,
ET AL., PLAINTIFFS
ZONING FILE NO. R-86-110

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 40
Folio No. 177
File No. 87-CG-2107

CERTIFIED
BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE THE JUDGE OF SAID COURT:

And now come 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 the Board of Appeals of Baltimore County:

ENTERED FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

No. R-86-110
March 1, 1985 Petition of Conservation Associates for a reclassification for 306 acres of total area of 682 acres from R.C. 2 to R.C. 5 on property located on the northeast side of Park Heights Avenue, 467 feet and 1507 feet northwest of Caves Road, in the 4th Election District of Baltimore County.
March 11, 1985 Amended Petition of Conservation Associates for a reclassification of 303.39 acres out of the total tract of 682 acres from R.C. 2 to R.C. 5.
April 17, 1985 Comments of Baltimore County Zoning Plans Advisory Committee - filed
Sept. 5, 1985 Certificate of Posting of Property - filed
Sept. 5, 1985 Publication in newspaper - filed

Conservation Associates
Case No. R-86-110

Sept. 24, 1985 Hearing held on petition by County Board of Appeals; continued.
Oct. 22, 1985 Hearing held on petition by County Board of Appeals; continued.
Nov. 23, 1985 Certificate of Posting of Property - filed
Dec. 19, 1985 Hearing held on petition by County Board of Appeals; first day of testimony.
Dec. 2, 1986 Hearing held by County Board of Appeals; continued.
Dec. 19, 1986 Hearing held by County Board of Appeals; continued.
Jan. 23, 1987 Hearing held by County Board of Appeals.
March -, 1987 Post-Hearing Memorandum submitted by Counsel for Petitioners.
March 24, 1987 Memorandum of Protestants in Opposition to the Petition submitted by Counsel for Protestants.
March 25, 1987 People's Counsel's Post-Hearing Memorandum submitted by People's Counsel for Baltimore County.
April 13, 1987 Petitioners' Reply Memorandum submitted by Counsel for Petitioners.
May 1, 1987 Order of the County Board of Appeals ordering that the requested reclassification from R.C. 2 to R.C. 5 as petitioned for be DENIED.
May 21, 1987 Joint Motion of Petitioners and Protestants for a 60-Day Extension of Time to File an Appeal and for this Board to Exercise its Revisory Power over its Opinion and Order submitted by Counsel for Petitioners.
May 29, 1987 Order of the County Board of Appeals ordering that the Petition for Extension of Time and Request for Reconsideration be DENIED.
May 29, 1987 Order for Appeal filed in the Circuit Court for Baltimore County by Michael Gisriel, Esquire, and Thomas J. Gisriel, Esquire, on behalf of Conservation Associates, et al.
June 4, 1987 Certificate of Notice sent to all interested parties.
June 8, 1987 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County.

Conservation Associates
Case No. R-86-110

Petitioner's Exhibit No. 1 - Resume of James R. Schulte
" " No. 2 - Topographic Map (Bd's closet)
" " No. 3 - Slope Condition Map (Board's closet)
" " No. 4 - Land Uses Map (Bd's closet)
" " No. 5 - Constraints on Septic Installation Map (Board's closet)
" " No. 6 - Buildable Area Composite Map (Board's closet)
" " No. 7 - Top. Map showing same area and surrounding area (Bd's closet)
" " No. 8 - Balto Co Zoning Map (Bd's closet)
" " No. 9 - Soil Conservation Map (Board's closet)
" " No. 10 - Planning Study for Valleys
" " No. 11 - Resume of James Tracey
" " No. 12 - Boundaries Site Plan (Bd's closet)
" " No. 13 - Ltr to Gisriel from Commodari
" " No. 14 - Worthington Valley Plat (Board's closet)
" " No. 15 - Resume of George A. Stevenson
" " No. 16 - Map of subject property
" " No. 17 - Aerial photo (Bd's closet)
" " No. 18 - Aerial photo (Bd's closet)
" " No. 19 - Tax exhibits -NOT ADMITTED
" " No. 20 - Estimate of income-various uses of Petitioners' property
" " No. 21 - Estimate of income-various uses of Petitioners' property

Conservation Associates
Case No. R-86-110

Petitioners' Exhibit No. 22 - Estimate of Income - Timber Production
" " No. 23 - Resume of Joseph E. Brown
Protestants' Exhibit No. 1 - Letter to J. Smith from George C. Doub, Jr. - 8/15/84
People's Counsel's Exhibit No. 1 - Resume of Jeremy Criss
" " No. 2 - Resume of G. Richard Curran
" " No. 3 - Tax Map (Bd's closet)
" " No. 4 - Soil Overlay Map (Board's closet)
" " No. 5 - Sheet headed -Caves Valley Properties for Reclass from R.C. 2 to R.C. 5
" " No. 6 - Rags -Md Agr Land Preservation Program
" " No. 7 - Overlay Topo Map - Caves Valley (Bd's closet)
" " No. 8 - Resume of Stephen William Kane
" " No. 9 - Forest Resource Mgmt Plan
" " No. 10A thru 10C - Three (3) Forest Management Maps (Bd's closet)
" " No. 11 - Resume of John McGrain
" " No. 12 - The Green Spring Valley cover sheet: Page 235 thru 241
" " No. 13 - Hist. Map and Info. on Caves Valley
" " No. 14 - 1984 Zoning Map Issues before County Council
" " No. 15 - Resume of Larry F. Duket
" " No. 16 - Letter to Wm. T. Hackett from Larry F. Duket -11/17/86

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People's Counsel's Exhibit No. 17 - Resume of Paul Solomon
" " No. 18A & 18B - Scale Zoning Maps adopted by County Council 1984
" " No. 19 - Ground Water Pollution Exhibit (Board's closet)
" " No. 20 - Estimated Acquisition Cost based on Joint Exh. 1 through 4

Stipulated Joint Exhibit No. 1 - Deed dated 8/25/77
" " No. 2 - Deed dated 8/25/77
" " No. 3 - Deed dated 8/25/77
" " No. 4 - Mortgage dated 8/25/77

Record of Transcript Filed.
Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court. Together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomsoever institutes the request.

Respectfully submitted,

Kathleen C. Weidenbacher
County Board of Appeals
of Baltimore County

cc: Thomas J. Gisriel, Esquire
Michael Gisriel, Esquire
Phyllis Cole Friedman, Esq.
Michael McMahon, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT
* * * * *
* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE COUNTY
* CASE NO. 87CG2107
* 40/177
* * * * *

ADDITIONAL CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 1987 a copy of the Petition was mailed first class, postage prepaid to:

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

Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(301) 539-0531

cc: Phyllis C. Friedman, Esquire
George C. Doub, Jr., Esquire
County Board of Appeals

TJC/srb

RECEIVED
COUNTY BOARD OF APPEALS
JUN 10 A 11 01

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
NE/S PARK HEIGHTS AVENUE
467' AND 1507' NW CAVES ROAD
FROM R.C. 2 TO R.C. 5
4th ELECTION DISTRICT
CONSERVATION ASSOCIATES
PETITIONERS/PLAINTIFFS
Zoning File No. R-86-110

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 40
Folio No. 177
File No. 87-CG-2107

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Patricia Phipps and LeRoy B. Spurrier, 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, Thomas J. Gisriel, Esquire, and Michael Gisriel, Esquire, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire, and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavemen Properties, Kingdom Gould, Jr., Trustee, c/o RMI, 1725 DeSales Street, N.W., Suite 900, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201; Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney, Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue,

Conservation Associates
Case No. R-86-110

Owings Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117; Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Buck, 11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthai, 12321 Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills, MD 21117; Lisa Keir, 11806 Greenspring Avenue, Owings Mills, MD 21117; Wilfred G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C., P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills, MD 21117; Jim Cox, 36 Caveswood Lane, Owings Mills, MD 21117; George Doub, 2700 Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane, Owings Mills, MD 21117, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenbacher
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas J. Gisriel, Esquire, and Michael Gisriel, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavemen Properties, Kingdom Gould, Jr., Trustee, c/o RMI, 1725 DeSales Street, N.W., Suite 900, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201;

(6) John McGrain, an historian, gave some background relating to the history of Caves Valley.

(7) Mr. Haswall, a member of the Baltimore County Planning staff, testified to some of the prior proceedings relating to the Gould property before the planning staff, Board of Planning Appeals and County Council in connection with the last comprehensive revisions of the zoning maps.

(8) Larry Duket, Chief of the Department of State Planning testified on behalf of the State of Maryland to the importance of RC-2 zoning, the importance of preserving agricultural land in Maryland, and the importance of the aquifer underlining Caves Valley and supported the existing RC-2 zoning of the Gould property.

(9) Jim Cox testified that he and the community opposed the proposed zoning and that it would produce a substantial change in the neighborhood inconsistent with its present rural character.

(10) Paul Solomon of the Baltimore County planning office, explained the basis for the RC-2 zoning of the Gould property, pointing out that with only a handful of very minor exceptions, none of the property zoned RC-2 in 1978 has been changed to RC-5, that in drawing the RC-2 zoning lines the planning office followed property lines rather than dividing farms, and that if the Board allowed Gould a change with respect to part of his property because it is partly wooded, partly steep and partly traversed by streams, every farmer in the County will seek rezoning of some of his farm on that basis.

(11) Joan Lott who had been the number one salesperson for Piper & Company for several years testified that the Gould property could be divided under existing zoning into 15 20-acre lots each of which could be marketed for approximately \$25,000 to \$350,000 with minimal development expenses, and, accordingly, that Gould could develop the property under existing zoning today for approximately \$4,000,000.

Petitioners' Rebuttal

Gould's attorneys then called Shulte and Stephens briefly essentially to repeat some of their earlier testimony. They also called a land use planner, Joseph Brown, who testified that timbering the Gould property was not a suitable use in view of the proximity of residential communities.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF * CASE NO. R-85-110
CONSERVATION ASSOCIATES, * ITEM 4, CYCLE 1
ET AL *

* * * * *

PETITIONERS' REPLY MEMORANDUM

Petitioners Conservation Associates, Cavemen Properties and Kingdon Gould, Jr., Trustee respectfully submit this memorandum in reply to the memoranda submitted in this matter by People's Counsel and Protestants.

PRELIMINARY COMMENTS REGARDING PEOPLE'S COUNSEL'S MEMORANDUM

The memorandum submitted by People's Counsel consistently mischaracterizes the positions taken by Petitioners in this proceeding and makes broad sweeping statements regarding the testimony in the proceeding which are misleading, inaccurate and totally unsupported by

transcript references. It trivializes this proceeding by its reliance on so-called myths and its cavalier tone.

People's Counsel claims that Petitioners seek "concentrated development" on the petition property. (People's Counsel Memorandum, hereafter "PCM", page 2) This is patently false. The rezoning requested is R.C.5. The requested zoning not only remains within the Resource Conservation category, it is also the least dense residential zoning classification in the Baltimore County Zoning Regulations.

People's Counsel claims that Petitioners' case regarding the unsuitability of the petition property for agricultural use is limited to its unsuitability for growing crops, ignoring potential uses as pasture or for timbering operations. (PCM pp. 3-4) Again, this is false. Substantial testimony was offered regarding the unsuitability of the petition property for pasture and timbering operations. Petitioners spent seven pages of their memorandum (pp. 33-40) specifically addressing the unsuitability of the petition property for pasture or timbering operations. This seven page analysis is the same length as People's Counsel's entire memorandum.

People's Counsel characterizes Petitioners' position regarding the desirability of maintaining the existing forest cover on the petition property as a mere attempt to please the developer and "the natives", and an attempt at zoning by plebiscite. (PCM p. 4) Again, this is false, totally mischaracterizing Petitioners' position. The issue of forest cover preservation is a significant environmental issue.

Mr. Duket, who was offered by People's Counsel as a witness, testified regarding the beneficial environmental effects of forest cover in controlling sedimentation and storm water runoff. (12/19/86 M p. 79, 12/19/86 A pp. 13, 23-24) Accordingly, Mr. Duket recommended that no trees be removed along the stream valley or on the steep slopes. (12/19/86 A pp. 18, 26) Every agricultural use proposed by People's Counsel calls for removal of trees on the steep slopes and in the stream valley. Low density residential development, as sought by Petitioners, preserves forest cover. Petitioners have pointed out, at pages 27-32 of our memorandum, that the low density residential development they propose is more desirable environmentally than the agricultural uses proposed by People's Counsel because it will preserve far more of the forest cover.

Agricultural use of property is not environmentally benign, especially on property subject to severe erosion hazard as is the petition property. (See Petitioners' Memorandum pp. 24-27) Recent news coverage of the plight of the Chesapeake Bay indicates that the largest source of non-point pollution in the bay is agricultural runoff. The agricultural uses proposed by People's Counsel will significantly increase erosion and runoff from this property. Low density residential development, with the associated preservation of forest cover, will minimize the erosion and runoff. One of the reasons the R.C.2 agricultural zoning of the property is a mistake is because agricultural use of the property will significantly increase erosion and runoff thereby damaging the environment, a factor the County Council failed to consider.

PRELIMINARY COMMENTS REGARDING PROTESTANTS' MEMORANDUM

Protestants' memorandum focuses virtually exclusively on the portion of the petition property which fronts on Caves Road. This reflects the specific concerns of those protestants who, like their counsel Mr. Doub, live on or near Caves Road. Indeed, Mr. Doub's residence lies not only

on Caves Road, but also borders on this portion of the petition property.

As is the case with People's Counsel, Protestants seek to characterize testimony in the case without any transcript references. Indeed, Protestants go so far as to attach a "summary" of the testimony to their memorandum. This "summary" not only lacks any reference to the transcript to support it, it is also self serving in the extreme and glaringly inaccurate, making such basic mistakes as misspelling the names of some of the witnesses. It should not be relied upon.

As is the case with People's Counsel, Protestants also mischaracterize the positions of Petitioners. For example, Protestants suggest that Petitioners are urging the use of boundary lines of capability unit 2 soils as zoning boundary lines. (Protestants' Memorandum hereafter "PM" p. 6) Of course, no such suggestion was made by Petitioners.

The agricultural capability ratings by the U.S.D.A. Soil Conservation Service of the soils on a property necessarily must be an important factor in determining whether a property is suitable for agricultural use. Capability unit 3 soils are characterized by the Soil Conservation Service as having severe limitations for

agricultural use. (12/2/86 p. 37, 12/3/86 p. 77) Petitioners do not suggest, as Protestants claim on page 8 of their memorandum that any property that "contains some capability 3 soils" would be inappropriate for R.C.2 zoning.

In the present case, however, capability 3 and worse soils, with severe limitations for agricultural use, predominate consisting of 60% of the petition property above the transmission line and 70% of the petition property on Caves Road. (See People's Counsel Exhibit 5) The capability 2 soils which do exist on the petition property are scattered about the property in noncontiguous parcels separated from one another by steep slopes exceeding 20% and by stream bed. (Petitioners' Exhibit 9)

Where a property is predominantly capability 2 or better soils, the presence of some capability 3 soils would not foreclose proper R.C. 2 zoning. However, where a property is predominantly capability 3 or worse soils and the remaining capability 2 soils are scattered about the property in noncontiguous patches separated from one another by steep slopes and stream bed, that property is not suitable for agriculture. On that basis, the petition property is unsuitable for agriculture and R.C. 2 zoning for it is a mistake.

THIS BOARD MAY PROPERLY PLACE THE ZONING BOUNDARY WITHIN PETITIONERS' PROPERTY

People's Counsel appears to suggest that it would be improper for this Board to reclassify the 303.39 acres which are the subject of this petition because they are part of a larger 682 acre tract. (PCM pp. 2 and 3) Factually, People's Counsel's position is inaccurate. The 682 acres do not consist of one tract, but rather is made up of three tracts owned by the three Petitioners, as described at page two of our previous memorandum.

To support their position, People's Counsel has cited a string of cases having absolutely no relevance to the present case or to the issue of the propriety of this Board reclassifying the 303.39 acres under consideration. Penn Central Transportation v New York City, 438 U.S. 104 (1978) (dealing with constitutionality of development restrictions on Grand Central Station); Bureau of Mines v George's Creek, 272 Md. 143 (1974) (dealing with constitutionality of Maryland's strip mining bill); Potomac Sand and Gravel Company v Governor, 266 Md. 358 (1972) (dealing with the constitutionality of a Maryland law prohibiting dredging for sand or gravel in tidal water or marshlands). Finally,

People's Counsel quote at length from a dissent in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), a case dealing with the constitutionality of a Pennsylvania coal law. Again, the entire quotation has no relevance to this case.

To the degree People's Counsel means to suggest that this Board must consider all aspects of the petition property in making its decision in this case, we agree. When all aspects of the petition property are considered, however, the unsuitability of the petition property for agriculture is apparent.

Elsewhere in their memorandum, at page 5, People's Counsel states:

If it is suggested that property lines are not pertinent to comprehensive zoning, then there will be chaos. Indeed, the usual contention is that it is error to split a tract.

Of course, Petitioners have never suggested that property lines are not pertinent to comprehensive zoning. Moreover, we have little doubt that in some circumstances it may be error to split a property. These factors, however, must be applied in the facts of a particular case.

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Petitioners do not suggest that property lines may never be used as zoning lines. It is clear, however, that zoning lines need not follow property lines. The Baltimore County Zoning regulations regarding resource conservation zones expressly allow single tracts to be split by zoning boundaries. Section 1A00.5 states:

Application to tract divided by zone boundary.

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels.

Moreover, People's Counsel has conceded that a single tract has been split by a zoning boundary in the immediate Caves Valley area. The property involved is the S & R Investors property across Park Heights Avenue from the petition property. It is the property for which the zoning boundary was moved down to the transmission line, the same boundary requested by Petitioners. People's Counsel concedes that the portion rezoned was 65 acres of a 240 acre tract. (PCM p.5) This is also consistent with the testimony of Mr. Solomon. (12/19/86 A p.67)

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Where small properties are involved which would be rendered unusable if they were split by zoning lines, strict adherence to property lines may be necessary. Where large tracts of land are involved, it simply is not necessary for zoning boundaries to follow property lines. There is no allegation that rezoning the petition property in this case would render the remaining land unusable for agriculture. Indeed, Mr. Solomon has conceded that the remaining land would be larger than the average farm in Baltimore County. (12/19/86 A p.97)

Mr. Hoswell, a Baltimore County planner, testified that the appropriateness of using a property line as a zoning boundary is determined on a case by case basis. Neither using the property line or failing to use the property line is inherently illogical. It depends on the specifics of each property. (12/19/86 M pp.50-51).

In any case, the end result of any rule which required that zoning boundaries be on property lines would be subdivision of large tracts as a preliminary step before requesting reclassification. Requiring such a step would be needless and wasteful.

People's Counsel can cite no authority which prohibits this Board from dividing a property with a zoning boundary,

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or requires the Board to place all zoning boundaries on property lines. The Baltimore County Zoning Regulations expressly allow zoning boundaries within a tract, and such zoning boundaries have been created in the immediate Caves Valley area. Testimony of Mr. Hoswell, a County planner, indicates that there is no inherent problem in placing the zoning boundary line away from the property line. The new zoning boundary which would arise from the reclassification sought by Petitioners is proper.

THE LEGAL STANDARD PROPOSED BY PROTESTANTS IS WRONG

In their memorandum, Protestants confuse the legal standard necessary to establish mistake in zoning with the standard necessary to establish an unconstitutional taking. Protestants suggest that Petitioners must establish that they are deprived of any reasonable use of the property in order to establish a mistake in the zoning. (PM p. 13) This standard is the standard for establishing an unconstitutional taking of the property, not the standard for establishing mistake in zoning.

Petitioners do contend that the zoning of the subject property is unconstitutional in that it deprives them of all

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reasonable use of the property by mandating agricultural use for which the property is not suited. However, Petitioners need not establish an unconstitutional taking to prevail on the issue of mistake.

Similarly, Protestants suggest that if the appropriateness of the present zoning boundary line is fairly debatable, the existing zoning must be sustained by this Board. (PM p.15). Again, Protestants misstate the law. If the evidence produced in this proceeding renders the issue of mistake fairly debatable, this Board may properly rezone the petition property and that reclassification must be upheld by reviewing Courts.

Once evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the courts to substitute their judgment for that of the zoning authority.

Tennison v. Shomette, 38 Md. App. 1, 5 (1977), cert. denied, 282 Md. 739 (1978); quoted with approval, People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 624 (1980). The standard referred to by Protestants is the standard of review of a court reviewing this Board's decision upon appeal, not the standard this Board applies in making its decision.

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Error or mistake is established if there is probative evidence that the assumptions or premises relied upon by the Council at the time of comprehensive rezoning were invalid. People's Counsel v. Williams, supra, 45 Md. App. at 624. In the Williams case, the invalid assumption or premise of the Council in zoning a property industrial was that it was a prime industrial site. Similarly, the invalid assumption or premise of the Council in zoning the petition property for agricultural use was that it is productive agricultural land.

A substantial amount of the evidence presented in this proceeding simply was not available to the Council in 1984 when it went through the comprehensive zoning process. For example, Mr. Koehn's Forestry Management Plan, People's Counsel Ex. 9, which states the maximum amount of economic return the property could generate from an extremely aggressive timber harvesting program, was not generated until April 27, 1986. Dr. Stevens' economic analysis which shows that this economic return would not even cover the interest on the value of the land, Petitioner's Exhibit 22, was also unavailable to the Council. Similarly, Dr. Stevens' economic analysis which showed that using the property for beef or sheep pasture would lose money,

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Petitioners' Exhibits 20 and 21, were not available to the Council.

Indeed, the evidence shows that the Council relied on false information. The Planning Board's recommendation to the Council, on which the Council relied, (People's Counsel Exhibit 13, p.81) states that the U.S.D.A. Soil Survey listed the areas on the property with 8% to 15% slope as "productive farmland". As can be seen from People's Counsel Exhibit 5, all areas on the petition property with 8% to 15% slope are classified as capability unit 3. This soil is not characterized by the U.S.D.A. as productive farmland, it is characterized as having severe limitations for agricultural use. (12/2/86 p.37, 12/3/86 p.77) The Council's reliance on this false information was a critical factor in its mistaken assumption that the petition property is productive agricultural land.

The appropriate legal standard in determining mistake in this case was set forth in Petitioners' Memorandum at pages 4 to 9. In summary, where property is zoned for a use for which it is not suitable, that zoning is a mistake which should be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966); Dill v. The Jobar Corporation, 242 Md. 16 (1965); Kracke v. Weinberg, 197 Md. 339 (1950);

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Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular...application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

This standard has been amply met by the evidence presented in this proceeding.

R.C. 2 ZONING FOR THE PETITION PROPERTY IS UNFAIRLY DISCRIMINATORY

People's Counsel, citing County Commissioners of Queen Anne's County v. Miles, 246 Md. 355 (1967), claims that Petitioners have not met their burden of proving unlike treatment of like properties necessary to establish discriminatory zoning. In the Miles case, People's Counsel argues, property owners claimed that two properties were similar because of similar soils and topography but the

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Conservation Associates
Case No. R-86-110

3.

Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney,
Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore
County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue, Owings
Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117;
Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Buck,
11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthal, 12321
Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood
Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills,
MD 21117; Lisa Keir, 11826 Greenspring Avenue, Owings Mills, MD 21117; Wilfred
G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C.,
P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills,
MD 21117; Jim Cox, 35 Caveswood Lane, Owings Mills, 21117; George Doub, 2700
Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane,
Owings Mills, MD 21117, on this 4th day of June, 1987.

Kathleen C. Weidenhamer
Kathleen C. Weidenhamer
County Board of Appeals of Baltimore County



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

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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,

Encl.

cc: Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Weldon Hale
Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

Judith A. Arnold, Esquire
Michael McMahon, Esquire
Doris C. Woodward
Avis Reed
Frances P. Matthal
Phyllis A. Zheutlin
Lisa Keir, V.P.C.
Betty Beck
George Doub
Arnold Jablon
James E. Dyer
Margaret E. du Bois



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

June 4, 1987

Thomas J. Gisriel, Esquire
210 E. Lexington Street, Suite 400
Baltimore, MD 21202

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Gisriel:

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.

Very truly yours,

Enclosures

cc: Michael Gisriel, Esquire
Conservation Associates

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

IN THE
CIRCUIT COURT
OF MARYLAND
FOR
BALTIMORE COUNTY
CASE NO.

ORDER FOR APPEAL

Conservation Associates, Cavenem Properties and
Kingdon Gould, Jr., Trustee, pursuant to Rule B2, order an
appeal of the order of the County Board of Appeals of
Baltimore County issued on May 1, 1987.

The undersigned certify that a copy of this order
of appeal was served on the County Board of Appeals prior to
the filing of this order.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(301) 539-0513

Attorneys for Conservation
Associates, Cavenem Properties
and Kingdon Gould, Jr.,
Trustee

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County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
May 1, 1987

Michael Gisriel, Esquire
210 E. Lexington Street
Suite 400
Baltimore, MD 21202

RE: Case No. R-86-110
Conservation Associates

Dear Mr. Gisriel:

Enclosed is a copy of the signed Opinion and Order passed
today by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhamer
Kathleen C. Weidenhamer
Administrative Secretary

Encl.

cc: Thomas J. Gisriel, Esquire
W. Thomas Gisriel, Esquire
George C. Doub, Jr., Esquire
Conservation Associates
c/o PUL
Doris C. Woodward
Weldon Hale
Avis Reed
Judith A. Arnold, Esquire
Michael McMahon, Esquire
James Earl Kraft
Phyllis A. Zheutlin
Kathleen Pontone
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Phyllis Cole Friedman, Esquire
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Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Norman E. Gerber
James G. Hoswell

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
FROM R.C. 2 TO R.C. 5
FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS
AVENUE, 467' AND 1507' NORTH-
WEST OF CAVES ROAD
4th ELECTION DISTRICT

OPINION

This matter comes before the Board on a petition for reclassification of
two parcels with a total size of approximately 303 acres confined within a con-
tiguous parcel of approximately 682 acres. The parcel owned by Petitioners is
located north of Caves Road on both sides of Park Heights Avenue, extending to
the southwest almost as far as Garrison Forest Road and extending to the north-
east almost as far as Greenspring Avenue. This property comprises in substantial
measure that portion of Maryland historically known as the Caves Valley. The
existing zoning for the tract is R.C. 2. Petitioners have requested that approx-
imately 277 acres of the northern portion of the tract be reclassified as R.C. 5
zoning and approximately 26 acres of the southern portion of the parcel, fronting
on Caves Road, be reclassified as R.C. 5 zoning.

The issues presented to this Board were as broad in their impact of land
use in Baltimore County as any in the history of the Board of Appeals. As would
have been expected given the scope of this project, the testimony before this
Board was as comprehensive and detailed on the issues raised as we have ever seen.
In particular the testimony from the expert witnesses, a total of thirteen of
whom testified during the five days during which this matter was heard, demon-
strated authority of the highest order. The Board was extremely impressed by the
quality of content presented by all sides in this matter.

Case No. R-86-110
Conservation Associates

2.

The decision in this case was a most difficult one for the Board. In the
thirteen years since resource conservation zones were established in Baltimore
County, no parcel close to this size has been reclassified. The historical per-
spective of this case shows that prior to the 1984 Comprehensive Zoning Map the
property was zoned R.C. 2. During the comprehensive review in 1984, the
Petitioner identified this property as a specific issue. At that time the
Planning staff and Planning Board recommended retention of R.C. 2 zoning and the
Baltimore County Council reaffirmed R.C. 2 zoning for the parcel. In considering
the herein petition, the Planning Board said significant deference to the
suitability of this property for active agricultural pursuits and the potential
harm to the water supply source under this property. It was the Planning
Board's belief that the existing zoning is consistent with the Baltimore County
Master Plan and that the agricultural qualities of the property argued strongly
for retention of the R.C. 2 zoning.

Petitioners have acknowledged the obvious agricultural profile of a sub-
stantial portion of their full tract and are not requesting rezoning of the
entire parcel. They have carefully extracted those portions that comprise the
Caves Valley floor and are requesting reclassification solely of the valley walls
and ridge.

The conditions on the petitioned acreage are significantly different than
conditions on the valley floor. The valley floor is cleared while the walls and
ridge are heavily wooded. The floor is flat while the walls and ridge are
steeply sloped. The soil types on the floor are significantly different than
the soils on the walls and ridge. Clearly the use of the valley floor is for
active agricultural pursuits. Equally clear is that those parcels contained in

Case No. R-86-110
Conservation Associates

3.

the petition are not tillable in their present condition, do not possess essen-
tial qualities that would make the land profitable agriculturally, are not being
used presently for any agricultural pursuit of a commercial nature and from all
indications have not been used for such pursuits over the course of the last
century, if ever.

Nevertheless these parcels are zoned to promote the conservation of
agricultural property. The fundamental issue before this Board therefore is not
necessarily whether or not those parcels contained in the herein petition are
appropriately considered agricultural; but rather are they appropriate to remain
in an "agricultural" zone in order to foster conditions favorable to a continued
agricultural use of productive agricultural areas by preventing incompatible
forms and degrees of urban uses. This Board notes that the petitioned properties
are not agricultural in the sense that they can be used commercially in a pro-
fitable manner. We further hold that the qualities of these parcels and in
particular their proximity to and effect on active farmland is wholly consistent
with the purposes and legislative statement of findings of the R.C. 2 zoning
classification as stated in Sections 141.12 and 141.14.13 and 5 of the
Baltimore County Zoning Regulations. Quite simply we are stating that the peti-
tioned property is not suitable for profitable agricultural pursuits. This does
not conclude however that the present or possible uses permitted by a zoning of
R.C. 2 under the R.C. 2 classification deny the property owners their reasonable
use of the property; nor does it require us to permit a significantly more
intensive development of the property solely because agricultural pursuits are
not likely to be profitable at this location. We believe that potential devel-
opment of the petitioned property of the nature permitted in R.C. 5 is a use

court found the properties distinguishable. (PCM pp. 5-6). Of course, People's Counsel neglects to inform the Board what differences the court found in Miles.

The differences in Miles were many. The two properties were of different caliber and character, quality and condition. One was on a peninsula, one was not. One had two or three miles of waterfront on broad waters while the other had far less waterfront on back creeks. Moreover one property, unlike the other, bordered on industrial development, including a gravel pit, a dump for old automobiles, a storage building housing beer and building materials, a ready mix concrete business and an automobile repair shop. 264 Md. at 375-376. The Miles court concluded that the subject property was properly zoned within a homogeneous group of properties whose characteristics it shared, and differed from the properties zoned in the category sought in that case. 246 Md. at 379.

Unlike the Miles case, witnesses for both Petitioners and People's Counsel agree that the petition property is unlike other properties zoned R.C. 2 and identical in all material respects with properties zoned R.C. 5. Consider the testimony of Mr. Solomon, a witness for People's Counsel:

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Examination by Mr. Zimmerman

Q. ...Can you comment on any other [than size] relevant differences between that property [the S&R Investors property] of sixty-five acres and the property under consideration here in terms of productive soils, topography, or anything else that is important?

A. Well, I don't think there are -- I would love to say there are some significant differences...

(12/19/86 A p. 69).

The only difference between the properties to which People's Counsel can point is the size of the properties. They also claim the smaller property is situated closer to existing centers of population.

The claim that the S&R Investors property lies closer to centers of population is totally unsupported by any testimony in the record. We assume, since People's Counsel has failed to explain this point, that People's Counsel means the S&R Investors property is closer to Owings Mills. We note that the petition property is closer to Pikesville, but question the significance of either point.

The aerial photographs (Petitioners' Exhibits 17 and 18) and the tax map (People's Counsel Exhibit 3) plainly show that both properties border on R.C. 5 residential

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development. The development bordering on both properties is identical in character.

The difference in size between the two properties is both obvious and inconsequential. People's Counsel do not even attempt in their memorandum to explain why the difference in size is significant. The mere fact that the petition property is large enough to be a farm unto itself does not make it suitable for agriculture. All of its other characteristics, soil quality, slope, erosion danger, and forest cover, make it unsuitable for agriculture. In these significant characteristics the petition property is identical to the S&R Investors property which was rezoned R.C. 5 using the same zoning boundary proposed by Petitioners in this case. This unlike treatment of like property is discriminatory and must be corrected by this Board.

While focusing on the Caves Road portion of the petition property, Protestants follow the opposite strategy from People's Counsel. They do not argue that the Caves portion of the petition property is different from the other properties on the northwest side of Caves Road which have been developed in a manner inconsistent with R.C. 2 zoning but consistent with R.C. 5 zoning. Protestants say the

- 18 -

Caves portion of the petition property is so similar to the other properties on the northwest side of Caves Road that rezoning the petition property would start a domino effect resulting in the rezoning of the entire northwest side of Caves Road. (PM p.6)

What Protestants fail to note is that if the northwest side of Caves Road were rezoned R.C. 5, there would be no change in land use. It is already developed in an R.C. 5 manner, that is our point. Consider the development on Caveswood Road. It is already at the maximum permissible density for R.C. 5. None of the residences on Caves Road are on 50 acre lots as required under R.C. 2 zoning.

Protestants were able to point to only one property on Caves Road which was not already developed. All of the remainder of Caves Road is developed in an R.C. 5 manner. Petitioners seek only the right to do what every other property owner on Caves Road, except one, has already done, to develop their property in an R.C. 5 manner. To prohibit Petitioners from residential development of their property on Caves Road where the rest of the Caves Road owners are able to enjoy their residential development is unreasonably discriminatory.

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THE CAVES ROAD PORTION OF THE PETITION PROPERTY IS UNSUITABLE FOR AGRICULTURE

Protestants suggest that Petitioners have been "somewhat unclear" regarding the unsuitability of the Caves Road portion of the petition property for agriculture because no separate section of our memorandum was limited to that portion of the petition property. (PM p.2) In order to clarify this point, Petitioners will review the unsuitability of the Caves portion of the petition property for agriculture.

Protestants argue that this portion of the property is suitable for agriculture because, relying on their attachments 1, 2 and 3, they claim that more than half of that portion is located in the valley floor, the slopes are gentle, and nearly all of the soils are suitable for agriculture. (PM p.2)

The problem with Protestants' argument is that the facts on which they rely are simply not true. Notable in its absence from Protestants' argument is any reference to the record of this proceeding to support the facts on which they rely. Perhaps if Protestants had reviewed the record of these proceedings in order to seek such support, they would have realized there is none.

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Protestants' reliance on the attachments to their memorandum for the proposition that over half of this portion of the property is located on the valley floor is misplaced. The attachments are far too imprecise. The scale of the attachments is far too large. The topographic and slope maps of the property, Petitioners' Exhibits 2, 3 and 7 plainly show that this portion of the property lies above the valley floor, not in it.

The slopes on this portion of the property are anything but gentle. Even People's Counsel introduced evidence that 70% of this portion of the property has slopes in excess of 8%. (People's Counsel Exhibit 5) The slope map of the property (Petitioners' Exhibit 3) shows that this portion of the property is steeply sloped. The significance of this sloped condition for agricultural suitability is addressed in our previous memorandum at pages 24 to 27. It significantly increases erosion hazard and makes agricultural activities unproductive. Significantly, all of the soil in this portion of the property is rated by the soil Conservation Service as subject to severe erosion. (People's Counsel Exhibit 5).

The Soil Conservation Service rates 70% of the soil of this portion of the property as capability unit 3 or worse,

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having severe limitations on agricultural production. (People's Counsel Exhibit 5). The remainder of the property is capability unit 2, having moderate limitations on agricultural production. The significance of these soil ratings is discussed in our previous memorandum at pages 13 to 24. Significantly, the 30% of this portion of the property which has unit 2 soil is found in two noncontiguous patches at opposite ends of the property. (Petitioners' Exhibit 9)

Plainly, the facts on which Protestants rely to assert that the Caves Road portion of the petition property is suitable for agriculture are not supported by the record of this proceeding. The facts in the record establish that this portion of the property is not suitable for agriculture.

CONCLUSION

None of the arguments made by People's Counsel or Protestants in their memoranda undermine the conclusions drawn in our previous memorandum. Zoning the petition property R.C. 2 for agricultural use was a mistake. The petition property should be rezoned R.C.5.

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The 303.39 acres under consideration in this petition are unsuitable for agricultural use. The U.S.D.A. Soil Conservation Service rates 60% of the property above the transmission line and 70% of the property on Caves Road as having severe limitations for agricultural production. The remainder of the property, which has moderate limitations for agricultural production, consists of scattered noncontiguous parcels separated from one another by steep slopes in excess of 20% and stream bed, making agricultural production impractical. The slopes on the property create severe erosion hazards, necessitating expensive conservation management measures which make agricultural production on the property economically unproductive.

Placing the land in agricultural production, for either crops or pasture, would necessitate clearing the land of its existing tree cover which would greatly increase erosion and be environmentally unsound. Placing the land in pasture would result in annual losses of scores of thousands of dollars.

The forestry management plan proposed by People's Counsel calls for an initial "thinning" cut removing in excess of 58% of the trees on the property in preparation for a "final harvest" which would leave significant portions

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of the property clear cut. It includes removal of some of the trees on the steep slopes and in the stream bed, which is environmentally unsound. The plan is wholly inappropriate for the property in light of its size and proximity to residential development. Moreover, the plan is also economically unproductive, failing to produce enough revenue even to pay interest on the value of the land.

The petition property has the same characteristics in soils, slope, topography and ground cover as surrounding land zoned R.C. 5. It shares none of these characteristics with surrounding land zoned R.C. 2. The R.C. 2 zoning of the petition property is unfairly discriminatory.

The petition property is now zoned R.C. 2, agricultural, based on the County Council's assumption that the petition property is productive agricultural land. That zoning and the Council's assumption are mistaken because the property is not suitable for agriculture. In addition, R.C. 2 zoning is a mistake because it unfairly discriminates against the property, which is identical to surrounding R.C. 5 zoned land and unlike nearby R.C. 2 zoned land.

This Board should correct the mistake in zoning the petition property and end the unfairly discriminatory

treatment of the property by reclassifying the property R.C.5.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Suite 400
Baltimore, Maryland 21202
(301) 539-0513

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 1987, a copy of the foregoing Petitioners' Reply Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204, and George Doub, Esquire, Venable, Baetjer & Howard, Suite 1800, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Thomas J. Gisriel
Thomas J. Gisriel

County Board Of Appeals Of Baltimore County

IN THE MATTER OF * CASE NO. R-86-110
CONSERVATION ASSOCIATES, * ITEM 4, CYCLE 1
ET. AL. *
* * * * *

PETITIONERS' POST-HEARING MEMORANDUM

Petitioners Conservation Associates, Caveman Properties, and Kingdon Gould, Jr., Trustee, respectfully submit this Post-Hearing Memorandum, as requested by the Board on January 23, 1987, at the conclusion of hearings on this matter.

DESCRIPTION OF THE PROPERTY

Petitioners in this case are Conservation Associates, a Maryland Limited Partnership; Caveman Properties, a Maryland Limited Partnership; and Kingdon Gould, Jr., Trustee. On August 25, 1977, Petitioners acquired three contiguous tracts of unimproved land, totaling 682 acres of

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land, more or less (See Joint Exhibits 1, 2 and 3). The respective holdings of each Petitioner are as follows:

Conservation Associates	299.3 acres
Caveman Properties	322.7 acres
Kingdon Gould, Jr., Trustee	60 acres

Because the entities owning the properties are owned and controlled by the Gould family, Petitioners will be collectively referred to as the Goulds.

The Gould property is located in and above an area of Baltimore County known as the Caves Valley. Numerous exhibits entered into evidence in this proceeding locate the property precisely (See e.g. Petitioners' Exhibits 17 and 18, aerial photographs). Generally the property lies southwest of Green Spring Avenue and northwest of Caves Road, and is bisected by Park Heights Avenue. All 682 acres of the Gould property are presently zoned R.C. 2.

The property has two distinctly different, physical characteristics. (12/2/86. pp 23-25, 27-30, 34-35, (See Explanation Of Transcript References at the end of the memorandum) Petitioners' Exhibits 3, 4 and 7) Over half of the property is flat and low-lying. It has been cleared, and it is cultivated. This portion of the property lies on

the valley floor. Elsewhere in the area, land with these conditions is zoned R.C. 2. Petitioners do not seek to disturb the R.C. 2 agricultural zoning for it.

The Goulds do seek to have 303.39 acres of their property rezoned R.C. 5. The petition property is very different in physical characteristics from the valley floor. It is higher in topography and more steeply sloped and rolling. It has forest cover and has not been cultivated. This portion of the property is located on the valley walls and ridge. Land of this character is zoned R.C. 5 elsewhere in the area. The Goulds seek to have their property rezoned in a like manner. The precise definitions of the petition areas are found in Petitioners' Exhibit 12, but general boundaries are found on numerous exhibits (e.g. Petitioners' Exhibits 3, 4, 7, 9, 17 and 18; People's Counsel Exhibit 3).

The petition property consists of two separate parcels. The first, and larger, is that portion which lies north of the power transmission line which runs through the property. The transmission line is used as the demarcation line of the petition property for several reasons. It is, of course, easy to locate in the field. The county has recognized the appropriateness of using the transmission as the zoning

demarcation line by using it southwest of Park Heights Avenue until it reaches the Gould property. (See Petitioners' Exhibit 8, County Zoning Map). Most importantly, the transmission line marks the boundary of environmental conditions, between valley floor and valley walls, while the existing zoning boundary for the property completely disregards the topographic and environmental conditions of the area. (12/2/86 pp 25-33).

The second parcel of the petition property consists of approximately 25 acres binding on Caves Road southwest of Park Heights Avenue. It is the only property binding on the west side of Caves Road which is not developed in an RC-5 manner, even though all of these properties are zoned RC-2. (See People's Counsel Exhibit 3, Tax Map, Petitioners' Exhibits 17 and 18, Aerial Photographs, and 1/23/87 pp 87-88).

The Legal Standard

It is, of course, fundamental that there is a strong presumption that original zoning and comprehensive rezoning are correct. Trainer v. Lipchin, 269 Md. 667, 673 (1973); Boyce v. Sembly 25 Md. App. 43, 49 (1975). Generally, in

order to overcome this presumption, Petitioners must produce strong evidence of mistake. Trainer v. Lipchin, supra; Boyce v. Sembly, supra. In the present case, however, the Goulds seek reclassification from one resource conservation subcategory (R.C. 2) to another resource conservation subcategory (R.C. 5). Reclassification from one subcategory to another is subject to a more liberal and relaxed standard in determining whether the presumption of correctness has been overcome. Chapman v. Montgomery County Council, 259 Md. 641, 648 (1970); Missouri Realty, Inc. v. Ramer, 216 Md. 442 (1958); Tennison v. Shomette, 38 Md. App. 1, 5 (1975), cert. den. 282 Md. 739 (1978).

Where property is zoned for a use for which it is not suitable, that zoning is a mistake which should be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966); Dill v. The Johar Corporation, 242 Md. 16 (1965); Kracke v. Weinberg, 197 Md. 339 (1950); Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular...application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

Petitioners have presented strong evidence that the petition property is not suitable for agriculture, the use for which it is zoned. This evidence is described in great detail in the remainder of this memorandum. The evidence shows that over 60% of the soil of the petition property has severe limitations for agricultural production. The remaining soil, with moderate limitations for agricultural production, is scattered about the property in noncontiguous parcels separated by steep slopes and streams, making it impractical to farm. The slopes and erosion hazard on the property make it unsuitable for farming. Every agricultural use proposed by People's Counsel for this property is unsuitable for the physical conditions of the land, environmentally unsound or economically unproductive.

The evidence presented in this case is certainly strong enough to render the issue of mistake fairly debatable. Therefore, the Board may properly reclassify the petition property. Tennison v. Shomette, supra, 38 Md. App. at 5.

The evidence before the Board is easily substantial enough to permit reasoning minds reasonably to conclude that the presumption of correctness of the zoning has been overcome. Therefore, the Board would act correctly in rezoning the property. Dill v. The Jobar Corporation, supra, 242 Md. at 23. The evidentiary standard required for reclassification of the property has been amply satisfied by Petitioners.

There has been some discussion during the proceeding of the possibility of leaving the petition property in agricultural zoning, despite its unsuitability for agriculture, to act as a buffer between the agricultural land below it and the residential development on the other side of the property line. Such zoning is clearly improper. Property may not be zoned for an unsuitable use in order to act as a buffer for other property. Kracke v. Weinberg, supra; Northwest Merchants Terminal, Inc. v. O'Rourke, supra. The property is unsuitable for agriculture. Therefore, it may not be zoned agricultural. It may not be zoned for an unsuitable use in order to act as a buffer.

Finally, zoning may not be unfairly discriminatory. Land of like conditions must be zoned in like manner.

- 7 -

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.
Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

Zoning is improper if a property is devoted to a use which is inconsistent with the uses to which similarly situated property in the district is devoted. Hewitt v. Baltimore County, 220 Md. 48, 58 (1958); Cassel v. City of Baltimore, supra.

The evidence presented in this case shows that the R.C. 2 zoning on the petition property is unfairly discriminatory. Elsewhere in the area, property which shares the same soils, topography, slopes and ground cover as the petition property is zoned R.C. 5. All of the properties on Caves road have been developed into residential lots except the petition property. The land in the area which is zoned R.C. 2 shares none of the characteristics of the petition property. The R.C. 2 zoning of the property is a mistake because it is unfairly discriminatory. This mistaken zoning should be corrected by this Board.

- 8 -

The petition property is zoned for a use for which it is not suitable. Moreover, the zoning of the petition property is unfairly discriminatory. The R.C. 2 zoning of the petition property is a mistake which must be corrected by this Board. This Board should rezone the property R.C. 5.

R.C. 2 ZONING

The Baltimore County Zoning Regulations expressly designate R.C. 2 zones as agricultural. The stated purpose of the R.C. 2 zoning classification is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." This purpose is premised on a legislative finding "... that Baltimore county is ... endowed with a variety of very productive agricultural soil types..." The Zoning Regulations state that agricultural operations "...shall be afforded preferential treatment over and above all other permitted uses in R.C. 2 zones."

It is obvious that R.C. 2 zoning is intended to foster continued agricultural use of very productive agricultural areas. There is no intention to expand agricultural use

- 9 -

regulations are based on findings of the existence of very productive agricultural soil types. Therefore, it is clear that R.C. 2 zoning is not intended to be imposed on areas which are not very productive for agriculture.

The evidence in this case plainly shows that the petition property has not been used for agricultural production at any time in the twentieth century. The evidence also shows that the petition property has severe limitations for agricultural production. It is not the very productive agricultural land for which R.C. 2 zoning is intended. The R.C. 2 zoning of the property is a mistake which must be corrected.

THE PETITION PROPERTY IS NOT APPROPRIATE FOR AGRICULTURE

The petition property is not suitable for agriculture, and this fact has been recognized by owners of the property for over a century.

There is, and can be, no dispute that the petition property is completely covered by trees (see Petitioners Exhibit 4, Land Use Map, and Exhibits 17 and 18, Aerial Photographs). The forest cover on the land is significant.

- 10 -

It is a physical fact which speaks plainly of the property's use by previous owners and their judgment regarding the appropriateness of the land for agricultural use.

Mr. Schulte testified that the fact that the land is covered with woods suggests that the land is not suitable for agricultural cultivation. (12/2/86 pp. 35-36) Mr. Stevens testified that the forest cover indicated that a past owner of the property determined that the land was not suitable for farming and just let the trees grow. (12/2/86 pp. 92-93)

The historian called by People's Counsel, John W. McGrain, Jr., testified that in 1899 a substantial portion of this property was in forest cover based on the 1899 plat and newspaper advertisements. (People's Counsel Exhibit 13). The 1899 advertisements for farms 6 and 7, which then occupied the land now under consideration, stated that only 83 acres of the 380.8 acres were considered arable. (Farm 6, 14 of 121.8 acres arable; Farm 7, 75 of 189 acres arable). (12/19/86 M pp. 29-30). The forester called by People's Counsel, Mr. Koehn, testified that many of the trees on the petition property were in excess of 90 years

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old, with one black oak being 99 years old. (12/3/86 p. 190).

Obviously, this land has not been farmed in the twentieth century. The forest cover shown on the 1899 plat of this land indicates that it wasn't farmed in the latter part of the nineteenth century either.

It must be borne in mind that the purpose of R.C. 2 zoning is "... to foster ... continued agricultural use of productive agricultural areas..." Zoning which is intended to continue agricultural use is inappropriate and mistaken for land which is not in agricultural use and has not been in agricultural use for generations.

In judging the appropriateness of this land for agriculture, the fact that it hasn't been used for agriculture for generations is very significant. There was no productive use for this land during this period other than agriculture. Mr. McGrain clearly testifies that the valley floor was farmed. The same owners who cleared and farmed the valley floor recognized that the property under consideration was not appropriate for agriculture. This land was not kept out of agriculture in 1899 so it could be

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developed for houses. There was no ulterior motive. Failure to farm the land made the land economically unproductive. Yet it was not farmed.

Consider the position of the Carroll family when they place the advertisement for Farms 6 and 7 in 1899, what is now the petition property. Surely they had every incentive to describe those farms in as attractive a manner as possible. They had every reason to describe the farms as productive and therefore more valuable. Nonetheless they describe only 89 of 310.8 acres as arable, less than 30%. It is plainly the judgment of generations that this land is not suitable for agriculture.

THE SOIL OF THE PETITION PROPERTY PLACES SEVERE LIMITATIONS ON AGRICULTURAL PRODUCTION

Contemporary conditions and evidence support the historic conclusion that the petition property is not suitable for agriculture. The soil capability ratings of the United States Department of Agriculture Soil Conservation Service ("SCS") rate 60% of the petition property above the transmission line and 70% of the petition property on Caves Road as placing severe to very severe limitations on agricultural production. The SCS rates soils

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for agricultural use from capability unit 1 to capability 8. (12/2/86 p. 37) Unit 1 soils are defined by the SCS as having little or no constraints on agricultural use. (12/2/86 p. 38) There are no capability unit 1 soils on the petition property. (12/2/86 p. 38, People's Counsel Exhibit 5)

Capability unit 2 soils are defined by the SCS as having moderate limitations on agricultural use (12/2/86 p. 58). Capability unit 2 soils do exist on the petition property. Their location on the property is graphically depicted on Petitioners' Exhibit 9, the soils map. Mr. Criss, testifying on behalf of People's Counsel, has calculated that 40% of the petition property above the transmission line, and 30% of the petition property on Caves Road are capability unit 2. (People's Counsel Exhibit 5)

Mr. Schulte has testified that in planning land usage, land planners generally seek unit 1 and sometimes unit 2 soil for agricultural areas. (12/2/86 p. 40) Dr. Stevens agrees, saying that he would look primarily for class 1 and 2 soils for agricultural pursuits. (12/2/86 p. 92)

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The unit 2 soils on the petition property, however, are not contiguous (See Petitioners' Exhibit 9). The areas of unit 2 soils which do exist on the petition property are so scattered, irregular and small that they are not adequate for agricultural use. (12/2/86 p. 39) Dr. Stevens characterizes the type of farming that necessarily would take place if those areas were farmed as "patch farming". It would give rise to significant problems moving machinery from patch to patch and would not be economically feasible. (12/2/86 p. 98)

Capability unit 3 soils are defined by the U.S.D.A. Soil Conservation Service as soils with severe limitations on agricultural use (12/2/86 p 37, 12/3/86 p 77). A sense of where capability unit 3 soils are located on the property can be gained by comparing Petitioners' Exhibit 9 and the overlay to People's Counsel Exhibit 4. While unit 3 soils do not absolutely preclude agriculture in the sense that nothing would grow on the property, in order to farm such soils, unusual procedures are essential to overcome the severe constraints of the soil. These procedures generally cause agricultural pursuits on such soils to be unproductive. (12/2/86 pp. 58-59) Even Dr. Curran, the agricultural witness for People's Counsel acknowledges that

to till unit 3 land there must be a conservation plan implemented. (12/3/86 p. 47)

Farming unit 3 soil is hard and expensive. You don't make money farming this type of soil. It is unproductive. (12/2/86 p. 92) The agricultural products derived from farming such soil are less valuable than the effort required to create them. (12/2/86 p 59). Surely capability unit 3 soils are not the "very productive agricultural soil types" for which R.C. 2 zoning is intended under the Baltimore County Zoning Regulations.

According to the calculations done by Mr. Criss for People's Counsel, 35% of the petition property above the transmission line and 50% of the petition property on Caves Road are capability unit 3 soils. These same calculations indicate that 60% of the petition property above the transmission line and 70% of the petition property on Caves Road are capability unit 3 soils or worse. That is, the U.S.D.A. Soil Conservation Service consider 60% and 70% of these petition areas to have severe limitations on agricultural production, or worse.

Despite the fact that the Soil Conservation Service considers unit 3 soils to have severe limitations on agricultural production, People's Counsel has taken the position that unit 3 soils are, in fact, the "very productive soil types" appropriate for RC-2 agricultural zoning. This position appears to be based largely on the testimony of Mr. Criss and the regulations of the Maryland Agricultural Land Preservation Program. COMAR 15.15.01.03C(1)(b) states that a majority of any agricultural preservation district must consist of U.S.D.A. Soil Capability Classes 1, 2 and 3 or U.S.D.A. Woodland Groups 1 and 2. (People's Counsel Exhibit 6, p. 576)

Mr. Criss's testimony, of course, must be considered within the limits of his expertise. He has no graduate degrees in agriculture and no work experience in agriculture. (12/2/86 pp. 133-134) Mr. Criss admits that he is not qualified to testify whether the petition property is suitable for agricultural pursuits, only whether it would qualify for the preservation program. (12/3/86 p. 96)

The mere fact that capability 3 soil is eligible for the preservation program does not indicate that capability 3 soil is one of the "very productive soil types" which should

be subject to R.C. 2 zoning. This is especially true in light of the the Soil Conservation Service characterizing unit 3 soil as having severe limitations. The preservation program is voluntary (12/2/86 p 137, People's Counsel Exhibit 6). Zoning is mandatory. No owner is forced by the preservation program to place unit 3 soil into agricultural production despite its severe limitations. However, where Baltimore County zones unit 3 soil R.C.2, it is requiring that soil with severe agricultural limitations be used for agriculture.

The regulations are purposefully drafted broadly and permissively. Mr. Criss states: "... the program's intention is to preserve as much farm land throughout the state as possible on a voluntary basis." (12/3/86 p. 66) Indeed, Mr. Criss states that they are not even discouraging soil classes greater than 3. (12/3/86 p. 66) The purpose and policy of the regulations and the administration of the program is to expand eligibility for the program to as much land as possible.

The policy of expanding eligibility for the program is also evident in Mr. Criss's application of the other "productive capability criteria" of the preservation

program, COMAR 15.15.01.03C(1)(a) (People's Counsel Exhibit 6, p. 576) to the petition property. That regulation requires that to be eligible for the program, the land be "... used primarily for the production of food or fiber..." and that "... continued agricultural production is feasible." "Profitable farming feasibility" is defined in COMAR 15.15.01.01C (People's Counsel Exhibit 6, p. 572) (see 12/3/86 pp. 77 and 80) as "[the] potential for yielding an excess of returns over expenditures through agricultural production..."

Mr. Criss admitted that the petition property is not used for the production of food. (12/3/86 pp. 77 and 89) He considered the land presently to be active in production of fiber, however, (12/3/86 p. 77) despite the fact that Mr. Criss has no basis to believe that fiber is being harvested by the owners (12/3/86 p. 90), the forest arose naturally, it was not planted (12/3/86 p. 91), and the land is not under any forestry management program (12/3/86 pp. 77 and 89). Moreover, Mr. Criss admitted that he had done no analysis of the feasibility of profitable agricultural production on the subject property (12/3/86 p 94).

Nonetheless, Mr. Criss stated that not only would the petition property be eligible for the preservation program, it would be a "high priority" for the program. (12/3/86 p. 71) If the petition property would be a high priority for the preservation program despite the fact that it produces no food, is yielding no harvest of fiber to the owner, is under no forestry management plan, and has not been analyzed for feasibility of profitable agricultural production, obviously agricultural productivity is not a significant factor for inclusion in the program. The fact that capability unit 3 soils are eligible for inclusion in the program does not suggest that these soils are the "very productive agricultural soil types" intended for R.C.2 zoning.

Capability unit 4 soils are defined by the Soil Conservation Service as having very severe limitations on agricultural use. (12/3/86 p. 77) There seems to be little disagreement that soils of unit 4 and worse are not productive land for tilling. (see testimony of Dr. Curran 12/3/86 pp. 48-49) According to calculations submitted by People's Counsel, 25% of the petition property above the transmission line and 20% of the petition property below

Park Heights Avenue is unit 4 or worse. (12/3/86 pp. 49-50, People's Counsel Exhibit 5)

The location of unit 4 and worse soil is shown on the overlay to People's Counsel Exhibit 4. Significantly, even if one were to accept People's Counsel's proposition that unit 3 soil is productive for agricultural use, you are still left with noncontiguous patches. This would result in "patch farming" in Dr. Stevens' terminology. (12/2/86 p. 98) The patches are separated by streams and steep slopes in excess of 20%. (see Petitioners' Exhibit 3) Dr. Stevens has stated that the patches' separation by this terrain would cause significant problems in moving machinery from patch to patch, and farming the patches would not be economically feasible. (12/2/86 p. 98)

Dr. Curran who unlike Dr. Stevens (12/2/86 p. 100) has never visited the property, (12/2/86 p. 43) is of two minds on this issue. On one hand he agrees that he wouldn't use the stream bed or the slopes for tilling. (12/3/86 p. 45) When confronted with the scattered noncontiguous nature of the land he is recommending for tilling, however, he recommends that a farmer "plant through that". It won't

produce much, he says, but a farmer would do it for ease of farming. (12/3/86 p. 46)

In making this recommendation, Dr. Curran ignores the obvious fact that planting on slopes above 20% and in the stream bed would cause substantial erosion, environmental damage, and destroy the stream. Mr. Duket of the Maryland Department of State Planning, who was called People's Counsel as a witness, absolutely opposed removal of the trees from these steep slopes and the stream bed, much less planting on them, because of the environmental effect. (12/19/86 M p. 79, 12/19/86 A pp. 18, 23-24)

Dr. Curran's opinion that the petition property is suitable for agriculture is undermined by a close look at his testimony. Unlike every other witness in this case, who offered opinions on soils based on their capability unit number, Dr. Curran based his opinion that the petition property is suitable for agriculture on the fact that it is located in the Piedmont region (12/3/86 pp. 5-6) and it contains Manor and Glen Elg soils. (12/3/86 pp. 8 and 35) Only when asked a direct question on cross-examination regarding capability unit numbers does he discuss them at all. A review of People's Counsel Exhibit 5, however, plainly shows that even if we confine ourselves just to the

petition property, Manor and Glen Elg soils range from capability unit 2 all the way up to capability unit 6. Moreover, The Piedmont runs from Harford Road all the way to the mountains in the west. (12/3/86 p. 13) Surely R.C. 2 zoning is not appropriate for this entire region.

Dr. Curran expressly bases his opinion regarding suitability of the petition property for agriculture not only on the presence of Glen Elg and Manor soils, but also on the "slope not being over 15%". (12/3/86 p. 38) But this property has a substantial amount of land with slopes over 15%. (see Petitioner's Exhibit 3) His opinion is also based on the supposed similarity between the petition property and the Vernon Foster farm which he claims is productive. (12/3/86 pp. 9-10) In making this comparison, Dr. Curran totally ignores the fact that the slopes on the Vernon Foster farm peak at 12 to 13%. (12/3/86 p. 10) Dr. Curran betrays his unfamiliarity with the property he never visited. The petition property has slopes in excess of 20%.

According to the U.S.D.A. Soil Conservation Service, 60% of the petition property above the transmission line and 70% of the petition property on Caves Road have severe limitations or very severe limitations on agricultural production. The remaining soil has moderate limitations,

but is scattered about the property in noncontiguous parcels separated from one another by steep slopes exceeding 20% and by stream bed. The attempts by People's Counsel to portray this severely constrained soil as prime or highly productive are not credible. The soil on the petition property is not the very productive agricultural soil for which R.C.2. Zoning is intended. Zoning this property R.C. 2 is a mistake.

THE SLOPES AND EROSION DANGER
ON THE PROPERTY MAKE IT
UNSUITABLE FOR AGRICULTURE

The slopes of the petition property and its erosion danger are very significant factors which make the property unsuitable for agriculture. Mr. Schulte describes the erosion hazard on this property as critical. If this property were placed in agricultural production, erosion would not only damage the streams which receive the soil, but would destroy the agricultural land in the process. (12/2/86 p. 49)

Dr. Stevens testified that the petition property has a great problem with erosion because of the slope conditions. He would never advise a farmer to farm slope conditions such

as are on the petition property. This is not productive farmland. (12/2/86 p. 90)

Dr. Stevens testified that once you get slope over 5% you have to begin engaging in conservation management measures such as terracing, strip cropping and drainage. This increases your cost of production making farming the land economically unproductive. (12/2/86 p. 91)

Dr. Curran largely agrees that there would be serious erosion problems in farming land with slopes in excess of 5% without conservation management techniques (12/3/86 p. 37). Dr. Curran believes, however, that conservation techniques can control the erosion problem. (12/3/86 p. 37) He believes that these management techniques can yield crops up to 12-15% slope, although he admits that slopes over 10% require more intensive management. (12/3/86 p. 14) Dr. Curran has made no attempt to estimate the cost of using these advanced management techniques on this property. (12/3/86 p. 16) He also has made no estimate of how long it would take for farming this land to become profitable in light of the costs of placing it in service and the conservation management techniques necessary to combat erosion. (12/3/86 p. 17)

The Soil Conservation Service, as part of its soil ratings, determines which soils are subject to severe erosion. Those subject to severe erosion are noted with a small "e" in their ratings. (12/2/86 p. 41) As can be seen on People's Counsel Exhibit 5, all soils in the petition property are subject to severe erosion except those with a small "w". The small "w" indicates that the soil has severe limitations because of excess water. (12/2/86 p. 42) These soils are the stream beds. Mr. Schulte has testified that land use planners typically would not place soil subject to severe erosion into agricultural use. (12/2/86 p. 41)

In summary, the petition property is not now in agricultural production and has not been in agricultural production at any time in the twentieth century or even well before. Generations of farmers have considered this land unsuitable for agriculture. The U.S.D.A. classifies 60% of the soils of the petition property above the transmission line and 70% of the soils of the property on Caves Road as having severe limitations on agricultural production. The soils which have only moderate limitations on agricultural production are scattered on noncontiguous sites separated by steep slopes and stream bed. They are therefore

economically impractical to farm. The slopes on the property would require advanced conservation techniques in order to farm them, which would make farming economically impractical. The Soil Conservation Service classifies the entire petition property other than the stream beds as subject to severe erosion.

The physical characteristics of the petition property plainly indicate that the property is not suitable for agriculture. As Mr. Schulte has testified, zoning this land for agricultural use is a mistake. (12/3/86 p. 50)

PRESERVATION OF FOREST COVER

One of the points which has been made by several witnesses during the hearing is the desirability of maintaining as much forest cover on the property as possible. Mr. Cox, an area resident, testified that the community would like to maintain as much forest cover as possible, (12/19/86 A p. 13) and would object to clear cutting or forestry practices removing as much as 50 to 90% of the forest cover. (12/19/86 A p. 10)

Mr. Duket of the Maryland Department of State Planning described the beneficial environmental effects of forest cover. (12/19/86 M p. 71) He stated that he is absolutely opposed to removal of trees on slopes 20% or higher or along the stream valley, and that he would recommend preservation of trees on 15-20% slopes because of their benefits in controlling sedimentation and storm water run-off. (12/19/86 M p. 79, 12/19/86 A pp. 18, 23-24)

A review of the testimony indicates that it is the proposals for land use made by the People's Counsel that would result in substantial removal of trees, far more than the low density residential development proposed by Petitioners.

Both Dr. Curran and Dr. Stevens acknowledge that to place the petition property in agricultural production, either for crops or pasture, the first step is to clear the land. (Dr. Stevens 12/2/86 pp. 93-94, Dr. Curran 12/3/86 pp. 14, 20-21, 25-27, 43-54). As Dr. Curran pointed out, this clearing involves more than then just clear cutting the trees; stumps must be removed. (12/3/86 pp. 26-27) Indeed, Dr. Curran advocated planting through the slopes and stream

for ease of farming. (12/2/86 pp. 45-46) Of course, in order to plant this land it must be cleared.

The forestry management plan proposed by Mr. Koehn calls for an initial "thinning" or "improvement" cut of 58.25% of the tree material on the petition property (calculation made from table on p. xv of People's Counsel Exhibit 9). After the initial "thinning" cut, Mr. Koehn generally recommends waiting 15 years and then conducting a "final harvest". For stand 1, Mr. Koehn recommends that a "final harvest" and that all trees down to 2 inches "...must either be killed or removed".

A comparison of Petitioner's Exhibit 3 and People's Counsel Exhibit 10A plainly shows that stand 1 occupies the stream bed and steep slopes. Indeed, People's Counsel Exhibit 10B, the "cutting unit schedule" shows that the bulk of the stream bed will be the twelfth cutting unit, to be cut in 1996. According to the figures for stand 1 in the table on page xv of People's Counsel Exhibit 9, the "thinning" or "improvement" cut in stand 1 will remove 53.37% of the trees. Elsewhere in the report, Mr. Koehn does recommend establishment of a 50 foot buffer along all streams, but then recommends harvesting within the buffer by

"selective cutting". (People's Counsel Exhibit 9 p.10) Mr. Koehn does not indicate what "selective cutting" means.

Mr. Duket has stated that he wasn't sure what Mr. Koehn had proposed, but that he would be opposed to removing trees along the stream valley. (12/19/86 A p. 26) He states that trees on the steep slopes and in the stream valley should not be removed for farming or forestry. (12/19/86 p. 18).

Mr. Gould, the owner, expressed great reluctance to remove trees from this property because it would diminish substantially the aesthetic value of the land. (12/2/86 p. 173) Even a selected cut, Mr. Gould said, leaves a terrible mess in the woods. Unless an owner was trying to get a quick buck and throw the property away, he said, it would do great damage. (12/2/86 p. 174)

Several witnesses, in addition to Mr. Gould commented on the damaging effect that forestry operations would have, not only on the property itself, but also on surrounding properties. Mr. Schulte described the appearance of land after forestry management practices as "extremely unattractive". (12/3/87 pp. 80-82) Mr. Brown's review of the forestry management plan leads him to conclude that there

would be more road construction on the site for forestry operations than there would be for residential development. (1/23/87 pp.128-129) Ms. Lott said that the debris typically left in the woods after timbering is "very detrimental" and would affect not only the property itself, but neighboring properties as well. (1/23/87 p.33)

The low density residential development proposed by Petitioners will preserve more forest cover than any land use proposal made by People's Counsel. We do not assert that residential development will result in no tree removal; however, it will not be necessary for substantial areas to be cleared of trees as it would be for crops or pasture. Moreover, there will be no initial "thinning" of 58% of the trees leading up to a "final harvest" which removes all trees over 2 inches in girth as proposed by Mr. Koehn.

Petitioner would have no incentive to remove more trees than are absolutely essential for development. To do so not only would incur costs, it would reduce the value of the property. Ms. Lott, the realtor called by Protestants, acknowledged that a wooded lot is much more valuable than a cleared lot. (1/23/87 p. 32) Mr. Brown also testified that

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trees add value to property, and generally the more trees the more value (1/23/87 pp. 122-125).

A review of the aerial photographs (Petitioners Exhibits 17 and 18) plainly shows that in this area it is the residential areas which retain forest cover. The residential areas are where the trees are. In the agricultural areas, the trees are cleared. Residential development in this area is very compatible with maintaining forest cover, and does in fact maintain tree cover. It is agricultural development which removes tree cover. (1/23/87 pp. 76-77). Indeed, Mr. Duket noted from the aerial photographs that the residential areas have "a tremendous amount of forest cover". (12/19/86 M p. 81)

Significantly, Petitioners have recognized that the steep slopes and stream bed are unsuitable for development. (See Petitioners' Exhibit 6, Buildable Area Map, Schulte testimony 12/19/85 pp. 63-64) Mr. Duket has agreed that the petition property could accommodate residential development in the flatter areas, as proposed by Petitioner, in an environmentally sound manner (12/19/86 A p. 20)

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The residential development sought by Petitioners in this reclassification petition is the most environmentally sound proposal for use of this land. It would result in the preservation of the largest number of trees of the various land use proposals made during the hearing. Petitioners should not be forced to remove the forest cover on the property, over their objection, in order to gain any economic utility from the property.

SPECIFIC LAND USES PROPOSED BY PEOPLE'S COUNSEL

In its case, People's Counsel made several specific proposals for use of the petition property which would not necessitate rezoning the property. Proposals were made that the land be used for pasture, that the trees be harvested according to a forestry management plan, and that extremely large lot residential development take place. These proposed uses are either economically unproductive, inappropriate at this location or contrary to the intentions of the Baltimore County Zoning Regulations.

Pasture

In his testimony, Dr. Curran has suggested the possibility that the petition property be used for pasture.

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(12/3/86 pp. 18, 20-27, 31, 33-35) He recommends against swine because of the proximity of residences, but suggests sheep or beef. (12/3/86 pp.21-22, 24).

To put this land in pasture, Dr. Curran acknowledges it would be necessary to remove the trees, including the stumps, grade the soil, take conservation measures such as terraces and swales, establish a pasture and provide buildings to shelter the animals. (12/3/86 pp 20-21, 25-26, 36-37) He has estimated that it would take 6-8 months before the cover crop would be well enough established to put animals on it, and that it would take two to two and a half years before income was coming in for beef, eighteen months to two years for income from sheep. (12/3/86 pp. 25-26)

The most immediate problem with this proposal is the clearing of the land which is necessary. Dr. Curran says a substantial majority of the land must be cleared. "[A] few trees could remain. But I wouldn't suggest too many." (12/3/86 pp 20-21) Mr. Koehn says that to clear the land for pasture, "...you really have to abuse the land by regrading it and ripping up the stumps and removing the forest cover and all residual in the soil..." (12/3/86

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p.181) As addressed above, this land clearing is undesirable environmentally.

Even Dr. Curran views acquisition of this land for pasture as an undesirable alternative. He hasn't seen many farms remove woodlands for use as pasture. (12/3/86 p.27) He states that he would recommend someone acquiring the petition property for pasture only if there is no other pasture available. If someone needed pasture right away, it would be out of the question (12/3/86 p.33-35). Dr. Curran offered no estimate of the costs of establishing or running a pasture operation.

Dr. Stevens has calculated cost and revenue estimates for both sheep and beef operations on this property (Petitioners' Exhibits 20 and 21). The annual loss from operating a beef herd on the property would be \$41,145.00. The annual loss from operating a sheep herd on the property would be \$34,445.00.

An operation which loses \$34,000 to \$41,000 a year can by no means be characterized as productive. Therefore, placing the petition property in pasture cannot be considered an appropriate use of the land.

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HARVESTING THE TREES

Mr. Koehn has developed an extensive "Forest Resource Management Plan" (People's Counsel Exhibit 9) which calls for an initial "thinning" or "improvement" cut which will remove 58.25% of the trees on the property and a subsequent "final harvest" 15-20 years later which removes, kills or poisons all trees greater than 2 inches in girth in substantial areas. As an alternative to the "final harvest," Mr. Koehn, in his testimony, proposed a rotating series of "thinning" or "improvement" cuts which, he claims, would yield an annual sustainable income of \$30,000.00 a year from the 326 acres covered by his plan. The difference between the 303 acres of the petition property and the 326 acres involved in his plan appears to arise from Mr. Koehn's inclusion of trees below the transmission line in his plan. (see People's Counsel Exhibit 10A)

Mr. Gould testified that a forester he contacted two years ago offered \$40,000.00 to cut the mature timber from the property. (12/2/86 p. 173) As was addressed above, however, Petitioners are unwilling to remove the trees from the property as called for by Mr. Koehn's plan because of

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the substantial damage it would do to the aesthetics and value of the property and the surrounding neighborhood. Moreover, Mr. Koehn's plan calls for harvesting trees on steep slopes and in the stream bed, which is environmentally unsound, and directly contradicts the recommendations of another People's Counsel's witness, Larry Duket.

Joseph Brown, an expert in environmental planning (1/23/87 p. 120) who has had experience with the U.S. Forestry Service (1/23/87 p. 119) considers Mr. Koehn's forestry management plan to be inappropriate for this property in view of its size and location relative to a major urban center. (1/23/87 p. 127) The noise of the timbering operation would be "unbelievable". (1/23/87 p. 129) Implementation of this plan would not just diminish the value of the land, he says, it would remove it from any kind of valuation process. (1/23/87 p. 127)

Ms. Lott's assessment of the impact of timbering operations in the neighborhood caution against implementation of Mr. Koehn's plan. Ms. Lott commented that, "...most people that go in and timber leave so much junk behind you can't even go in and show a lot. The tops, the limbs are all lying around. That's going to be

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detrimental..." (1/23/87 p. 33). Ms. Lott said such timber operation affect not only the property itself but neighboring properties as well. (1/23/86 p. 33)

Mr. Schulte described the appearance of land after forestry management practices as "extremely unattractive". The remaining trees tend to be immature and damaged with broken branches and tops from trees falling around them. The ground is littered with debris from tops, branches and limbs of trees. The soil itself is badly chewed up by the movement of heavy equipment. Flowering trees such as dogwoods and myrtles are gone. (1/23/87 pp. 80-82)

Like Mr. Duket, Mr. Brown questions whether the plan is environmentally sound. He objects to cutting trees along the stream, as called for in the plan, something he states the Forest Service would never allow. (1/23/87 p. 128) He also objects to Mr. Koehn's plan to inject poison into the ecology. (1/23/87 p 126)

Mr. Brown characterizes the plan as an aggressive plan on a marginal site. (1/23/87 p 127) The plan is typical of major timbering plans for vast land holdings of several million acres isolated from urban areas, major

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transportation infrastructures and roads. (1/23/87 p 125) Obviously these conditions are not the conditions on the petition property.

Even Dr. Curran, People's Counsel's agricultural expert, stated that the wouldn't encourage someone to establish a lumbering operation on the petition property because of the proximity of neighboring residences. (12/3/86 pp. 40-41) Dr. Curran stated that there are only several farms in Baltimore County which produce lumber and even for them it is a small amount of lumber. They don't really consider themselves lumber operators, it is usually just a small amount of the farm used for that purpose. To the extent there are lumbering operations in Maryland, they are in other counties. (12/3/86 pp 39-40)

Relying on Mr. Koehn's estimates for revenue and costs, Dr. Stevens has estimated the annual net income for timber production on the petition property. (Petitioner's Exhibit 22) In calculating capital invested in the property, Dr. Stevens used a conservative figure of only \$2,000 per acre. Mr. Criss testified that the fair market value of property in this area with R.C. 2 zoning is \$4,500 to \$6,500 per acre, and the agricultural value of property

in the area is \$2,500 to \$3,500 per acre. (12/3/86 p.102) Even with his conservative estimate of capital invested in the property, Dr. Stevens estimates a net loss of \$20,342 per year from timber production on the property. (Petitioners' Exhibit 22).

Not only is the forestry management plan environmentally unsound and inappropriate to the site, it is economically unproductive. Timber production is not appropriate for this property.

EXTREMELY LARGE LOT RESIDENTIAL DEVELOPMENT

People's Counsel and Protestants offered testimony by Ms. Lott and Mr. Solomon regarding the possibility of developing extremely large lot residences on the petition property, averaging 20 acres per lot. (1/23/87 p.19) The offering of this testimony is very much a capitulation by People's Counsel and Protestants. This is not an agricultural use of the property. As Ms. Lott put it, "Some of the people might still have an animal, a horse, a pony. I mean, they're not going to be raising corn..." (1/23/87 p. 26)

The purpose of R.C. 2 zoning is to preserve productive agricultural land for agricultural use, not to reserve land in Baltimore County for extremely large residential estates. Mr. Lott described the market that would be interested in the extremely large residential lots she describes as people who want to be assured that "...that the next door neighbor is also going to have a million dollar property." (1/23/87 p. 24) It is not the purpose of R.C. 2 zoning to create neighborhoods of million dollar properties. Certainly nothing in the regulations themselves suggest such a purpose.

If the petition property is not suitable for agriculture, it would be indefensible to leave it in R.C. 2 zoning for the development of extremely large estates averaging 20 acres and valued at a million dollars. Land which is unsuitable for agriculture should not be zoned agricultural. The petition property is unsuitable for agriculture. It should be reclassified R.C. 5, rural residential.

R.C.2 ZONING FOR THE PETITION PROPERTY IS UNFAIRLY DISCRIMINATORY

The law requires that zoning not be unfairly discriminatory. Land of like conditions must be zoned in like manner.

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.

Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

The evidence presented in this case clearly demonstrates that the petition property is very much like surrounding property zoned R.C. 5, and very much unlike property in the area zoned R.C. 2. Using the aerial photographs (Petitioners Exhibits 17 and 18) with their topographic overlay, Mr. Schulte clearly demonstrated that everywhere in this area where there is the kind of rolling topography found on the petition property there is residential R.C. 5 development, except on the petition property. (1/23/87 pp. 75-76)

Mr. Schulte described two other zoning requests for properties which, like the petition property, lie above the transmission line. They were the S & R Investors property southwest of Park Heights Avenue, and a trapezoidal site contiguous to the Gould property, petition 82135. Both were reclassified from R.C. 2 to R.C. 5. (1/23/87 p. 94) Mr. Schulte described these two properties as similar to the petition property in every respect. (1/23/87 p. 99)

Mr. Solomon concedes that, other than the size of the property, there are no significant differences between the S & R Investors property that was rezoned R.C. 5 and the property under consideration in this matter. They have the same soils, the same topography, the same forest cover. (12/19/86 A pp. 69-70, 91-92) As Mr. Solomon concluded, "If you want to make a big case about that, you should." (12/19/86 A p.115) Mr. Solomon seeks to minimize the impact of the rezoning of this identical property by stating his opposition to it. Nonetheless, that land has no meaningful differences with the land now before this Board, except one. It is zoned R.C. 5 while the Gould land is zoned R.C. 2.

Mr. Solomon also concedes that the topographic characteristics of the petition property are very similar to

the bordering land zoned R.C. 5, and to the R.C. 5 land on the other side of Caves Road, while acknowledging that the topographic conditions of the petition property are different from the bordering R.C. 2 land. (12/19/86 pp. 101-102) These topographic characteristics are apparent from Petitioners' Exhibits 7, 17 and 18.

Caves Road is only a theoretical boundary between R.C. 2 and R.C. 5 zoning. The Caveswood Road properties are zoned R.C. 2, but are developed R.C. 5. (1/22/87 p. 88) The pattern of development on both sides of Caves Road is the same despite different zoning. As Mr. Schulte said, "R.C. 5 on this side, R.C. 2 on this side, but driving down the road the difference in the zoning would not be apparent." (1/23/87 p. 87)

Examine the aerial photographs (Petitioners' Exhibits 17 and 18) and the tax map. (People's Counsel Exhibit 3) All of the properties on Caves Road except the Gould properties are developed in a manner totally inconsistent with R.C. 2 zoning. The zoning has no effect on any property owner on Caves Road other than the Goulds. This is discrimination, pure and simple.

There is no justification for treating the petition property any different from surrounding property of the same characteristics. The Gould property is zoned the same as property on the valley floor which is different in soils, slope topography and ground cover. Every other property in the area which shares the same soils, slope, topography and ground cover as the petition property has rural residential development. The Goulds seek only to be treated the same as their neighbors. Proper zoning demands that this discrimination be corrected. This Board must correct the discriminatory zoning of the petition property by rezoning it R.C. 2.

CONCLUSION

The 303.39 acres under consideration in this petition are unsuitable for agricultural use. The U.S.D.A. Soil Conservation Service rates 60% of the property above the transmission line and 70% of the property on Caves Road as having severe limitations for agricultural production. The remainder of the property, which has moderate limitations for agricultural production, consists of scattered noncontiguous parcels separated from one another by steep slopes in excess of 20% and stream bed, making agricultural

production impractical. The slopes on the property create severe erosion hazards, necessitating expensive conservation management measures which make agricultural production on the property economically unproductive.

Placing the land in agricultural production, for either crops or pasture, would necessitate clearing the land of its existing tree cover which would greatly increase erosion and be environmentally unsound. Placing the land in pasture would result in annual losses of scores of thousands of dollars.

The forestry management plan proposed by People's Counsel calls for an initial "thinning" out which would remove in excess of 58% of the trees on the property in preparation for a "final harvest" which would leave significant portions of the property clear cut. The plan is wholly inappropriate for the property in light of its size and proximity to neighbors. Moreover, the plan is also economically unproductive.

The petition property has the same characteristics in soils, slope, topography and ground cover as surrounding land zoned R.C. 5. It shares none of these characteristics

AMENDED
PETITION FOR ZONING RE-CLASSIFICATION

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition the County Board of Appeals for the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an RC-2 Zone to an RC-5 Zone for 682 acres out of the total tract of 682 acres of the subject property for the reasons given in the attached statement. (See also the attached maps.)

NOTE: The following information is relevant to the subject property:

Total Area: 682 acres
Zoning reclassification sought for 303.39 acres
Location: Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road
Map: 059; Block 01 & 02
Parcel 215/397/554; Liber 5797 folio 349 through 356
Property Number(s) 17-00-01339*, 013399 and 013400.

Property is to be posted and advertised as prescribed by The Baltimore County Code

I, or we, agree to pay expenses of above reclassification, Special Exception and/or Variance, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: N/A (Type or Print Name)	Legal Owner(s): CONSERVATION ASSOCIATES, a MD Limited Partnership (Type or Print Name)
Signature	BY: <i>Michael Gisriel</i> Signature General Partner
Street or Box	CAVEMEN PROPERTIES, a MD Limited Partnership (Type or Print Name)
City and State	BY: <i>Michael Gisriel</i> Signature General Partner
Attorney for Petitioner: Michael Gisriel, Esquire (Type or Print Name)	KINGDON GOULD, JR., Trustee (Type or Print Name)
204 North Liberty Street, Suite 400 Baltimore, MD 21201 City and State	Street or Box: 1729 Decades' Str., Suite 900 Washington, D.C. 20036 City and State
Attorney's Telephone No.: (301) 539-0513	Name and telephone number of legal owner, contract purchaser or representative to be contacted: Michael Gisriel, Esquire Name (301) 539-0513 Telephone No.

PAGE: Four

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1) North 05°30'00" West, 544.50 feet, thence
23) North 84°30'00" East, 1136.60 feet, thence
24) North 05°30'00" West, 440.55 feet, thence
25) South 68°30'00" East, 1914.00 feet, thence
26) North 21°30'00" East, 330.00 feet, thence
27) South 37°45'00" East, 1151.70 feet, thence
28) South 24°30'00" East, 1156.65 feet, thence
29) North 59°30'00" East, 660.00 feet, thence
30) North 58°00'00" East, 726.00 feet, to a point on the aforesaid westerlymost side of Greenspring Avenue, thence continuing along the outline of said property and the westerlymost side of Greenspring Avenue the following course and distance,
31) South 24°30'00" East, 41.25 feet to the point of Beginning
Containing 277.005 acres of land more or less.

SAVING AND EXCEPTING those four (4) areas previously zoned R.C.5, designated "a", "b", "c", "d" & "e" and shown thusly on Site Plan attached, containing 5.1 acres of land, more or less.

Part 2

BEGINNING for the same at a point in Caves Road, said point being 2,400 feet, more or less, southwesterly from the intersection of the centerlines of Caves Road and Park Heights Avenue, thence leaving said Caves Road and running along the lines of the property of Conservation Associates, et al., as recorded among Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following course and distance viz:

1) North 25°30'00" West, 1476.75 feet, thence leaving the outline of the property of Conservation Associates, et al., and running the

AMENDMENT AND SUPPLEMENT TO PETITION
FOR ZONING RE-CLASSIFICATION

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal representative of the legal owners of the subject property situate in Baltimore County, reaffirm its Petition to Reclassify from an RC-2 zone to an RC-5 zone, a portion of the subject property, as set forth in its original Petition filed with and accepted by the Baltimore County Board of Appeals on March 1, 1985, but said legal owners, through the undersigned as the legal representative, hereby amends and supplements its Petition by filing the following items to amend, accompany and support its original Petition filed on March 1, 1985:

1. Original and three (3) copies of the Amended Petition for Zoning Reclassification by the legal owners of the subject property
2. Twelve (12) copies of the site plan of the Amended Reclassified property tied in to the metes and bounds property description of the subject property
3. Seven (7) copies of a metes and bounds property description defining the amended area which we seek to have reclassified
4. Two (2) copies of the 1981 Baltimore County 200 scale zoning map delineating the amended area sought to be reclassified
5. Two (2) copies of the 1984 Baltimore County 1,000 scale zoning map showing the amended property to be reclassified

Respectfully submitted,

Michael Gisriel
Michael Gisriel
Attorney for Conservation Associates,
Cavemen Properties, and
Kingdon Gould, Jr., Trustee

COUNTY BOARD OF APPEALS
RC5 MAR 11 P 4-07 E

Page 4

following course and distance,

- 2) North 64°24'48" East, 835.31 feet to a point on the outline of the property of Conservation Associates, et al., thence continuing along the outline of said property the following two (2) courses and distances,
3) South 55°30'10" East, 664.46 feet, thence
4) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,
5) South 28°15'00" West, 1080.75 feet, thence
6) South 31°00'00" West, 232.65 feet, thence
7) South 30°15'00" West, 97.35 feet to the point of beginning,
Containing 26.344 acres of land more or less.

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum.



TRACY, SCHULTE & ASSOCIATES INC.
planning • architecture • engineering

8450 Baltimore National Pike • Suite 31 • Ellicott City, Maryland 21043 • (301) 465-6105

METES & BOUNDS DESCRIPTION
PROPERTY OF CONSERVATION ASSOCIATES,
CAVEMEN PROPERTIES & KINGDON GOULD, JR., TRUSTEE
FOR ZONING RE-CLASSIFICATION PETITION

Part 1
BEGINNING for the same at a point on the westerlymost side of Greenspring Avenue, said point being 1330 feet, more or less, northwesterly from the intersection of the centerlines of Caves Road and Greenspring Avenue, thence leaving said Greenspring Avenue and running along the lines of the property of Conservation Associates, et al., as recorded among the Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following five (5) courses and distances, viz:

- 1) South 56°00'00" West, 723.00 feet, thence
- 2) South 59°30'00" West, 1330.50 feet, thence
- 3) South 36°30'00" East, 673.20 feet, thence
- 4) South 57°50'00" East, 775.50 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, thence leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said B.G. & E. Transmission line right-of-way the following course and distance,
6) North 70°46'25" West, 3379.95 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, thence continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet wide road, the following course and distance,
7) North 39°30'00" East, 485.15 feet, thence leaving the centerline of said road and continuing along the outline of said property the following six (6) courses and distances,
8) North 83°22'00" East, 242.62 feet, thence
9) North 65°32'00" East, 224.65 feet, thence
10) South 87°51'00" East, 215.25 feet, thence
11) North 14°41'00" East, 293.00 feet, thence
12) North 05°58'00" West, 463.20 feet, thence
13) South 82°41'00" West, 309.60 feet to a point in the centerline of the aforesaid thirty (30) feet wide road, thence running along the centerline of said road, being common with the outlines of said property, the following course and distance,
14) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
15) South 84°30'00" West, 1379.60 feet to a point in the centerline of the Maryland Gas Transmission Corporation right-of-way, thence continuing along the outline of said property, being common with the centerline of said right-of-way, the following course and distance,
16) South 39°36'00" West, 532.96 feet to a point, thence leaving said right-of-way and continuing along the outlines of said property, the following fourteen (14) courses and distances,
17) South 84°30'00" West, 1016.10 feet, thence
18) North 08°15'00" East, 169.73 feet, thence
19) North 35°15'00" East, 198.00 feet, thence
20) North 05°30'00" East, 396.00 feet, thence
21) North 84°30'00" East, 1386.00 feet, thence

PETITION FOR RECLASSIFICATION
LOCATION: Northeast side of Caves Road, 407 feet and 1507 feet
North and West of Caves Road - Two Parts
PUBLIC HEARING: Tuesday, September 24, 1985 at 10:00 a.m.
The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing
Present Zoning: R.C. 5
Proposed Zoning: R.C. 5
All that parcel of land in the 4th District of Baltimore County, being the property of Conservation Associates, as shown on the plat plan filed with the Zoning Department.

METES & BOUNDS DESCRIPTION
PROPERTY OF CONSERVATION ASSOCIATES,
CAVEMEN PROPERTIES & KINGDON GOULD, JR., TRUSTEE
FOR ZONING RE-CLASSIFICATION PETITION

BEGINNING for the same at a point on the westerlymost side of Greenspring Avenue, said point being 1300 feet, more or less, northwesterly from the intersection of the centerlines of Caves Road and Greenspring Avenue, thence leaving said Greenspring Avenue and running along the lines of the property of Conservation Associates, et al., as recorded among the Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following five (5) courses and distances, viz:

- 1) South 56°00'00" West, 723.00 feet, thence
- 2) South 59°30'00" West, 1330.50 feet, thence
- 3) South 36°30'00" East, 673.20 feet, thence
- 4) South 57°50'00" East, 775.50 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, then leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said B.G. & E. Transmission line right-of-way the following course and distance, said B.G. & E. Transmission line right-of-way the following course and distance,
6) North 70°46'25" West, 3379.95 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, thence continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet wide road, the following course and distance,
7) North 39°30'00" East, 485.15 feet, thence leaving the centerline of said road and continuing along the outline of said property the following six (6) courses and distances,
8) North 83°22'00" East, 242.62 feet, thence
9) North 65°32'00" East, 224.65 feet, thence
10) South 87°51'00" East, 215.25 feet, thence
11) North 14°41'00" East, 293.00 feet, thence
12) North 05°58'00" West, 463.20 feet, thence
13) South 82°41'00" West, 309.60 feet to a point in the centerline of the aforesaid thirty (30) feet wide road, thence running along the centerline of said road, being common with the outlines of said property, the following three (3) courses and distances,
14) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
15) South 84°30'00" West, 1379.60 feet to a point in the centerline of the Maryland Gas Transmission Corporation right-of-way, thence continuing along the outline of said property, being common with the centerline of said right-of-way, the following course and distance,
16) South 39°36'00" West, 532.96 feet to a point, thence leaving said right-of-way and continuing along the outlines of said property, the following fourteen (14) courses and distances,
17) South 84°30'00" West, 1016.10 feet, thence
18) North 08°15'00" East, 169.73 feet, thence
19) North 35°15'00" East, 198.00 feet, thence
20) North 05°30'00" East, 396.00 feet, thence
21) North 84°30'00" East, 1386.00 feet, thence
22) North 05°30'00" West, 544.50 feet, thence
23) North 84°30'00" East, 1136.60 feet, thence
24) North 05°30'00" West, 440.55 feet, thence
25) South 68°30'00" East, 1914.00 feet, thence
26) North 21°30'00" East, 330.00 feet, thence
27) South 37°45'00" East, 1151.70 feet, thence
28) South 24°30'00" East, 1156.65 feet, thence
29) North 59°30'00" East, 660.00 feet, thence
30) North 58°00'00" East, 726.00 feet, to a point on the aforesaid westerlymost side of Greenspring Avenue, thence continuing along the outline of said property and the westerlymost side of Greenspring Avenue the following course and distance,
31) South 24°30'00" East, 41.25 feet to the point of Beginning
Containing 277.005 acres of land more or less. SAVING AND EXCEPTING those four (4) areas previously zoned R.C.5, designated "a", "b", "c", "d" & "e" and shown thusly on Site Plan attached, containing 5.1 acres of land, more or less.

Part 2
BEGINNING for the same at a point in Caves Road, said point being 2,400 feet, more or less, southwesterly from the intersection of the centerlines of Caves Road and Park Heights Avenue, thence leaving said Caves Road and running along the lines of the property of Conservation Associates, et al., as recorded among Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following course and distance viz:

- 1) North 25°30'00" West, 1476.75 feet, thence leaving the outline of the property of Conservation Associates, et al., and running the

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum

Page 2

wide road, the following course and distance,
7) North 39°30'00" East, 485.15 feet, thence leaving the centerline of said road and continuing along the outline of said property the following six (6) courses and distances,
8) North 83°22'00" East, 242.62 feet, thence
9) North 65°32'00" East, 224.65 feet, thence
10) South 87°51'00" East, 215.25 feet, thence
11) North 14°41'00" East, 293.00 feet, thence
12) North 05°58'00" West, 463.20 feet, thence
13) South 82°41'00" West, 309.60 feet to a point in the centerline of the aforesaid thirty (30) feet wide road, thence running along the centerline of said road, being common with the outlines of said property, the following course and distance,
14) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
15) South 84°30'00" West, 1379.60 feet to a point in the centerline of the Maryland Gas Transmission Corporation right-of-way, thence continuing along the outline of said property, being common with the centerline of said right-of-way, the following course and distance,
16) South 39°36'00" West, 532.96 feet to a point, thence leaving said right-of-way and continuing along the outlines of said property, the following fourteen (14) courses and distances,
17) South 84°30'00" West, 1016.10 feet, thence
18) North 08°15'00" East, 169.73 feet, thence
19) North 35°15'00" East, 198.00 feet, thence
20) North 05°30'00" East, 396.00 feet, thence
21) North 84°30'00" East, 1386.00 feet, thence

LAW OFFICES
GISRIEL & GISRIEL
SUITE 400
AMERICAN NATIONAL BUILDING
204 N. LIBERTY STREET
BALTIMORE, MARYLAND 21201-3999

March 1, 1985

Board of Appeals of Baltimore County
Old Court House
2nd Floor
Towson, MD 21204

RE: Petition for Zoning Reclassification of Kingdon Gould, Jr. et al for
Reclassification of 306 of 682 acres
Park Heights Avenue and Caves Road

Members of the Board of Appeals:

This statement is filed in support of the Petition for Zoning Reclassification of the above captioned property. Our firm represents Conservation Associates and Cavemen Properties, two limited partnerships, and Kingdon Gould, Jr., Associates and Cavemen Properties, two limited partnerships, which consists of 682 acres of land in the Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue, along and just to the north of Caves Road. The owners of the above captioned property seek a zoning reclassification from the existing zoning of R-C-2 (rural-agricultural) for the whole tract to R-C-5 (rural-residential) for approximately 306 acres with the remaining 376 acres to remain R-C-2.

The legal basis of our Petition for Reclassification is the mistake, i.e. the arbitrary and capricious decision, of the Baltimore County Planning Staff and County Council not to reclassify any of the 682 acres of the subject property from R-C-2 to R-C-5 which resulted in the de facto economic confiscation of the property rights of the owners of the Caves property. We are submitting together with our Petition and this supporting memorandum several drawings and maps which delineate the subject Caves property and the zoning reclassification requested. For the purposes of this Petition for Zoning Reclassification, all three of the above entities which are the owners of the Caves property, join in requesting the change as outlined in our Petition and the supporting maps, drawings and memorandum.

The owners of the subject property strongly maintain that the Baltimore County Planning Staff and County Council were clearly wrong and in variance with the existing Baltimore County Zoning Regulations when they left the current R-C-2 zoning intact for the entire 682 acre tract in November, 1984. The Planning Staff and County Council used the existing property boundary line to justify its decision to leave the entire property as R-C-2. We contend that the use of the existing property boundary line is the demarcation line to determine R-C-2 from existing property boundary line. The current R-C-2 zoning for the entire 682 acre tract is clearly not the proper zoning for the entire tract.

with surrounding land zoned R.C. 2. The R.C. 2 zoning of the petition property is unfairly discriminatory.

The petition property is now zoned R.C. 2, agricultural. That zoning is a mistake because the property is not suitable for agriculture. In addition, R.C. 2 zoning is a mistake because it unfairly discriminates against the property, which is identical to surrounding R.C. 5 zoned land.

This Board should correct the mistake in zoning the petition property and end the unfair discrimination against the property by reclassifying the property R.C. 5.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel
Gisriel & Gisriel
210 E. Lexington Street
Suite 400
Baltimore, Maryland 21202
(301) 539-0513
Attorneys for Petitioners

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EXPLANATION OF TRANSCRIPT REFERENCES

Hearings in the case took place on five different days. Transcript says for each day are separately numbered, and in the case of December 19, 1986 the pages for the morning and afternoon are separately numbered. For clarity all transcript references are given by date and page. In the case of December 19, 1986, the date is followed either by an M, indicating morning, or an A, indicating afternoon.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 1987, a copy of the foregoing Petitioners' Hearing Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204, and George Doub, Venable, Baetjer & Howard, Suite 1800, 2 Hopkins Plaza, Baltimore, Maryland 21201.

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Thomas J. Gisriel
Thomas J. Gisriel

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IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 46th and 1507th
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE COUNTY
* CASE NO. 87CG2107
* 40/177

* * * * *

PETITION

Conservation Associates, Cavemen Properties and Kingdon Gould, Jr., Trustee, appellants, pursuant to Rule B2 of the Maryland Rules of Procedure, petition this Court regarding the May 1, 1987 order of the County Board of Appeals of Baltimore County and say:

1. On May 1, 1987 the County Board of Appeals of Baltimore County (hereinafter referred to as "Board of Appeals" or the "Board") denied appellants' petition for reclassification of two parcels of land with a total size of approximately 303 acres from R.C. 2 "Agricultural" zoning to R.C. 5 "Rural Residential" zoning.

2. The Baltimore County Zoning Regulations expressly designate R.C. 2 zones as "Agricultural." The stated purpose of the R.C. 2 zoning classification is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." This purpose is premised on a legislative finding "... that

Baltimore County is ... endowed with a variety of very productive agricultural soil types..." The Zoning Regulations state that agricultural operations "...shall be afforded preferential treatment over and above all other permitted uses in R.C. 2 zones."

3. The Baltimore County Zoning Regulations designate R.C. 5 zones as "Rural Residential." The stated purpose of the R.C. 5 zoning classification is to "...provide for rural-residential development in suitable areas in which basic services are not anticipated..." and to "...assure that encroachments onto productive or critical natural resources will be minimized."

4. Appellants had petitioned for reclassification of the property, alleging that agricultural zoning of the property is a mistake because the property is not suitable for agriculture, and that the agricultural zoning of the property is unfairly discriminatory because other property in the area which is not suitable for agriculture is not zoned for agricultural use.

5. The Board of Appeals retained R.C. 2 "Agricultural" zoning for the petition property despite factual findings that:

[T]hose parcels contained in the petition are not tillable in their present condition, do not possess essential qualities that would make the land profitable agriculturally, are not being used presently for any agricultural pursuit of a commercial

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nature and from all indications have not been used for such pursuits over the course of the last century, if ever. (pages 2-3)

* * *

[A]fter consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. (page 4)

6. The Board concluded that R.C. 2 "Agricultural" zoning is correct for the petition property, notwithstanding its unsuitability for agricultural use, in order to avoid fostering conditions unfavorable to continued agricultural use of agricultural land adjacent to the petition property.

7. The Board failed to address appellants' arguments regarding discrimination in any manner in its May 1, 1987 Opinion and Order.

8. The Board of Appeals' May 1, 1987 Opinion and Order are erroneous in that:

A. The Board's decision improperly classifies the petition property for a use for which it is not suitable in order to act as a buffer for other property.

B. The Board's decision is in conflict with the Baltimore County Code, the Baltimore County Zoning

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Regulations, as well as with the decisional law of the courts of Maryland relating to zoning.

C. The Board's decision is unsupported by competent, material and substantial evidence;

D. The Board failed to address appellants' arguments regarding discrimination in any manner, thereby allowing illegally discriminatory zoning to persist.

WHEREFORE, appellants petition this Court to reverse the Order of the Board of Appeals in this matter dated May 1, 1987 and reclassify all or a portion of the property which is the subject of this petition from RC-2 "Agricultural" zoning to R.C. 5 "Rural Residential" zonings.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(301) 539-0513

Attorneys for Appellants

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COUNTY BOARD OF APPEALS
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- 4 -

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1987, a copy of the foregoing Petition was mailed first class, postage prepaid to:

Phyllis C. Friedman, Esquire
Peter Max Zimmerman, Esquire
People's Counsel
Room 223, Court House
Towson, Md. 21204

George C. Doub, Jr., Esquire
Venable, Baetjer and Howard
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

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pat:3

Thomas J. Gisriel
Thomas J. Gisriel

- 5 -

IN THE MATTER OF THE PETITION
FOR RECLASSIFICATION FROM
R. C. 2 TO R. C. 5 ZONE
NE/S PARK HTS. AVE., 46th
6 1507th NW OF CAVES RD.,
4th DISTRICT
CONSERVATION ASSOCIATES,
Petitioner

BEFORE THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Zoning Case No. R-86-110

PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM

Taking a cue from William Safire*, imagine that we are approaching the end of Act Two of a three-act play called, "The Caves Controversy." Act One ran before the County Council in 1984, where the developer clashed with natives, amid the fateful warnings of planners over the future of the Piedmont. Act Three is expected to run in the state and federal courts, its future scenario just beginning to take shape.

Act Two has been the longest and most complex, with armies of lawyers and witnesses making point and counterpoint at the County Board of Appeals. It brings to mind the series of engagements around the Shenandoah River, which historians call, "The Valleys Campaign," for like the mists which hover over those valleys and influence the course of struggle, there are myths which tend to diffuse into this controversy. The prompt understanding and exposure of these myths is crucial to a correct observation and understanding of the present events.

* See New York Times Magazine, March 22, 1987, "Ten Myths About the Reagan Debacle."

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The Four Myths.

I. A Farm Tract Is Lesser Than
The Sum of Its Parts

The surest way to devastate agriculture in Baltimore County is to employ the age-old tactic of "divide and conquer." By a concentration of forces at the location believed to be most vulnerable, the challenger can isolate and pick off the intended target.

Here, the claim is that the valley walls are unfit for crops; therefore, they should be turned to concentrated development. Never mind that like many working farms in the Piedmont, this land offers timber and pasture which complements the cropland below. Never mind that farming typically involves a mixture and variety of soils and topography ideally found on large tracts.

This is a matter of facts produced by witnesses - Paul Solomon, Richard Curran, and Jeremy Criss. It also is a matter of law. Resource Conservation zoning is to be reasonably construed if it is to serve its purpose of protecting endangered resources. BC7R 1A01.1, attached as Exhibit A. See Furey v. City of Sacramento, 592 F. Supp. 463 (E.D.Cal. 1984); Wilson v. County of McHenry, 416 N.E.2d 426 (Ill. App. 1981).

Moreover, it is an essential tenet of modern land use law that the focus must be on the entire property, and not its parts. Penn Central Transportation Co. v. New York City, 430 U.S. 104, 98 S. Ct. 2646, 2665 (1978); Bureau of Mines v. George's Creek, 272 Md. 143, 321 A.2d 748 (1974); Potomac Sand and Gravel Company v. Governor, 266 Md. 358, 293 A.2d 241 (1972).

The current doctrine is traceable to this statement by Mr. Justice Brandeis in dissent in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 159, 161 (1922):

"It is said that one fact for consideration in determining whether the limits of the police power have been exceeded is the extent of the resulting diminution in value, and that here the restriction destroys existing rights of property and contract. But values are relative. If we are to consider the value of the coal kept in place by the restriction, we should compare it with the value of all other parts of the land. That is, with the value not of the coal alone, but with the value of the whole property. The rights of an owner as against the public are not increased by dividing the interests in his property into surface and subsoil. The sum of the rights in the parts can not be greater than the rights in the whole. The estate of an owner in land is grandiloquently described as extending ab eo usque ad coelum. But I suppose no one would contend that by selling his interest above 100 feet from the surface he could prevent the state from limiting, by the police power, the height of structures in a city. And why should a sale of underground rights bar the state's power? For aught that appears the value of the coal kept in place by the restriction may be negligible as compared with the value of the whole property, or even as compared with that part of it which is represented by the coal remaining in place and which may be extracted despite the statute."

Here, we have a 682 acre tract which, in its entirety, so far as the record shows, may be of outstanding value; and we have a portion under consideration which is of value and useful in context. Indeed, even if it were considered separately, it is productive. But that brings us to our next myth.

II. If You Can't Grow Corn, Then
It's Not Agriculture.

This is more than a quarrel over linguistics. It goes to the heart of the matter. The developer began the case with the idea that agriculture

involves no more than crops. By the end of the case, it became apparent that woodland and pasture activities are legitimate farm uses, separately or together with cropland. With this matter clarified, yet another arose.

III. If a Potential Use Appears to Displease
the Developer and the Natives, Then It's
Not Reasonable.

It has been suggested that neither the developer nor the natives wish to see the forests cut, the trees trimmed, or the resulting meadows put to pasture. Has it been overlooked that zoning is not by plebiscite? Northwest Merchants Terminal v. O'Rourke, 191 Md. 171, 60 A.2d 743 (1948). Nor can it be by agreement. Montgomery County v. Nat'l Capital Realty Corp., 267 Md. 364, 297 A.2d 675 (1972).

Comprehensive zoning is just that, comprehensive. Resource conservation zoning governs a massive area of the county's rolling hills and valleys. It is not to be chopped apart, even if we assume it to be in accordance with the desires of current owners and occupants of the neighborhood. The danger in the removal of each bit of farmland is the pattern which emerges only after it is too late.

IV. They Have Rezoned the Ridges and a Part
of the West Wall; Therefore, the East
Wall Cannot Stand.

To be sure, the planners have recommended, and the Council has approved, rural-residential zoning on the ridges; so, in the practical implementation of the zoning by property boundary, it may occur that the R. C. 5 includes some part of the wall, and the R. C. 2 the ridge. Is this the zoning equivalent of "a ridge too far?" Does it follow that the greater part of the valley walls must crumble under the heavy machinery of development?

Have we forgotten that zoning is an art, and that "zoning inevitably involves the drawing of lines"? Montgomery County v. Pleasants, 266 Md. 462, 467, 295 A.2d 216, 219 (1972). Otherwise stated, "... the fact that the legislative body has rezoned an adjoining property does not require it to rezone the property under consideration." 259 Md. 693, 703, 271 A.2d 166, 171 (1970).

If it is suggested that property lines are not pertinent to comprehensive zoning, then there will be chaos. Indeed, the usual contention is that it is error to split a tract.

As to the property across Park Heights Avenue, even if we assume it to have been mistakenly zoned in 1980, there is no reason to compound a wrong. In any event, there has been no unreasonable discrimination. The part rezoned, 65 acres of a 240 acre tract, is not of the same size or magnitude as the property under consideration, and it is closer to the previously developed suburbs lying in a westerly direction.

In County Commissioners of Queen Anne's County v. Miles, 246 Md. 55, 228 A.2d 450 (1967), the Court of Appeals denied a comparable objection to historic estate zoning. There, the property owners argued that land with similar soils and topography was zoned residential, proving discrimination. In finding that these properties were distinguishable, Judge Reuben Oppenheimer said:

"A person who contends that there has been a denial of the equal protection of the laws has the burden of showing that his situation is the same as another situation, and that the State or its instrumentalities, has treated the two situations differently in an unreasonable or arbitrary manner. . . . As Judge Hammond (now Chief Judge) said for the Court . . . :

"We reiterated . . . , as we have held in many cases before and since, that the court, in reviewing the action of zoning authorities, will not substitute its judgment for that of the authority unless the latter's action was arbitrary, capricious or illegal and that if the facts were sufficient to support the decision the question decided was fairly debatable and the decision must be upheld." . . .

"In the words of Chief Judge Brune, for the Court, . . . :

"Zoning and rezoning do require the drawing of lines, and the legislative body may draw them subject to the same limitations as are applicable to other phases of the zoning process." . . .

" . . . A zone boundary which was a property line has been upheld. . . ." (Citations omitted.) 228 A.2d. at 462-63.

In the present case, the property to the west is not only much smaller, but also situated in an area closer to existing centers of population. It is analogous to the properties zoned residential in Miles.

Judge Oppenheimer's concluding remarks there are likewise apt here:

"The Commission and the Commissioners, with sound reasons, may well have classified some of the A-1 properties as R-1, or some of the R-1 properties as A-1 or in a residential district with a smaller requirement for dwelling lots. That these possibilities were carefully considered is evident. That the conclusions of the deliberations were always wise may be doubtful. That the decisions as to the classifications were fairly debatable, however, in our judgment, is apparent." 228 A.2d, at 463.

V. The Minor Myths

In concentrating on the four major myths, we shall not overlook others which merit inclusion in this review. The developer has suggested that the early history of the site, recording a wooded aspect, negates its agricultural

character; that the more recent Plan for the Valleys recommends intense development; that the voluntary nature of the Agricultural Preservation Program makes this site's qualifications and suitability irrelevant; and that electric transmission lines establish and define the suitable zoning boundary in the area. These myths are so apparent that they need no further discussion.

In all of this, we have not yet said that the developer's lead planning witness conceded he had no expertise in agriculture, while the well-qualified county planners were backed not only by Mr. Curran of the Farm Bureau, but also by Mr. Duket of State Planning. Nor have we mentioned the thorough discussion of woodland resources by the District Forester, Mr. Koehn.

CONCLUSION

There is but one myth yet to be stated, the myth that the County Council acted unreasonably or erred when, in Act One, it made the judgment that this vital section of the Caves Valley remain agricultural. If, at the conclusion of Act Two, the County Board of Appeals believes this myth, it will precipitate the Caves Tragedy. As the curtain comes down on Act Two, the Board of Appeals should deny this reclassification.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2189

I HEREBY CERTIFY that on this 25th day of March, 1987, a copy of the foregoing People's Counsel's Post-Hearing Memorandum was mailed to Michael U. Gisriel, Esquire, and W. Thomas Gisriel, Esquire, 210 E. Lexington St., Suite 400, Baltimore, MD 21202; Mitchell Kolkin, Esquire, and George C. Doub, Jr., Esquire, Suite 1800, 2 Hopkins Plaza, Baltimore, MD 21201.

Peter Max Zimmerman
Peter Max Zimmerman

EXHIBIT A

Section 1A01 - R.C.2 (AGRICULTURAL) ZONES [Bill No. 98-75]
1A01.1 - General provisions. [Bill No. 98-75]

A. Legislative Statement of Findings.

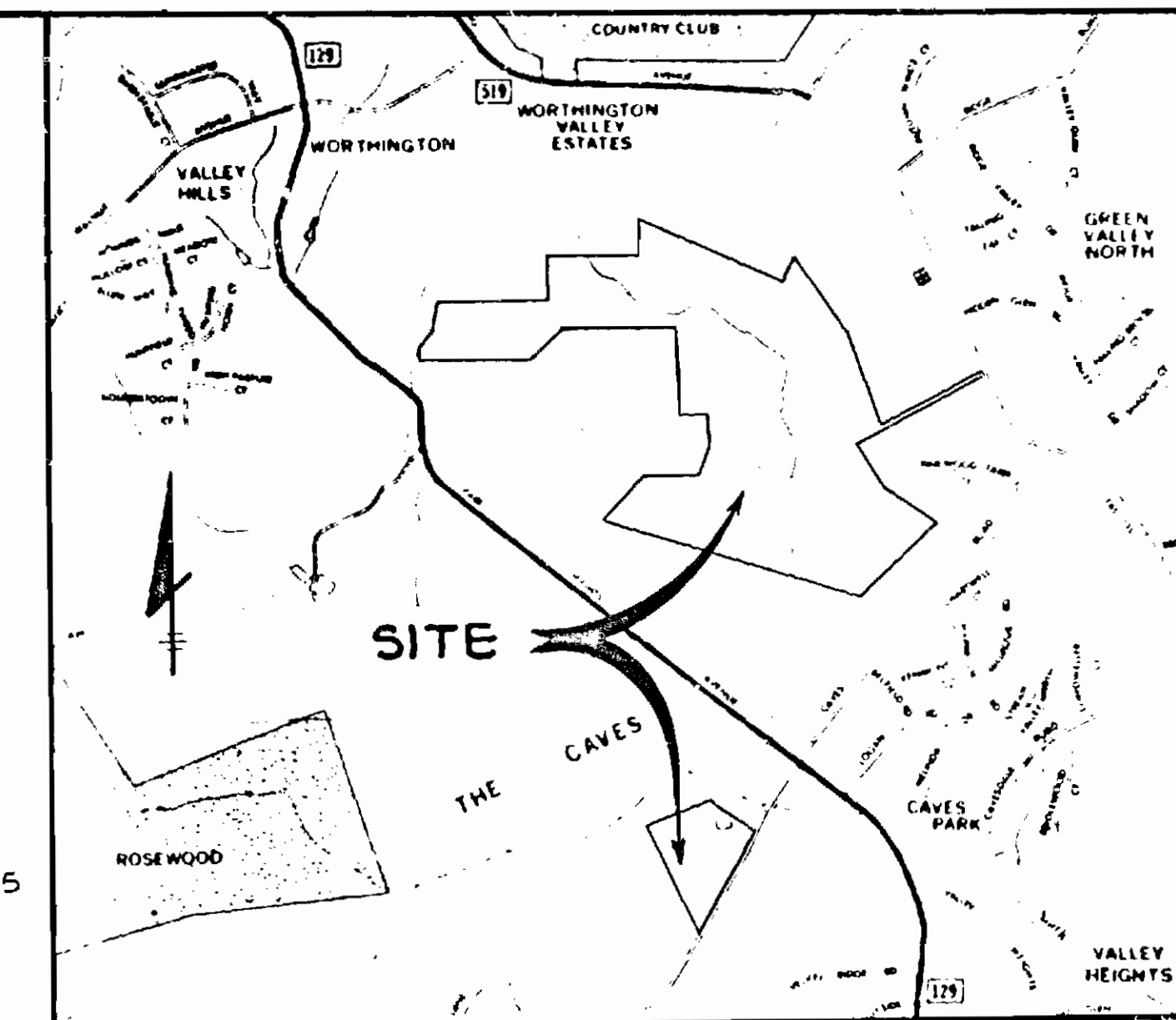
1. Declaration of findings. It is found:

- that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development; [Bill No. 98-75]
- that the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry; [Bill No. 98-75]
- that scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land; [Bill No. 98-75]
- that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area; [Bill No. 98-75]
- that heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County; [Bill No. 98-75]
- that Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the Bay's biotic life; [Bill No. 98-75]
- that Baltimore County possesses numerous areas which are highly suitable for urban development including residential subdivisions which are not located in areas of productive agricultural land. [Bill No. 98-75]

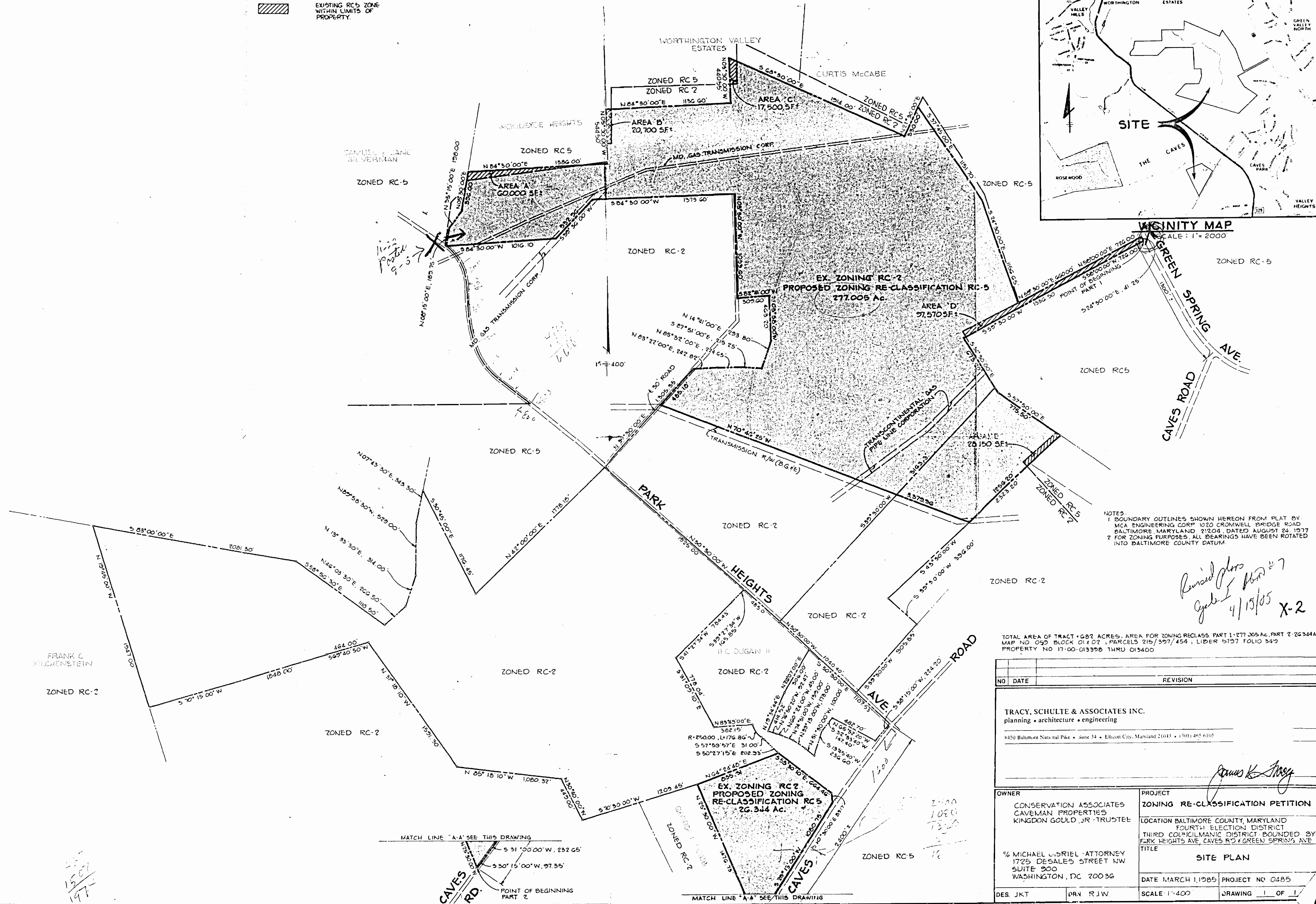
B. Purposes: The R. C. 2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses. [Bill No. 98-75]

LEGEND

EXISTING RC-5 ZONE
WITHIN LIMITS OF
PROPERTY.



NEIGHBORHOOD MAP
SCALE: 1" = 2000'



NOTES:
1. BOUNDARY OUTLINES SHOWN HEREON FROM PLAT BY:
MCA ENGINEERING CORP. 1020 CROMWELL BRIDGE ROAD
BALTIMORE, MARYLAND 21204, DATED AUGUST 24, 1977
2. FOR ZONING PURPOSES, ALL BEARINGS HAVE BEEN ROTATED
INTO BALTIMORE COUNTY DATUM.

Revised Plans
Cycles 1-7
4/15/05 X-2

TOTAL AREA OF TRACT: 682 ACRES, AREA FOR ZONING RECLASS. PART 1: 277,005 AC, PART 2: 26,344 AC
MAP NO. 050, BLOCK 01 & 02, PARCELS 215/357/454, LINDER 5757 FOLIO 345
PROPERTY NO. 17-00-013308 THRU 013400

NO.	DATE	REVISION
TRACY, SCHULTE & ASSOCIATES INC. planning • architecture • engineering 8450 Baltimore National Pike • Suite 34 • Ellicott City, Maryland 21043 • (301) 465-6105		
OWNER CONSERVATION ASSOCIATES CAVELMAN PROPERTIES KINGDON GOULD, JR. - TRUSTEE 5% MICHAEL CASRIEL - ATTORNEY 1725 DESALES STREET NW SUITE 300 WASHINGTON, DC 20036		
PROJECT ZONING RE-CLASSIFICATION PETITION LOCATION: BALTIMORE COUNTY, MARYLAND FOURTH ELECTION DISTRICT THIRD COUNCILMANIC DISTRICT BOUNDED BY PARK HEIGHTS AVE, CAVES RD & GREEN SPRING AVE TITLE SITE PLAN		
DES. JKT	DRN. RJW	DATE: MARCH 1, 1985 PROJECT NO. 0485
		SCALE: 1" = 400' DRAWING 1 OF 1

that would foster unfavorable conditions to the continued agricultural use of the productive Caves Valley floor, and that Baltimore County possesses numerous areas which are highly suitable for moderate intensity residential development which are not located in areas of such productive agricultural land.

AGRICULTURAL USE OF THE PARCELS

The Board heard extensive testimony from a number of highly credible sources as to the agricultural potential of this property. On balance we found the opinion of George A. Stevens, the Petitioner's agricultural economics expert, to be most persuasive. We will let the record speak for itself regarding the basis of these conclusions. We do however agree with his opinion that after consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. The facts of this case are simply too clear that the tree cover would have to be removed and the soils made productive for any of these pursuits. To accomplish this task would be much too costly relative to the potential monetary benefit not to mention that the result would be far less desirable than the aesthetic qualities of the property as it presently exists.

WOULD DEVELOPMENT OF THE PARCELS BE CONSISTENT WITH R.C. 5 ZONING
FOSTER CONDITIONS UNFAVORABLE TO A CONTINUED AGRICULTURAL USE
OF PRODUCTIVE AGRICULTURAL AREAS

Whether or not the development of the petitioned parcels into one and one-half-acre homesites fosters conditions that are unfavorable to a continued

agricultural use of the Caves Valley floor is the central issue in this case. It is recognized by this Board that factors such as elimination of tree cover or natural cover in order to construct a home; creation of significant amounts of impermeable surface required for homes themselves and ancillary roads, driveways and other structures; establishment of wells; establishment of septic systems and the effectiveness of these systems, as well as other factors have a negative impact on a continued agricultural use of productive land. The Board is not stating that any residential development near productive agricultural land is inherently evil or likely to cause a significant amount of harm to the farm areas. The R.C. 2 use regulations permit single-family detached dwellings at a density of one lot for each fifty acres. This level of development may appear unreasonably restrictive. However, when comparing such a right against the right to develop one house per every acre and one-half, the distinction requires close attention to the relative effects that such developments will have on the farmland. At a certain level the combination of unnatural factors does create an unfavorable environment for agriculturally used land.

The Board is convinced that the testimony of Larry F. Duket, Chief of the Current Planning Unit of the Maryland Department of State Planning, and the testimony of Paul J. Solomon, Environmental Planner for Baltimore County, was most credible and persuasive on this issue. In particular, Mr. Duket expressed the effectiveness of R.C. 2 zoning as a tool in preserving agriculture by channeling development away from agricultural areas and toward appropriate areas of moderate density residential or commercial development. He concluded that development at a density of one dwelling per one and one-half acres would compromise the aquifer that supports the farmland, reduce nutrients in the soil

which are considered prime and productive and that the services which of necessity must be provided to the homeowners would cause an impact well beyond the specific property over which their homes were located. There exists an aquifer of great size beneath this general geographic region including parts of the subject property. The integrity of this aquifer is of great concern in general and in particular to the retention of productive agricultural land. As stated by Mr. Duket, the capacity to obtain water from this aquifer is fine at present but development of the nature possible by rezoning these parcels could have a significant impact on maintaining this critical water supply. When trees are removed and foreign impervious surfaces are placed on the land, the soils lose valuable nutrients. The soils in the present instance generally have a hydrologic value "B". This is a rather porous quality. The result of placing septic systems each acre and one-half over properties with the above characteristics would create an environment where effluence would sift down rather quickly and creates a clear potential for damage to the aquifer. Mr. Solomon took the analysis one step further. It was his opinion that even if homes were not directly over the aquifer but were uphill of the aquifer, the sewage from such homes could infiltrate into this water supply. This he characterized as the potential for a serious problem with the aquifer. Obviously, once this aquifer begins to become compromised, the impact would be a detriment to the farmland of the Caves Valley. Furthermore, other services necessary to satisfy the needs of moderate residential development in this area would continue to compromise the region. Additionally, this land is part of the Piedmont, well recognized for its prime and productive agricultural qualities. It is an important natural resource. It is of a finite quantity. It is being lost to development continuously. Careful consideration on the impact that development will have across

the Piedmont is a factor that this Board recognizes.

Mr. Solomon testified further on the appropriateness of zoning land around a farm use as "agricultural" in order to support the strong farm use. In explaining the basis of using the Petitioners' property lines as the basis for distinguishing between R.C. 2 and R.C. 5 he satisfied the Board of the appropriateness of the County's policy of using such a standard consistently as the line which divides such uses. Clearly a "resource line" must be determined and then a "legal line" must be established in pursuit of protecting the resources worthy of protection. We do not believe that establishing the zoning demarcation around this property was arbitrary, capricious or illegal. There is a valuable resource--the Caves Valley--which was not previously compromised by development, maintains active and good soils and is of a large size. Zoning is an appropriate and effective tool in maintaining such a resource. Mr. Solomon explained that it is a rare exception to divide a farm between zones. The nature of agriculture is such that virtually every farm has a portion of woodland or other land not suitable for active agricultural pursuits. If this Board divided the property at the transmission line as suggested by Petitioners we may well open the floodgates to other farmers who want to carve out sections of their farms for development. Though such issues are not before this Board, are not relevant to our decision and have not been considered in reaching our decision, we would be foolish if we did not recognize the profound impact on the future development of other valley walls throughout Baltimore County that approval of this petition would encourage.

THE PRESENT ZONING AFFECTS THE PROPERTY OWNERS
A REASONABLE USE OF THEIR PROPERTY

After five days of testimony, Paul Solomon was recalled as People's Counsel's final rebuttal witness. During his testimony on the conclusions of

a number of the experts called previously in the case, he articulated a land plan that could be easily accomplished as a matter of right within the R.C. 2 zone. Such a plan affords a reasonable and appropriate use of the entire tract owned by Petitioners, conserves the Caves Valley resource, would preserve the agricultural nature of this resource for many years and at the same time provides the owners with what would, by any measure, amount to a substantial profit on their investment in having purchased this property less than ten years ago. Taking advantage of the sales potential of fifteen lots each of approximately twenty acres and which could be clustered as permitted in an R.C. 2 zone and placing the remaining 750 acres into the Maryland Agricultural Land Preservation Program while continuing to farm that portion of the property which is capable of productive agricultural pursuits the result is a reasonable and effective land plan that accomplishes the conservation of a valuable natural resource for which the R.C. 2 zone was specifically created to protect and creates a reasonable and profitable residential use consistent with the R.C. 2 regulations that is a compatible form of development. The sum result of such use would foster conditions favorable to the continued use of the agriculturally productive Caves Valley. To retreat from this objective by granting the herein petition would not be appropriate. We are therefore denying this reclassification petition.

ADDITIONAL CONSIDERATIONS

The Board wishes to emphasize once again our agreement with Petitioner that the property that is the subject of this petition is not appropriately considered agricultural. Though the testimony on all sides dwelled extensively on the agricultural capacity of the petitioned acreage, we simply do not believe

that is the sole criteria for placement of land within the R.C. 2 zoning classification. We further contend that, after having heard the extensive testimony in this case, a somewhat higher use of a residential nature over that area contained in the petition above that which is permitted as a matter of right in an R.C. 2 zone may not be wholly incompatible with preservation of the viable agricultural land in the Caves Valley. It may be that more testimony on this point accompanied by a documented site plan in the future may satisfy this Board or the County Council in that regard. Testimony from Petitioner was that no more than 100 lots could be developed over this property. This Board however is compelled to assume that this property would be used to the fullest capacity permitted by the reclassification. We have no authority to restrict use following a reclassification and we are therefore required to apply the standards testified to in this case assuming that 202 homes would be sited over this property. Notwithstanding Petitioners' protestations to the contrary, this Board has been witness on more than one occasion to the completion of more implausible engineering feats than placing more than 100 homes over this property. As it was, no such documented site plan was provided in this case and ultimately may not have made any difference in our decision. Such facts were not before us and we will speculate no further on them.

In applying the legal standards that we must in this request we are convinced that the proposed rezoning would in time compromise the agricultural land that is adjacent to these parcels. We are required to presume the correctness of the original zoning and comprehensive rezoning. Under the circumstances, we see no reason to believe that such a determination was in error and will so order.

The Board recognizes that the R.C. 2 classification is entitled Agricultural Zones. Generally it exists where there are active farming activities. We do not believe that such activities or even the potential for them are prerequisites for the placement of land within the zone in light of the clear purposes stated in Section 1A01.1B. In this case we are specifically finding that notwithstanding the absence of farming on the subject petitioned property and the inability for such a potential, such a zoning classification is correct. If this basic presumption is nevertheless perceived as our indicating "error" for the subject site, we further hold that the petitioned reclassification for the property of R.C. 5 is not warranted by such perceived error, as would be required by §2-58.1(j)(2) of the Baltimore County Code.

ORDER

It is therefore this 1st day of May, 1987, by the County Board of Appeals of Baltimore County ORDERED that the petitioned reclassification from R.C. 2 to R.C. 5 is hereby DENIED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

Patricia Phipps

George D. Dobb

Phyllis C. Friedman

Kingdon Gould, Jr.

LAW OFFICES

GISRIEL & GISRIEL
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

May 21, 1987

Mr. Keith S. Franz,
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: IN THE MATTER OF THE PETITION OF CONSERVATION ASSOCIATES FOR ZONING
RECLASSIFICATION FROM R.C. 2 TO R.C. 5 FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS AVENUE, 457' AND 1507' NORTHWEST OF
CAVES ROAD 4TH ELECTION DISTRICT

Dears Messrs. Franz and Spurrier and Ms. Phipps:

Attached please find the Joint Motion of the Petitioners and Protestants in the above captioned matter for a 60 day extension of time to file an appeal and for this Board to exercise its revisory power over its Opinion and Order which was dated May 1, 1987.

Also attached is the proposed order accompanying said Motion.

I understand that the People's Counsel, Phyllis C. Friedman, has been made aware of the attached Motion and that she will not object to it.

Please call us if you have any questions regarding this matter. We ask that the Board consider this matter as soon as possible so as to allow us enough time to file our Appeal in the event that the attached Motion and Order is rejected.

Continued best regards. I remain

Very truly yours,

Michael Gisriel

Thomas J. Gisriel

MG/bls

Enclosures

cc: Keith S. Franz, Esquire
George Dobb, Esquire
Phyllis C. Friedman, Esquire
Kingdon Gould, Jr.

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MAY 21 1987

VENABLE, BAETJER AND HOWARD

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1800 MERCANTILE BANK & TRUST BUILDING
WASHINGTON, D.C. 20004
(202) 662-4300

BALTIMORE OFFICE
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514
(301) 244-7400

W. THOMAS GISEL
MICHAEL GISEL
PHILIP O. TILGHMAN
VIRGIL H. ZIMMERMAN
THOMAS J. GISEL

TELEPHONE
(301) 539-0813

March 23, 1987

The Honorable Keith S. Franz
Ms. Patricia Phipps
Mr. Leroy B. Spurrier
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Members of the Board:

I have noticed two errors in the Memorandum of Protestants in Opposition to the Petition.

- (1) The reference on page 11 to "Attachment 3" should refer to Petitioner's Exhibit 3.
- (2) On Attachment 5, Mr. Hoswell's name is misspelled.

Very truly yours,

George C. Doub, Jr.
George C. Doub, Jr.

GCD:bb
8658Y/10

cc: Phyllis C. Friedman, Esquire
Michael Gisriel, Esquire

GISRIEL & GISRIEL

LAW OFFICES
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BALTIMORE, MARYLAND 21202-3514

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TELEPHONE
(301) 539-0813

February 27, 1987

The Honorable Keith S. Franz
County Board of Appeals
of Baltimore County
Room 200 Court House
Towson, MD 21204

RE: Caves Valley

Dear Mr. Franz:

Enclosed is a personal copy of the post-hearing memorandum which we have filed with the Board of Appeals today in the Caves Valley case.

While the memorandum is somewhat lengthy, we believe that the magnitude of the case justifies its length.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

TJG/bls

Enclosures

GISRIEL & GISRIEL

LAW OFFICES
SUITE 400
210 E. LEXINGTON STREET
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MICHAEL GISEL
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VIRGIL H. ZIMMERMAN
THOMAS J. GISEL

TELEPHONE
(301) 539-0813

April 13, 1987

Ms. Patricia Phipps
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, et al
Case No. R-86-110

Dear Ms. Phipps:

Enclosed is a personal copy of Petitioners' Reply Memorandum, the original of which has been filed today with the Board of Appeals.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

MG/TJG:phk
Enclosure
RECEIVED
APR 13 1987



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180

September 30, 1988

Howard E. Friedman, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-1698

RE: Case No. 87-CG-2107
Conservation Associates

Dear Mr. Friedman:

We would appreciate your noting our request for a copy of the Opinion in the subject case when it is filed by the Court of Special Appeals.

Thank you.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

GISRIEL & GISRIEL

LAW OFFICES
SUITE 400
210 E. LEXINGTON STREET
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W. THOMAS GISEL
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March 2, 1987

The Honorable Keith S. Franz
County Board of Appeals
of Baltimore County
Room 200, Court House
Towson, MD 21204

Re: Conservation Associates
Reclassification Petition
Case No. R-86-110

Dear Mr. Franz:

Our review of the Post-Hearing Memorandum which we filed on Friday revealed several typographical errors, some of which obscured the meaning of several sentences of the memorandum. For example, the first line of page 10 was omitted and on page 45 "R.C.2" appears where "R.C.5" was intended.

Rather than leaving the errors uncorrected or sending replacement pages to be interspersed in the memorandum filed on Friday, we are taking the liberty of sending an entire corrected copy. Other than the correction of the typographical errors, the corrected copy is identical to the memorandum filed on Friday.

Copies of the corrected memo, and a copy of this letter are being sent to the Clerk of the Board, Mr. Spurrier, Ms. Phipps, People's Counsel and Mr. Doub.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

TJG/bls

RECEIVED
APR 13 1987

Michael Gisriel, Esquire
204 North Liberty Street
Suite 400
Baltimore, Maryland 21201

August 23, 1985

NOTICE OF HEARING

RE: PETITION FOR RECLASSIFICATION
NE/S Park Heights Ave., 467' &
1507' N.W. Caves Road - 2 Parts
4th Election District
Conservation Associates, Petitioner
Case No. R-86-110 Cycle I Item #4

TIME: 10:00 a.m.

DATE: Tuesday, September 24, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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.

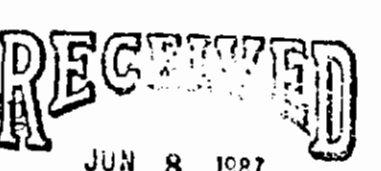
Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Weldon Hale
Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

Judith A. Arnold, Esquire
Michael McMahon, Esquire
Doris C. Woodward
Avis Reed
Frances P. Matthal
Phyllis A. Zheutlin
Lisa Keir, V.P.C.
Betty Beck
George Doub
Arnold Jablon
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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Kathleen C. Weidenhammer
Administrative Secretary

Encl.

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Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
NE/S PARK HEIGHTS AVENUE
467' AND 1507' NW CAVES ROAD
FROM R.C. 2 TO R.C. 5
4TH ELECTION DISTRICT

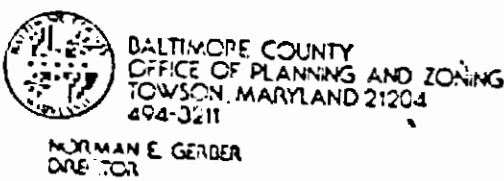
Conservation Associates
Petitioners/Plaintiffs
Zoning File No. R-86-110

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 40
Folio No. 177
File No. 87-CG-2107

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Patricia Phipps and Leroy B. Spurrier, 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, Thomas J. Gisriel, Esquire, and Michael Gisriel, Esquire, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire, and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavenen Properties, Kingston Gould, Jr., Trustee, c/o KFI, 1775 DeSales Street, N.W., Suite 500, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201; Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney, Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue,



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

3/25/85
Re: Zoning Advisory Meeting of 3/6/85
Item # 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Ave.,
NW Caves Road

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject
petition and offers the following comments. The items checked below are
applicable.

- (X) There are no site planning factors requiring comment at this time.
- () A County Review Group meeting is required.
- () This site is part of a larger tract, therefore it is defined as a
subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior
to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () The parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and
development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited
under the provisions of Section 22-98 of the Development
Regulations.
- () Development of this site may constitute a potential conflict with
the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board
on 1/25/85.
- () Landscaping: Must comply with Baltimore County Landscaping Manual.
The property is located in a deficient service area as defined by
Bill 178-79. No building permit may be issued until a Reserve
Capacity Use Certificate has been issued. The deficient service
is:
- () The property is located in a traffic area controlled by a "D" level
traffic intersection as defined by Bill 178-79, and as conditions change
are re-evaluated annually by the County Council.
- (X) Additional comments:
Any future development on this site
must meet the requirements of Bill 178-79,
the Development Regulations.

cc: James Howell

Eugene A. Robb
Chief, Current Planning and Development



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

March 7, 1985

Mr. William Hackett
Chairman, Board of Appeals
Office of Law, Courthouse
Towson, Maryland 21204

Cycle I - Meeting of March 6, 1985
Item No. - 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507'
NW Caves Road
Existing Zoning: R.C.2
Proposed Zoning: R.C.5

Acres: 306
District: 4th

Dear Mr. Hackett:

As presently zoned this site can be expected to
generate approximately 75 trips per day. The proposed zoning can
be expected to generate approximately 2,530 trips per day.

MSF/ccm

Michael S. Flanagan
Traffic Engineering Assoc. II



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2566
494-4500

PAUL H. RENCKE
CHIEF

March 11, 1985

William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Conservation Associates

Location: NE/S Park Heights Ave. 467' and 1507' N/W Caves Road

Item No.: 4

Zoning Agenda: Meeting of 3/6/85
Cycle 1

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

REVIEWED BY: [Signature] Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Nicholas Commodari, Zoning Department Date: April 11, 1985

FROM: C. E. Burham, Chief, Building Plans Review

SUBJECT: Cycle #1, Item #4

Conversion of property from one use to another use requires the structures
involved to comply with the Building Code in force at the time a permit is
applied for and before the structure can be used. Existing structures will
require a Change of Use/occupancy permit as well as alteration permits to
upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the
correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings
and the site.

Set backs from interior lot lines, other buildings on the same lot, and
street lot lines for fire separations shall also comply to the Building Code
in force at the time an application is made for the permit. This currently
involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A.
Code known as the Baltimore County Building Code as adopted by Bill 1-82.
The 1981 Edition of B.O.C.A. has been approved by the County Council and will
become effective on permits filed 15 days after its enactment.

No further comments at this time.

CEB/vw

C. E. B.

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 19, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1

RE: Item No. 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507' N/W Caves Road
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

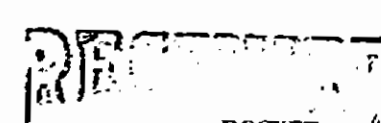
School Situation September 1984

School	Enrollment	Capacity	Over/Under
Franklin Elementary	538	500	+ 38
Owings Mills Jr.-Sr.	991	1210	-219

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	9		50
Junior	6		31
High	4		22

Very truly yours,
John Haddon, Field Representative
Department of Planning

JD/H



COPY: Bettye du Bois
CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 40 PAGE 177 CASE NO. 87CG2107 CATEGORY APPEALS

ZONING OFFICE

CASE NO. R-86-110

IN THE LATTER OF
THE PETITION OF CONSERVATION ASSOCIATES, ET AL.
FOR ZONING RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK HEIGHTS AVENUE,
467' and 1507' NORTHEAST OF CAVES ROAD
4th ELECTION DISTRICT

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Protestant/Appellee

THE VALLEYS PLANNING COUNCIL, INC.
Defendant-Intervenor

THE MARYLAND DEPARTMENT OF STATE PLANNING

True Copy Test

DIANNE MENSIL, Clerk

[Signature]

- (1) July 28, 1987 - Conservation Associates, Cawman Properties and
Kingdon Gould, Jr., Trustee Order for Appeal from the Order of
of County Board of Appeals of Baltimore County fd.
- (2) June 4, 1987 - Certificate of Notice fd.
- (3) June 5, 1987 - Petition fd.
- (4) June 9, 1987 - Correspondence fd.
- (5) June 10, 1987 - Petitioner's Additional Certificate of Service, fd.
- (6) June 25, 1987 - App. of Peter Max Zimmerman for People's Counsel for
Baltimore Co. and Same Day Answer fd.
- (7) June 29, 1987 - App. of (George C. Doub, Jr.) for Protestant/Appellee
for Defendant Answer to Petition, fd.
- (8) June 29, 1987 - Transcript of Record fd.
- (9) June 29, 1987 - Notice of Filing of Record fd.
- (10) July 2, 1987 - App. of (Kathleen Pontone & Donald R. Delorenz)
for Deft. Intervenor (The Valleys Planning Council, Inc.) & Same
Day Answer, fd.
- (11) July 2, 1987 - Deft./Intervenor (The Valleys Planning Council, Inc.)
Motion to Participate or Intervene, Memorandum & Exhibits, fd.
- (12) July 6, 1987 - App. of (J. Joseph Curran, Jr. & Judith A. Arnold)
for (Maryland Dept., of State Planning) & Same Day Answer, fd.
- (13) July 25, 1987 - Order of Court that the Valleys Planning Council, Inc.
may participate in this appeal. (13)

COPIES
CV GEN 87CG2107
CLK 70.00
LRY 5.00
POST 2.00
CLERK TL 77.00
MISSED COPY REC TL 12.00
CC 22.00

CASE NO. 87 CG 2107

(15) Aug. 3, 1987 - Appellant's Memorandum fd.

(16) Aug. 24, 1987 - App. of J. Joseph Curran, Jr. & Andrew H. Baids for The STATE OF MARYLAND
AND THE MARYLAND DEPARTMENT OF STATE PLANNING to Participate or Intervene, Memorandum
& Exhibits fd.

(17) Aug. 24, 1987 - Protestants Memorandum of Appellates fd.

(18) Aug. 31, 1987 - People's Counsel's Memorandum fd.

(19) Sept 4, 1987 - Deft. (The Valleys Planning Council), Inc. Memorandum fd.

(20) Sept 15, 1987 - Order of Court that the State of Maryland and the Maryland
Department of State Planning May Participate in this Appeal fd. (JWH) Copies Sent.

(21) Sept 22, 1987 - Appellants' Reply Memorandum fd.

Oct. 6, 1987 Hon. A. Owen Hennegan. Hearing had. ruling held sub-curia. Opinion to be filed.

22 Oct. 20, 1987 - Memorandum Opinion & Order of Court that the decision of the Baltimore
County Board of Appeals be and is hereby AFFIRMED FD. (ADM)

COMMUNITY
RECORDING
FEB 10 4 00 PM '85

True Copy Test

DIANNE MENSIL, Clerk

[Signature]

COPY: Bettye du Bois

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHEAST OF CAVES ROAD
4th ELECTION DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
ZONING CASE NO. R-86-110
CASE NO. 87-CG-2107

MEMORANDUM OPINION AND ORDER

This case comes before the Court on appeal from the Board of Appeals,
denying a petition for reclassification of two parcels of land with a total
size of approximately three hundred three (303) acres, confined within a
contiguous parcel of approximately six hundred eighty-two (682) acres.
Appellants appeal from a finding that although the subject parcels are not
suitable for profitable agricultural use, they nevertheless should remain
zoned R.C. 2 to protect the agricultural land on the floor of the Caves Valley.
The Court, having reviewed the entire record below, together with memoranda
and argument of counsel, renders the following opinion.

The property at issue is located in the Caves Valley area of northern
Baltimore County. The present zoning for the property is Resource Conservation
2 (R.C. 2).

Appellants' bought the subject property in 1977. In 1980, during the
Comprehensive Rezoning Process, attempt was made to have the whole property
rezoned from R.C. 2 to R.C. 5. Both the Planning Board and the County Council
refused to make this change, leaving the land zoned R.C. 2.

During the 1984 Comprehensive Rezoning Process, Appellants brought a
petition to have 303 acres of the subject property rezoned to R.C. 5. This

FILED OCT 28 1987

FILED OCT 28 1987

DIANNE MENSIL, Clerk

September 23, 1985

RE: PETITION FOR RECLASSIFICATION
Parcel 1: W/S Greenspring Ave., 1300'+
NW 1/4 Intersection/Caves Rd. & Greenspring Ave.
Parcel 2: N/S Caves Rd., 2400'+ SW/Intersection
CL/S of Caves Rd. & Park Heights Ave.
4th Election District
Conservation Associates, Petitioner
Case No. R-86-110 Cycle I Item #4

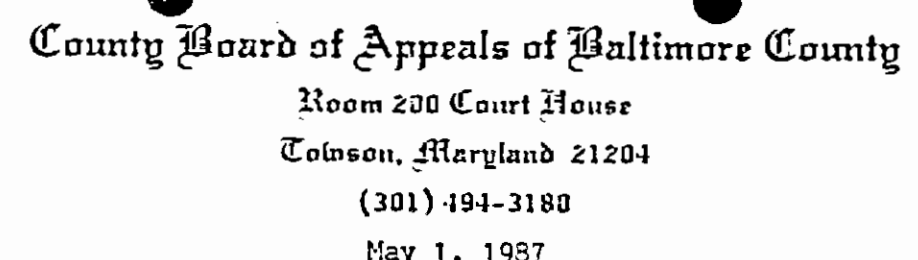
TIME: 10:00 a.m.

DATE: Wednesday, October 23, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel



Michael Gisriel, Esquire
210 E. Lexington Street
Suite 400
Baltimore, MD 21202

RE: Case No. R-26-110
Conservation Associates

Dear Mr. Gisriel:

Enclosed is a copy of the signed Opinion and Order passed today by the County Board of Appeals in the subject matter.

Sincerely,

Kathi C. Weidenhammer
Administrative Secretary

Encl

cc: Thomas J. Gisriel, Esquire
W. Thomas Gisriel, Esquire
George C. Doub, Jr., Esquire
Conservation Associates
c/o PMA
Doris C. Woodward
Weldon Hale
Avis Reed
Judith A. Arnold, Esquire
Richard B. Buck
Frances P. Matthai
Phyllis A. Zheutlin
Kathleen Pontone
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Wilfred G. Keir
Betty Beck
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Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
Michael McMahon, Esquire
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Norman E. Gerber
James G. Hovvell

RECEIVED
MAY 4 1987

ZONING OFFICE

IN THE MATTER OF : BEFORE
THE PETITION OF :
CONSERVATION ASSOCIATES : COUNTY BOARD OF APPEALS
FOR ZONING RECLASSIFICATION :
FROM R.C. 2 to R.C. 5 : OF
FOR PROPERTY LOCATED ON THE :
NORTHEAST SIDE OF PARK HEIGHTS : BALTIMORE COUNTY
AVENUE, 467' AND 1507' NORTH- :
WEST OF GATES ROAD : CASE NO. R-96-110
4th ELECTION DISTRICT :

O P I N I O N

This matter comes before the Board on a petition for reclassification of two parcels with a total size of approximately 303 acres confined within a contiguous parcel of approximately 482 acres. The parcel owned by Petitioners is located north of Caves Road on both sides of Park Heights Avenue, extending to the southwest almost as far as Garrison Forest Road and extending to the northeast almost as far as Greenspring Avenue. This property comprises in substantial measure that portion of Maryland historically known as the Caves Valley. The existing zoning for the tract is R.C. 2. Petitioners have requested that approximately 277 acres of the northern portion of the tract be reclassified as R.C. 5 zoning and approximately 26 acres of the southern portion of the parcel, fronting on Caves Road, be reclassified as R.C. 5 zoning.

The issues presented to this Board were as broad in their impact of land use in Baltimore County as any in the history of the Board of Appeals. As would have been expected given the scope of this project, the testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen. In particular the testimony from the expert witnesses, a total of thirteen of whom testified during the five days during which this matter was heard, demonstrated authority of the highest order. The Board was extremely impressed by the quality of content presented by all sides in this matter.

Case No. R-86-110
Conservation Associates

that would foster unfavorable conditions to the continued agricultural use of the productive Caves Valley floor, and that Baltimore County possesses numerous areas which are highly suitable for moderate intensity residential development which are not located in areas of such productive agricultural land.

AGRICULTURAL USE OF THE PARCELS

The Board heard extensive testimony from a number of highly credible sources as to the agricultural potential of this property. On balance we found the opinion of George A. Stevens, the Petitioner's agricultural economics expert, to be most persuasive. We will let the record speak for itself regarding the basis of these conclusions. We do however agree with his opinion that after consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. The facts of this case are simply too clear that the tree cover would have to be removed and the soils made productive for any of these pursuits. To accomplish this task would be much too costly relative to the potential monetary benefit not to mention that the result would be far less desirable than the aesthetic qualities of the property as it presently exists.

WOULD DEVELOPMENT OF THE PARCELS CONSISTENT WITH R.C. 5 ZONING
FOSTER CONDITIONS UNFAVORABLE TO A CONTINUED AGRICULTURAL USE
OF PRODUCTIVE AGRICULTURAL AREAS

Whether or not the development of the petitioned parcels into one and one-half-acre homesites fosters conditions that are unfavorable to a continued

Case No. R-86-110
Conservation Associates

agricultural use of the Caves Valley floor is the central issue in this case. It is recognized by this Board that factors such as elimination of tree cover or natural cover in order to construct a home; creation of significant amounts of impermeable surface required for homes themselves and ancillary roads, driveways and other structures; establishment of wells; establishment of septic systems and the effectiveness of these systems, as well as other factors have a negative impact on a continued agricultural use of productive land. The Board is not ruling that any residential development near productive agricultural land is inherently evil or likely to cause a significant amount of harm to the farm areas. The R.O. 2 use regulations permit single-family detached dwellings at a density of one lot for each fifty acres. This level of development may appear unreasonably restrictive. However, when comparing such a right against the right to develop one house per every acre and one-half, the distinction requires close attention to the relative effects that such developments will have on the farm-land. At a certain level the combination of unnatural factors does create an unfavorable environment for agriculturally used land.

The Board is convinced that the testimony of Larry F. Duket, Chief of the Current Planning Unit of the Maryland Department of State Planning, and the testimony of Paul J. Solomon, Environmental Planner for Baltimore County, was most credible and persuasive on this issue. In particular, Mr. Duket expressed the effectiveness of R.C. 2 zoning as a tool in preserving agriculture by channeling development away from agricultural areas and toward appropriate areas of moderate density residential or commercial development. He concluded that development at a density of one dwelling per acre and one-half acres would compromise the aquifer that supports the farmland, reduce nutrients in the soil

Case No. R-86-110
Conservation Associates

2

The decision in this case was a most difficult one for the Board. In the thirteen years since resource conservation zones were established in Baltimore County, no parcel close to this size has been reclassified. The historical perspective of this case shows that prior to the 1984 Comprehensive Zoning Map the property was zoned R.C. 2. During the comprehensive review in 1984, the Petitioner identified this property as a specific issue. At that time the Planning staff and Planning Board recommended retention of R.C. 2 zoning and the Baltimore County Council reaffirmed R.C. 2 zoning for the parcel. In considering the herein petition, the Planning Board paid significant deference to the suitability of this property for active agricultural pursuits and the potential harm to the water supply sources under this property. It was the Planning Board's belief that the existing zoning is consistent with the Baltimore County Master Plan and that the agricultural qualities of the property argued strongly for retention of the R.C. 2 zoning.

Petitioners have acknowledged the obvious agricultural profile of a substantial portion of their full tract and are not requesting rezoning of the entire parcel. They have carefully extracted those portions that comprise the Caves Valley floor and are requesting reclassification solely of the valley walls and ridges.

The conditions on the petitioned acreage are significantly different than conditions on the valley floor. The valley floor is cleared while the walls and ridge are heavily wooded. The floor is flat while the walls and ridge are steeply sloped. The soil types on the floor are significantly different than the soils on the walls and ridge. Clearly the use of the valley floor is for active agricultural pursuits. Equally clear is that those parcels contained in

Case No. R-56-110
Conservation Associates

which are considered prime and productive and that the services which of necessity must be provided to the homeowners would cause an impact well beyond the specific property over which their homes were located. There exists an aquifer of great size beneath this general geographic region including parts of the subject property. The integrity of this aquifer is of great concern in general and in particular to the retention of productive agricultural land. As stated by Mr. Duket, the capacity to obtain water from this aquifer is fine at present but development of the nature possible by rezoning these parcels could have a significant impact on maintaining this critical water supply. When trees are removed and foreign impervious surfaces are placed on the land, the soils lose valuable nutrients. The soils in the present instance generally have a hydrologic value "B". This is a rather porous quality. The result of placing septic systems each acre and one-half over properties with the above characteristics would create an environment where effluence would sift down rather quickly and creates a clear potential for damage to the aquifer. Mr. Salmon took the analysis one step further. It was his opinion that even if homes were not directly over the aquifer but were uphill of the aquifer, the sewage from such homes could infiltrate into this water supply. This he characterized as the potential for a serious problem with the aquifer. Obviously, once this aquifer begins to become compromised, the impact would be a detriment to the farmland of the Gages Valley. Furthermore, other services necessary to satisfy the needs of moderate residential development in this area would continue to compromise the region. Additionally, this land is part of the Piedmont, well recognized for its prime and productive agricultural qualities. It is an important natural resource. It is of a finite quantity. It is being lost to development continuously. Careful consideration on the impact that development will have across

Board of Appeals of Baltimore County
Page Two
March 1, 1985

Instead, the owners contend that the proper zoning plan for the subject property would allow them to make use of the valley walls with forest cover and ridge areas of the property for small estate single family development without jeopardizing the integrity of the valley floor. Thus, a mix of R-C-2 and R-C-5 zoning for the property seems the most appropriate zoning scheme when the existing Baltimore County Zoning Regulations are properly applied. James Schulte, the Land Use Planner retained by the owners, who prepared our various maps and drawings, as well as our development concept, concurs with this view and estimates that if the proposed zoning reclassification is allowed, good planning and the topography of the land dictates that no more than 101 houses could be placed on the approximately 306 acres to be rezoned R-C-5. In fact, in all probability, the number of units built could be fewer. Thus, while all the proposed building lots would be heavily wooded with the planned residence to be high quality and custom built in harmony with those already in the community, there is also contemplated no interference with the existing open fields in the valley floor. Furthermore, the density, taking into account all the land sought to be rezoned R-C-5 would be one house per approximately 3 acres - far less than would be allowed under Baltimore County R-C-5 density regulations and consistent with the plan for the Valleys developed twenty years ago.

The existing Baltimore County Zoning Regulations, as embodied in Council Bills 98-75 and 178-79, state in their declaration of legislative findings that the purpose of the R-C-2 zoning classification is "to foster conditions favorable to a purpose of rural use of the productive agricultural areas of Baltimore County and to provide for rural use of the productive agricultural areas of Baltimore County in a manner which is compatible with the degree of urban uses" (emphasis supplied). The purpose of the R-C-5 zoning classification is stated to be in order to:

"Provide for rural-residential development in suitable areas in which basic services are not anticipated. Eliminate scattered and generally disorderly patterns of rural-residential development. Assure that encroachments onto productive agricultural natural resource areas will be minimized. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems."

When these stated Baltimore County legislative findings and zoning purposes are applied to the subject property, it seems self-evident that the approximately 306 acres sought by this Request for Change Application should be zoned R-C-5, not R-C-2. The approximately 306 acres sought to be rezoned R-C-5 (i.e. along Caves Road on the western side of Park Heights Avenue and above the power transmission line on the eastern side of Park Heights Avenue) is land that is not currently in agriculture nor is it land that will ever be conducive to farming. Rather, it is hilly, wooded land that is surrounded by and adjacent to existing large lot development. By rezoning the approximately 306 acre part of the subject property R-C-5, Baltimore County would accomplish all of the above stated purposes embodied in the Baltimore County's R-C-5 zoning classification.

The subject property is ringed by existing R-C-5 zoning. Development exists or is contemplated all around the property. In fact, it could be accurately stated that our property is the R-C-2 hole in a surrounding doughnut of R-C-5 zoning. We do not seek to totally eliminate this R-C-2 doughnut hole which exists to protect the integrity of the Caves Valley floor, rather we seek a refinement of the R-C-2 line

Board of Appeals of Baltimore County
Page Three
March 1, 1985

(or a shrinking of the R-C-2 doughnut hole, if you will). R-C-2 zoning for the zoning reclassification requested area cannot be defended under existing Baltimore County Zoning Regulations, i.e. to preserve a continued agricultural use of the productive farmland, it can only be defended by using as its justification the purpose of preventing development of the entire subject property and this is not a proper purpose of rationale that is encompassed in the existing Baltimore County Zoning Regulations.

According to the proper application of the Baltimore County Zoning Regulations, the boundary of the R-C-2 zoning should be determined by environmental and use conditions in order to meet the stated objective of preserving agricultural opportunity. The existing R-C-2 demarcation line for the subject property follows the existing property boundary line in an arbitrary manner since the property line delineates no particular environmental or use condition and as such, includes considerable acreage not suitable for or relative to any kind of agricultural use. The key environmental use "break" on the subject property occurs along edges of the valley floor where agricultural lands meet the steeply sloped wooded hillsides. At this landscape juncture, soil types change as well as vegetation characteristics. Coincidentally, the existing BG&E transmission line generally follows this environmental break. Use of this transmission line as the zoning demarcation line would accurately reflect the existing environmental and use conditions as well as serving as a demarcation line that is easy to find and define in the field. In a similar way, the railroad right-of-way is used on the south side of the Greenspring Valley to define the change in both environmental and zoning conditions. It should be noted that the same BG&E transmission line is used as the zoning boundary elsewhere in the Caves Valley (i.e. northwest of the subject property).

The existing boundary line does not correlate in any significant way with environmental conditions. Whether elevations, slopes, topographic variations, vegetation or soil types are considered, conditions on both sides of the existing boundary line (R-C-5 v. R-C-2) are very similar. The existing boundary line arbitrarily passes through hill, plateau and valley--irrespective of environmental conditions. Obviously, the R-C-5 side of the line can be developed successfully with no hazard to the environment since much of it has already been attractively developed. Since the same environmental conditions prevail on our amended rezoning proposal, it is clear that development is not incompatible with the natural conditions in this proposed rezoned area. Some refinement of the R-C-5 demarcation line that encompasses part of the Gould property is clearly in order.

While our rezoning plan would not conflict with the stated purpose of the R-C-2 zoning classification, it would definitely allow for "moderated growth" in an area in which basic water and sewer services are not anticipated as envisioned in Baltimore County's Land Use Element 1979-1990 Master Plan.

Finally, our zoning reclassification request and our proposed development scheme on the valley walls with forest cover ridge areas of the Caves Valley, i.e. one unit for three acres, is in conformity with the Plan for the Valleys as developed by the Valleys Planning Council more than ten years ago and substantially adopted as the law and regulation by the Baltimore County Council. (See p. 38 of said Plan for the Valley.) Our proposed plan and development concept protects the County's goal of preserving open fields and agricultural land while encouraging responsible development.

Board of Appeals of Baltimore County
Page Four
March 1, 1985

It also benefits the local community in that the Caves Valley floor will remain undeveloped for the foreseeable future.

We respectfully request, therefore, that because of the clear mistake, i.e. the arbitrary, capricious and erroneous decision of the Baltimore County Planning Staff and County Council not to reclassify any of the 682 acres of the subject property from R-C-2 to R-C-5, that the Baltimore County Board of Appeals grant our Petition to Reclassify 306 acres of the subject property R-C-5.

Please don't hesitate to contact our office if you have any questions or require any additional information.

Sincerely,

Michael Gisriel
Michael Gisriel
Attorney for Conservation Associates,
Cavemen Properties,
Kingdon Gould, Jr., Trustee

MG/bls

PS If all or any members of the Board of Appeals would like to take a personal tour of the subject property, the owners would be happy to oblige and help arrange such an expedition.

1800 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MD. 21201

August 15, 1984

The Hon. James T. Smith, Jr.
County Council of Baltimore County
Court House
Towson, Maryland 21204

Re: (1) Application of Kingdon Gould, Jr. - Item 3-60
(2) Application of Alan B. Krongard - Item 3-86

Dear Mr. Smith:

Enclosed herewith is a report in letter form dated August 10, 1984 from Wallace Roberts & Todd pertaining to item 3-60 referenced above and which applies also to item 3-86.

This report confirms the conclusions reached by the staff of the Office of Planning and Zoning and by the Planning Board, and demonstrates that applications 3-60 and 3-86 should be denied.

Very truly yours,

George C. Doub, Jr.
George C. Doub, Jr.
Mitchell Kotkin

GCD/MK/mr

Enclosure

cc: Judy Baer (Valleys Planning Council Inc.)
Bert Booth and Lisa Keir (Chestnut Ridge Improvement Assn.)
James G. Cox (Caveswood Lane Improvement Assn.)
William N. Fitzpatrick, Jr., Esq. (Falls Road Community Assn.)
Stuart L. Sagal, Esq. (Timber/Valley Assn.)
Mr. Norman E. Gerber
S. Harrison Stone, Esq.
Michael Gisriel, Esq.
Francis N. Iglehart, Esq.
(w/Encl.)

WRT Wallace Roberts & Todd

Architects • Landscape Architects • Urban and Environmental Planners • 1727 Chestnut Street • Philadelphia, Pennsylvania 19103 • 215-564-2811

August 10, 1984

Mr. George C. Doub, Jr.
1800 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Dear Mr. Doub:

In response to your request, I have undertaken a review of the Application of Kingdon Gould, Jr. and others for reclassification of 306 acres in the Caves Valley from R-C-2 to R-C-5 zoning.

I am a member of the American Institute of Certified Planners, and received a Masters Degree in City Planning from the University of Pennsylvania. I have worked as a planner for seventeen years. For the past ten years, I have worked for Wallace Roberts & Todd, where I am a Senior Associate.

As you know, Wallace Roberts & Todd prepared the Plan for the Valleys, for the Green Spring and Worthington Valley Planning Council nearly twenty years ago. Lewis Mumford, author of The Culture of Cities, The Highway and The City, and The Urban Prospect cited the Plan as:

"demonstrating brilliantly how an ecological balance between the rural environment and an increasing urban population may be maintained... The report grapples with the essential problem of our civilization: the control of quantity by quality, of urbanization by community integration, of process by purpose."

The Plan established and documented the ecological significance and community value of the valley floors and walls of the Green Spring, Worthington and Caves Valleys and the importance of retaining very low levels of development.

Wallace Roberts & Todd

Mr. George C. Doub, Jr.
August 10, 1984
Page 2

In 1977-1979, I worked as a member of the Consultant Team directed by Wallace Roberts & Todd to assist Baltimore County in preparation of a Growth Management Plan, adopted in November 1979.

Both of these plans stress the outstanding ecological value of the Caves Valley, its vulnerability to development, and the importance of protecting both the Valley and its natural resources.

Discussions that I had with Mr. Frank Fisher and Mr. Paul Solomon of the Baltimore County Office of Planning and Zoning July 24, 1984, with regards to the Caves Valley and the Gould tract indicate that the conditions mapped and described in both the Plan for the Valleys and the 1979 Baltimore County Growth Management Plan have not changed and that the County staff continue to be strongly committed to the preservation of the Valley's valuable natural resources.

I visited the sites in question within the past month and found that the physical integrity of the Valley is still intact.

The R-C-2 zone permits development of two residential lots on any tract of land so zoned, with provision for one additional lot for each 50 acres over and above 100 acres.

The R-C-5 zone permits development at a tract density of .667. A 100 acre parcel zoned R-C-5 could therefore be developed for 66 residential lots.

The significant difference in the residential densities permitted under the two zones indicates the critical importance of the decision facing the Baltimore County Council, as regards preservation of the Caves Valley. Rezoning of the sites in question to a zone that would permit development of more than 200 residences would pose severe threats to the integrity of the character of the Valley, the underlying Cockeysville Marble aquifer which County staff consider a valuable potential future source for public water supply, and the Valley's high quality agricultural soils.

Wallace Roberts & Todd

Mr. George C. Doub, Jr.
August 10, 1984
Page 3

Both the Plan for the Valleys and the Baltimore County Growth Management Plan identify the unique quality and importance of the Valley and its resources.

The Underlying Aquifer

The Caves Valley is underlain by "the best groundwater source in the Baltimore Region, a limestone formation called Cockeysville Marble. This groundwater, called an aquifer, is extremely valuable and also extremely vulnerable. Should much development using septic tanks occur in the valley, the prospect of polluting this valuable groundwater resource increases. This will render present wells dangerous and finally useless."

"Observance of this physiographic fact suggests that no development should be located in the Green Spring, the Caves or the Worthington Valleys."

"Development should be prohibited over all formations of the Cockeysville Marble and the aquifer they contain."¹

"Pollution and depletion of groundwater resources are not visible to the public eye and as such their protection as a natural resource has until recently created little public concern and legislative action. In past years, inadequate land use regulation in areas of groundwater recharge has led to reduced recharge...and often severe water pollution in many parts of the country. Such effects endanger the general public welfare and cause greatly increased costs to public agencies."²

"Septic tank seepage and pollution from infiltrated urban runoff may cause localized problems of groundwater pollution which in the aggregate severely threaten the quality of the resource."³

¹Wallace-McHarg Associates, The Plan for the Valleys, 1964, p. 32, 38.

²Wallace, McHarg, Roberts and Todd, Baltimore County Growth Management Program, Technical Memorandum No. 7, Natural Resources Analysis, October 1978, p. 159.

³Ibid., p. 162.

Wallace Roberts & Todd

Mr. George C. Doub, Jr.
August 10, 1984
Page 4

permitted density increases resulting from a rezoning of the tracts in question from R-C-2 to R-C-5 would clearly increase the danger of pollution of the aquifer, which underlies the Caves Road site and portions of the larger site, and is clearly contrary to the County Growth Management Plan.

Agricultural Resources

Agricultural preservation is an important purpose of the County's Growth Management Plan, since Baltimore County ranks among the top three counties in numbers of farms in Maryland.⁴

"Recognition of prime and productive land as a resource of public concern in Baltimore County requires protection of agricultural land from scattered residential and urban development."⁵

"The R-C-2 Agriculture Zone recognizes the value of agricultural land in the county and the threat posed to it by scattered development residential uses."⁶

It is important to emphasize that the purpose of the R-C-2 zone is to preserve areas of valuable agricultural soils for farming use. The loams found in the Caves Valley and on the sites in question are well-suited for farming.

Glenelg loam for example is "well-suited to farming," even on slopes of 8 to 15 percent.

The Valley Walls

The walls of Caves Valley, even where wooded slopes exceed 15 percent, serve as an important buffer to the valuable agricultural resource, as well as a safeguard to the underlying aquifer.

⁴BCCMP, Technical Memorandum No. 7, p. 205.

⁵Ibid., p. 216.

⁶Ibid., p. 215.

⁷U.S. Department of Agriculture Soil Conservation Service in cooperation with Maryland Agricultural Experiment Station, Soil Survey Baltimore County, March 1976, p. 31.

1505 E 2nd Avenue • Suite 1111 • Miami, FL 33131 • 305-571-3822 • Ferry Building • The Embarcadero • San Francisco CA 94111 • 415-558-4249

Partners: Richard A. Mullman AIA, John E. Fensler AIA, John F. B. Sandoz ASLA, Timothy Kordas AIA, David A. Kordas AIA, Charles B. Johnson, Jr. AIA, Andrew F. Sandoz ACP, Jack S. Sander AIA ACP, Robert A. Rossmore AIA, Anthony H. Roberts ASLA, Richard B. Carr AIA ACP, Associate: Richard B. Carr AIA ACP, John E. Carr CPA, John Beckman

IN THE MATTER OF THE
PETITION OF CONSERVATION
ASSOCIATES FOR ZONING
RECLASSIFICATION FROM
R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND
1507' NORTHWEST OF CAVES
ROAD 4th ELECTION DISTRICT

ORDER

The Motion of the Petitioners and the Protestants
having been considered by the Board, it is this day of
May, 1987,

ORDERED that the time for filing an order for appeal
herein is hereby extended to July 30, 1987.

AND FURTHER ORDERED, that the Petitioners, People's
Counsel and the Intervenor are designated pursuant to Rule B
as the only parties to whom notice of the proposed
extension need be given, and since all such parties, by their
counsel, have joined in the motion or received a copy of the
motion, no further notice is required.

AND FURTHER ORDERED, that the time within which this
Board may revise or modify its order of May 1, 1987 pursuant
Rule 10 of the Board of Appeals Rules of Procedure is also
extended until July 30, 1987 provided that such revision or
modification shall only be for the purpose of considering for

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approval or rejection a proposed resolution of this matter to
be submitted by the parties and matters incidental thereto.

Keith S. Franz
Acting Chairman

Patricia Phipps

LeRoy B. Spurrier

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IN THE MATTER OF THE
PETITION OF CONSERVATION
ASSOCIATES FOR ZONING
RECLASSIFICATION FROM
R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND
1507' NORTHWEST OF CAVES
ROAD 4th ELECTION DISTRICT

* BEFORE THE
* COUNTY BOARD OF
* APPEALS OF
* BALTIMORE COUNTY
* CASE NO. R-86-110

JOINT MOTION OF PETITIONERS AND
PROTESTANTS FOR A 60-DAY EXTENSION
OF TIME TO FILE AN APPEAL
AND FOR THIS BOARD TO EXERCISE ITS
REVISORY POWER OVER ITS OPINION AND ORDER

The Petitioners by their undersigned counsel, Michael
Gisriel and Thomas J. Gisriel and the Protestants by their
undersigned counsel, George C. Doub, Jr., move the County Board
of Appeals of Baltimore County pursuant to Rule B4 of the
Maryland Rules of Procedure for an Order extending for 60 days
the time within which the Petitioners may file an order of
appeal. The grounds of this motion are as follows:

1. Kingdon Gould, Jr. will be in Europe until
approximately June 1, 1987 or shortly thereafter.
2. The above parties have engaged in serious
negotiations toward a resolution of the subject matter of this
proceeding in conformity with the concepts suggested in this
Board's opinion dated May 1, 1987. Petitioners and Protestants
believe that there is a substantial possibility that a proposed

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resolution can be developed by them and submitted to the Board
within the period of the extension.

3. The Board has authority to grant this motion.
Rule B(4)(b) of the Maryland Rules of Procedure provides that
"upon application of a person authorized to appeal or a party
to a proceeding before the agency, and for sufficient cause
shown, a court in which the order for appeal may be filed . . .
or agency may extend [the time for filing an appeal] for not
more than 60 days."

4. Since notice was delivered to Phyllis C. Friedman,
Esq., no further notice is required. Subparagraph e of Rule
B(4) provides that an application to extend the time for filing
an order for appeal shall not be granted unless the agency and
all parties to the proceeding before the agency shall have been
notified in writing of such application at least 3 days prior
to the consideration thereof by the agency; provided that where
there were more than 5 parties to the proceeding before the
agency it shall be sufficient to give such notice to such
parties as shall be designated by the agency. Out of an
abundance of caution, Petitioner requests that the parties to
this Motion be designated as the only persons to whom notice
need be given.

5. The above parties further move the Board to enter
an order extending for the same period the time within which
the Board may revise or modify its order of May 1, 1987 but

-2-

0682Y

only for the purpose of considering for approval or rejection
the proposed resolution to be submitted by the parties.

Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel
Suite 400
210 East Lexington Street
Baltimore, Maryland 21202
(301) 539-0513

George C. Doub, Jr.
Venable, Butler and Howard
1800 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 244-7540

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 1987, a
copy of the foregoing Joint Motion of All Parties for a 60-day
Extension in the Time to File an Appeal and Order was hand
delivered to Phyllis C. Friedman, Esquire, 409 Washington
Avenue, Suite 900, Towson, Maryland 21204.

Thomas J. Gisriel

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO William T. Hackett Date May 22, 1987
FROM Kathi Weidenhammer
SUBJECT Attached Correspondence - Conservation Associates

Mr. Hackett:

The attached material was hand-delivered to this office yesterday
afternoon from Gisriel & Gisriel concerning Conservation Associates.

In addition, Phyllis Friedman forwarded the attached response
to the above material within minutes of its receipt.

I thought you might want to be aware of this development, and
I've also sent copies to both Patti and Roy.

Kathi

Attachment

Copy to Patti and Roy



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 21, 1987

The Honorable
Keith S. Franz, Esquire
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: Conservation Associates, Petitioner - Case No. R-86-110

Dear Board Members:

I have just received a Joint Motion of the Petitioners and Protestants
in the above captioned matter for a 60 day extension of time to file an
appeal and for this Board to exercise its revisory power over its Opinion
and Order which was dated May 1, 1987.

This letter states that People's Counsel, Phyllis Cole Friedman,
has been aware of the attached Motion and that she will not object to it.
This is not accurate. I was made aware of the attached Motion by George
Doub, Attorney for the Protestants. However, I told Mr. Doub that I would
not participate in the Motion and that I would reserve the right to object
to it. I specifically told Mr. Doub that representations were not to
be made to the Board that I would not object to the Motion and want to
clear this misconception up immediately.

Very truly yours,

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

cc: George Doub, Esquire
Michael Gisriel, Esquire
Thomas J. Gisriel, Esquire
Keith S. Franz, Esquire

PCF:sh

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131 MAY 21 P 4 40

LAW OFFICES
GISRIEL & GISRIEL
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

May 21, 1987

Mr. Keith S. Franz,
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: IN THE MATTER OF THE PETITION OF CONSERVATION ASSOCIATES FOR ZONING
RECLASSIFICATION FROM R.C. 2 TO R.C. 5 FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS AVENUE, 467' AND 1507' NORTHWEST OF
CAVES ROAD 4th ELECTION DISTRICT

Dears Messrs. Franz and Spurrier and Ms. Phipps:

Attached please find the Joint Motion of the Petitioners and
Protestants in the above captioned matter for a 60 day extension of time to
file an appeal and for this Board to exercise its revisory power over
its Opinion and Order which was dated May 1, 1987.

Also attached is the proposed order accompanying said Motion.

I understand that the People's Counsel, Phyllis C. Friedman, has
been made aware of the attached Motion and that she will not object to it.

Please call us if you have any questions regarding this matter.
We ask that the Board consider this matter as soon as possible so as to allow
us enough time to file our Appeal in the event that the attached Motion and
Order is rejected.

Continued best regards. I remain,

Very truly yours,
Michael Gisriel
Thomas J. Gisriel

MG/bls
Enclosures
cc: Keith S. Franz, Esquire
George Doub, Esquire
Phyllis C. Friedman, Esquire
Kingdon Gould,

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131 MAY 21 P 4 21

VENABLE, BAETJER AND HOWARD

WASHINGTON, D.C. OFFICE
301 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 682-4300

BALTIMORE OFFICE
1800 MERCANTILE BUILDING
Baltimore, Maryland 21204
(301) 244-7400

VIRGINIA OFFICE
PLAZA SUITE THREE
400 NORTH HENDERSON ROAD
ARLINGTON, VIRGINIA 22203
(703) 243-9000

RECEIVED BY MAIL 1/15/87
FROM: VENABLE, BAETJER AND HOWARD
CHARLES W. HOWARD (C.W.H.)

WRITER'S DIRECT NUMBER IS
244-7540

March 23, 1987

The Honorable Keith S. Franz
Ms. Patricia Phipps
Mr. Leroy R. Spurrier
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Members of the Board:

I have noticed two errors in the Memorandum of Protestants in Opposition to the Petition.

- (1) The reference on page 11 to "Attachment 3" should refer to Petitioner's Exhibit 3.
- (2) On Attachment 5, Mr. Hoswell's name is misspelled.

Very truly yours,

George C. Doub, Jr.

GCD:hb
8658Y/16

cc: Phyllis C. Friedman, Esquire
Michael Gisriel, Esquire



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 19, 1987

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Courthouse
Towson, MD 21204

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Zimmerman:

Your request to extend the period of time in which to supply the Board with your Reply Memorandum is denied.

If you believe that any newly decided case law may assist us in our decision, you are free to supply us with that information only after your Memorandum has been submitted.

Very truly yours,

Keith S. Franz, Acting Chairman
County Board of Appeals

KSP:kcw

cc: Michael U. Gisriel, Esquire
W. Thomas Gisriel, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire
Mitchell Kolkin, Esquire



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2189

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

March 17, 1987

The Honorable
Keith S. Franz, Acting Chairman
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Chairman Franz:

It is my understanding that the Reply Memorandum in this case is due Friday, March 20, 1987. In view of a recent Supreme Court decision in a case involving Keystone Bituminous Coal Company, which should be published this week, I would respectfully request an additional week to submit the memorandum. I trust that such a short delay will be acceptable.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

cc: Michael U. Gisriel, Esquire
W. Thomas Gisriel, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire
Mitchell Kolkin, Esquire

PMZ:sh

10:11 AM LI 1000 LEM
3702245 30 00000 110000
0342250

R-86-110 CONSERVATION ASSOC.

Exhibits in Closet:

Petitioners Exhibit #2	People's Counsel's Exhibit #3
4	4
5	7
6	10
7	8
8	19
9	
10	
11	
12	
13	
14	
15	
16	

Balance of exhibits in brown folder - back of 3rd drawer, 1st cabinet.

NOTICE OF HEARING

RE: PETITION FOR RECLASSIFICATION
Parcel 1: W/S Greenspring Ave., 1300'±
NW/4 Intersection/Caves Rd. & Greenspring Ave.
Parcel 2: N/S Caves Rd., 2400'± SW Intersection
C1's of Caves Rd. & Park Heights Ave.
4th Election District
Conservation Associates, Petitioner
Case No. R-86-110 Cycle I Item #4

TIME: 10:00 a.m.

DATE: Wednesday, October 23, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

12/03/86 - CONTINUED HEARING SET FOR Friday, 12/19/86, 9:00 a.m. (Danker reporter)
12/19/86 - CONTINUED HEARING SET FOR Friday, 01/23/87, 9:00 a.m.

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel

9/24/85 - CONTINUED IN OPEN HEARING TO WEDNESDAY, OCTOBER 23, 1985 at 10 a.m.

12/23/85 - CONTINUED IN OPEN HEARING TO THURS., DEC. 19, 1985, at 1:00 p.m. 3rd day - case opened

12/27/85 - CONTINUED HEARING TO THURS., DEC. 19, 1985, at 10 a.m. - Petitioner's case set for 10 a.m.

4/29/86 - CONTINUED HEARING SET FOR TUES., JULY 9, 1986, at 10 a.m.

6/14/86 - CONTINUED HEARING SET FOR TUES., AUG. 12, 1986, at 10 a.m.

7/19/86 - CONTINUED HEARING SET FOR TUES., DEC. 2 and WED., DEC. 3, 1986 at 10 a.m.



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 4, 1986

CONTINUED HEARING 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.

CONTINUED HEARING FROM 12/03/86

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE. 467' and 1507'
NW CAVES ROAD
4th DISTRICT

Friday, December 19, 1986 at 9:00 a.m.

TO BE CONTINUED ON:

cc: Michael Gisriel, Esquire
Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.
Doris C. Woodward
Weldon Hale
Avis Reed
Richard B. Buck
Frances P. Matthaif
Phyllis A. Zheutlin
Kathleen Popfons
Lisa Keir
Judy Bager
Willyed Keir
Early Beck
Jim Cox
George Doub
Gretchen Feldman
Phyllis Cole Friedman, Esq.
Michael Woznon, Esq.
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Ceter
James G. Hoswell
Margaret E. du Bois

Counsel for Petitioner
Petitioner
Petitioner
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
People's Counsel

Kathi C. Weidenhammer
Administrative Secretary



MARYLAND DEPARTMENT OF STATE PLANNING

301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

CONSTANCE LIEDER
SECRETARY

November 17, 1986

Mr. William Hackett,
Chairman
Board of Appeals
Second Floor, County Court House
Towson, Maryland 21204

Re: Conservation Associates

Dear Mr. Hackett:

The Department of State Planning supports the retention of the existing RC2 zoning classification at property owned by Conservation Associates and located in the Caves Valley area of Baltimore County. The Department's position is based on three important characteristics of the subject property: (1) it is comprised of prime and productive agricultural soils; (2) it contains significant forest land cover on steep slopes and (3) it provides an important area suitable for groundwater recharge. Because of these characteristics, the zoning of this property has important implications for agricultural preservation and environmental protection efforts of both Baltimore County and the State of Maryland.

The subject site is comprised of prime and productive agricultural soils. Agricultural activities within the State's Piedmont Region, of which most of Baltimore County is a part, are key components of the State's agricultural economy. The Piedmont Region contributes 27 percent of the market value of agricultural products grown and sold in the State. The preservation of agricultural activity within the region requires maintaining large, critical masses of prime and productive soils, free from incompatible land uses and activities. Nearby residential development, in particular, has adverse impacts on farm land and farming (OSP Publication 63-19, September 1983, Agricultural and Forest Land Preservation in Maryland).

The subject site itself is comprised of prime and productive agricultural soils, and within a 3-mile radius of the subject property, 90 percent of the undeveloped soil is prime and productive. The requested rezoning to RC5 would clearly have a detrimental impact on agricultural preservation in the region, since it would lead directly to conversion of the subject property, and would promote the eventual conversion of surrounding properties, to non-farming uses. The RC2 zoning on the subject site implements County Planning Policies regarding agricultural preservation and growth management.

TELEPHONE 301-226-4550
TTY to 301-383-7255
OFFICE OF COMPREHENSIVE POLICY PLANNING

Mr. William Hackett
November 17, 1986

Page 2

The subject site contains significant forest land cover on steep slopes. Forest land cover, particularly when it is located on steep slopes, prevents erosion and sedimentation and assists in the uptake of nutrient pollutants (e.g., nitrogen and phosphorus) from stormwater. The water quality protection goals of the State's Chesapeake Bay initiatives call for minimizing adverse impacts resulting from sediment, nitrogen, and phosphorus loadings in stormwater runoff. Forest land cover also provides suitable habitat for the wildlife that is an integral part of the Bay's ecosystem.

A rezoning of the site to RC5 would likely result in removal of much of the existing forest land cover, thereby increasing sediment, nitrogen, and phosphorus loadings and destroying wildlife habitat.

The subject site provides an important area suitable for groundwater recharge. There is an important groundwater aquifer located beneath the Caves Valley, and the subject property is suitable for the continued recharging of that aquifer. The substantial increase in residential density that would be permitted under the RC5 zoning sought by the applicant would inevitably result in a significant increase in impervious surface, and in a substantial reduction in the ability of the site to provide groundwater recharge. Moreover, the introduction of septic systems, nutrient pollutants, and petrochemicals resulting from development under RC5 zoning may lead to contamination of the groundwater.

The preservation of the subject property's RC2 zoning for aquifer protection is consistent with planning initiated by the County in 1977. In that year, the County's Designation Report for Areas of Critical State Concern included the Caves Valley as an area deserving protection. The report recommended low-density zoning as a suitable management technique to accomplish aquifer protection.

The County and the State have been consistent in supporting the preservation of the Caves Valley. The County has maintained low density zoning in revisions and readoptions of the County Master Plan and Comprehensive Zoning Map. Also, during the County's 1980 Comprehensive Rezoning process, at a public hearing held on September 4, 1980, the Department of State Planning testified in opposition to the rezoning of the subject site to RC5.

The Department has examined recent land development in the vicinity of the subject property. Based upon discussions with the Office of Planning and Zoning, these changes are the result of implementation of the Comprehensive Zoning Map and are in accordance with stated County land use policies. As

Mr. William Hackett
November 17, 1986

Page 3

such, the changes do not warrant the piecemeal reclassification of the subject property. The existing RC2 zoning on the subject property is the result of careful and deliberate planning and zoning actions and is not a mistake.

The Department of State Planning again urges the Board of Appeals to maintain the existing RC2 zoning for the subject site. This recommendation is consistent with State and County policies, plans and programs.

Thank you for the opportunity to offer our views and recommendations in this important matter.

Very sincerely yours,


Larry F. Duket
Chief of Current Planning

LFD:alg

cc: Mr. Norman Gerber
Mr. Jim Hoswell
Ms. Phyllis Cole Friedman

IN THE MATTER OF THE PETITION : BEFORE THE COUNTY BOARD OF APPEALS
FOR RECLASSIFICATION FROM R.C. 2 :
TO R.C. 5 ZONE : OF BALTIMORE COUNTY
NE/S PARK HEIGHTS AVE., 467' & :
1507' N. OF CAVES RD., :
4th DISTRICT :

CONSERVATION ASSOCIATES, Petitioner : Case No. R-86-110 (Item 4, Cycle I)
: : : : :

MEMORANDUM

People's Counsel for Baltimore County states:

I. INTRODUCTION

For the first time in memory, a Petitioner in a zoning reclassification has challenged the right of County and State officials to make independent visits and inspections of the property under consideration. Conservation Associates has objected to evidence, alleged constitutional wrong, and claimed trespass. This memorandum will address concisely these assertions.

II. PROCEDURAL DUE PROCESS AND ADMISSION OF EVIDENCE

Generally speaking, administrative agencies are not bound by common law rules of evidence, but they must observe the basic rules of fairness as to parties appearing before them. Schultz v. Pritts, 291 Md. 1 (1981). In this connection, it is the substance, not the form, which governs.

Del Maso v. Board of County Comm'rs, 238 Md. 333 (1965).

In Del Maso, as in Temink v. Board of Zoning Appeals, 205 Md. 489 (1954), the courts have approved the practice in zoning cases of admitting planning board and technical staff reports disclosed for the first time at or after the hearing, so long as there is an opportunity provided to examine and challenge the report, typically by cross-examination and/or rebuttal. More recently, the Court of Appeals reiterated the appropriateness of evidence including independent investigative reports subject to cross-examination in Rogers v. Radio Shack, 271 Md. 126 (1974).

- 2 -

It is necessary to add, because of the constitutional objections claimed, that the law as it might be applied in criminal cases cannot be injected into an administrative hearing. In Widonski v. Chief of Police, 41 Md. App. 361 (1979), Chief Judge Gilbert refused to apply the constitutional law of confessions under Miranda v. Arizona and Simmons v. United States to police disciplinary proceedings. In this connection, he cited Chief Judge Wright's observations in Boulware v. Battaglia, 344 F. Supp. 889, 905 (D. Del. 1972):

"The Court is of the opinion that absent some particular factor of such import as to deny to ... [appellant] an effective opportunity to participate in and defend ... [himself] in the hearings, the procedures utilized were sufficient to fulfill constitutional requirements.

...The Trial Board adhered to the ... [Statutory] Rules governing such hearings and afforded ... [appellant] an orderly opportunity to hear evidence against ... [himself] and present a defense ... The Federal Constitution does not demand specific due process procedures, nor does it impose precise trial type requirements on state administrative disciplinary proceedings." 344 F. Supp. at 905 (Emphasis supplied.) 41 Md. App., at 380.

Once again, the key point was that the parties were permitted ample cross-examination and opportunity to present both evidence and argument.

In the present case, both Petitioner and People's Counsel have produced witnesses who conducted independent investigations and visits which were not disclosed until the hearing. Both sides have had and continue to have the opportunity to cross-examine and give rebuttal evidence. This is fair and consistent with the purpose of administrative law to provide a flexible approach to the handling of controversies.

- 3 -

In this context, it is necessary to add that the rights at stake here, while important, do not involve the same kind of personal jeopardy which attaches to police disciplinary proceedings (Widonski) or unemployment hearings (Rogers). The property owner here is initiating the administrative action to overturn the legislative zoning map and has the additional opportunity to request legislative action every four years. There is no precedent to apply the Constitution in such proceedings in the same manner as if the property owner were accused of a crime.¹

III. THE FOURTH AMENDMENT

Even assuming this were a criminal proceeding, there has been no constitutional violation. In Hester v. United States, 265 U.S. 57, 44 S. Ct. 445 (1924), Mr. Justice Oliver Wendell Holmes made the classic observation that "...the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." 44 S. Ct., at 446.

There, federal officers went on Charlie Hester's property, saw him give an associate a quart bottle, gave an alarm, and then pursued them. The officers proceeded to pick up and examine the bottle and a jug without a warrant. The Supreme Court had no difficulty affirming the conviction.

Since then, the "open fields" doctrine has been applied to administrative inspections to determine compliance with standards. A representative case is Shaffer v. United States, 229 F. 2d 124 (4th Cir. 1956), in which representatives of the Department of Agriculture obtained an injunction for entry to enforce the farm acreage allotment.

¹The Court of Appeals has just held that the Fourth Amendment exclusionary rule applies only to criminal trials. Whitaker v. Prince George's County, 307 Md. 368, 514 A.2d 4 (1986).

- 4 -

In the present case, the property is not lived on, and is occupied completely by open fields. There is no constitutional question.

IV. TRESPASS

Justice Holmes also implied, without deciding, that there was no trespass in Hester, because of "the justification." This is consistent with the traditional common law doctrine that a government official is privileged to enter upon land and to do such things as are appropriate for the governmental purpose. Restatement of the Law, 2d, Torts, Sec. 211 (1965). The privilege may arise by explicit statutory authority or by implication. There is extensive discussion in the Opinion of the Attorney General entitled Counties - Municipalities - Authority of Local Governments to Enter Land to Enforce Planning and Zoning Laws Under Article 668 - Power to Enact Ordinance for this Purpose (February 25, 1977).

In the present case, the Planning Director is responsible to make a report and recommendation on each zoning case pursuant to Sec. 2-58.1(e) of the Baltimore County Code. Moreover, the District Forestry Board or its agent is authorized to "enter upon any woodland in the county or district in performance of its duty." Md. Ann. Code NR Art. Sec. 5-606(b)(1). Those duties are broadly defined in Sec. 5-606(a). Finally, the People's Counsel is responsible for the defense of the comprehensive zoning maps, may call upon county officials, and may avail itself of the services of experts. Baltimore County Charter Sec. 524.1(b).

Plainly, the activities of County and State officials in examining property in the open fields in connection with a zoning proceeding do not amount to a trespass.

- 5 -

V. IMPLIED CONSENT

It is necessary to underline that questions as to the appropriateness of entry upon land by governmental officials usually arise where the government is initiating an enforcement action. The "open fields" doctrine, in the constitutional setting, and the common law doctrine of justification have evolved most often in cases where there is at stake a potential determination of liability or violation of the law.

Accordingly, when property owners apply for permits relating to land use, it is especially to be expected that the appropriate officials will make such reasonable inspections as are necessary to carry out their jobs. Traditionally, the officials act independently and at their own pace, and this is understood. Of course, their reports are subject to question and further review. But nobody would seriously contend that a building inspector trespasses every time he goes to a building site in the course of his daily travel.

The bottom line is that property owners usually know, and in any event, should reasonably expect, that zoning petitions will be followed by pertinent government inspection.

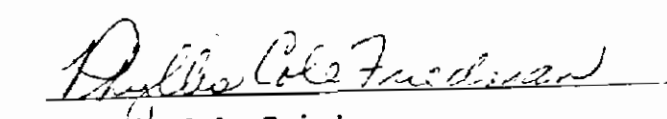
CONCLUSION

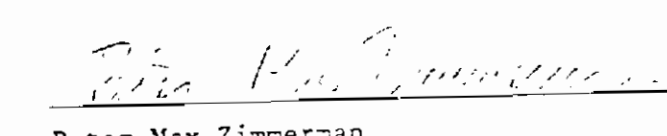
For the foregoing reasons, the Board of Appeals should find and declare:

1. That there has been no violation of procedural due process.
2. That there has been no violation of any constitutional rights.
3. That there has been no trespass.
4. That, as a matter of law, the property owner is deemed to consent to reasonable visitation and inspection of the property by appropriate County officers and employees.

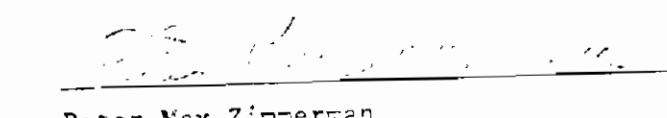
- 6 -

5. That, in any event, the exclusionary rule does not apply to these proceedings.


Phyllis Cole Friedman
People's Counsel for Baltimore County


Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 19th day of December, 1986, a copy of the foregoing People's Counsel's Memorandum was hand delivered to Michael U. Gisriel, Esquire and W. Thomas Gisriel, Esquire, 210 E. Lexington Street, Suite 400, Baltimore, MD 21202; and George C. Doub, Jr., Suite 1800, 2 Hopkins Plaza, Baltimore, MD 21201.


Peter Max Zimmerman



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

June 4, 1986

Michael Gisriel
Suite 400
210 E. Lexington Street
Baltimore, MD 21202-3514

Re: Case No. R-86-110
Conservation Associates

Dear Mr. Gisriel:

The Board looks with great reluctance on further postponements of the above entitled case. The Board also recognizes the petitioner's desire to have the case heard on consecutive or near consecutive dates.

In order to afford consideration to the People's Counsel's request for a postponement and the reasons stated therein, the Board will grant the requested postponement and reset the case for hearing on:

Tuesday, August 12, 1986 at 10 a.m. and
Wednesday, August 13, 1986 at 10 a.m.

This affords all parties two and one-half months to adjust schedules to suit these dates.

Unless some extreme circumstance intervenes, these are firm dates for this hearing. If such extreme circumstances presently exist, please notify this Board within ten (10) days from the date of this letter so that these dates may be assigned to other cases.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:e

cc: Phyllis Cole Friedman
Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.
Doris C. Woodward

Michael Gisriel
Page 2

Re: Case No. R-86-110

cc: Weldon Hale
Avis Reed
Richard B. Buck
Frances P. Matthai
Phyllis A. Zheutlin
Kathleen Pontone
Lisa Keir
Judy Baer
Wilfred Keir
Betty Beck
Jim Cox
George Doub
Gretchen Feldman
Michael McMahon, Esq.
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell

PETITION FOR ZONING RE-CLASSIFICATION

SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law

of Baltimore County, from an RC-2 zone to an RC-5 Zone for
306 acres out of the total tract of 682 acres of the subject property
for the reasons given in the attached statement. (See also the attached maps.)

NOTE: The following information is relevant to the subject property:

Total Area: 682 acres
Zoning reclassification sought for: 306 acres
Location: Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road
Map: 059; Block 01 + 02
Parcel 215/397/454; Liber 5797 folio 349 through 356
Property Number(s) 17-00-013398, 013399 and 013400.

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser:

N/A
(Type or Print Name)

Signature

Street or Box

City and State

Attorney for Petitioner:

Michael Gisriel, Esquire

(Type or Print Name)

Signature

204 North Liberty Street, Suite 400

Street or Box

Baltimore, MD 21201

City and State

Attorney's Telephone No. (301) 539-0513

Legal Owner(s):

CONSERVATION ASSOCIATES

(Type or Print Name)

BY:

Signature Michael Gisriel, Attorney

CAVEMEN PROPERTIES

(Type or Print Name)

BY:

Signature Michael Gisriel, Attorney

KINGDON GOULD, JR., Trustee

BY:

Signature Michael Gisriel, Attorney

Street or Box 470 PMT, 1725 DeSales St., NW

Suite 900

Washington, D. C. 20036

City and State

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

Michael Gisriel, Esquire

Name

(301) 539-0513

Telephone No.

BAM Form 1



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Cobson, Maryland 21204
(301) 494-3180
December 26, 1985

NOTICE OF ASSIGNMENT

(CONTINUED FROM DECEMBER 19, 1985)

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

CASE NO. R-86-110

Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

ASSIGNED FOR:

WEDNESDAY, APRIL 30, 1986, at 10 a.m. AND THURSDAY, MAY 1, 1986, at 10 a.m.

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioners
"
"

Phyllis C. Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

April 29, 1986

NOTICE OF POSTPONEMENT and REASSIGNMENT

CONTINUED HEARING FROM 12/19/85

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

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 to RC-5
NE/S PARK HEIGHTS AVE. 407' and 1500'
NW CAVES ROAD
4th DISTRICT

Scheduled for hearing on Wednesday, April 30, 1986, has been POSTPONED at the request of counsel for the Petitioner (wants consecutive hearing dates) and has been

REASSIGNED FOR:

TUESDAY, JULY 9, 1986 at 10 a.m. and
THURSDAY, JULY 10, 1986 at 10 a.m.

cc: Michael Gisriel, Esquire

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioner
"
"

Doris C. Woodward

Requested Notification

Weldon Hale

" "

Avis Reed

" "

Richard B. Buck

Protestant

Frances P. Matthai

" "

Phyllis A. Zheutlin

" "

Kathleen Pontone

" "

Lisa Keir

" "

Judy Baer

" "

Wilfred Keir

" "

Betty Beck

" "

Jim Cox

" "

George Doub

" "

Gretchen Feldman

" "

Phyllis Cole Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James Earl Kraft

Board of Education

Arnold Jablon

Jean M. H. Jung

James E. Dyer

Norman E. Gerber

James G. Hoswell

Edith T. Eisenhart, Adm. Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

April 21, 1986

NOTICE OF POSTPONEMENT

CASE NO. R-86-110
Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

THE ABOVE CASE, SET FOR HEARING ON THURSDAY, MAY 1, 1986, at 10 A.M.,

HAS BEEN POSTPONED BY THE BOARD AT THE REQUEST OF PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY. (THE MAY 1st DATE IS THE ONLY DATE CANCELED.)

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates

Petitioner

Cavemen Properties

" "

Kingdon Gould, Jr.

" "

Phyllis C. Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell

Jane Holmen, Secretary

12/19/85 - R-86-110 - Weldon Hale, Esq. Pres.
Community Residents agreed to this Re-classification -
Richard B. Buck 11219 Kensington Ave. P-21
Frances P. Matthai 18331 Gessia Fair Rd. Caves Mills 21117
Phyllis A. Zheutlin 22 Covered Lane - O.H. 21117
Kathleen Pontone 25229 Caves Rd. on 21117
Lisa Keir 11806 Kensington Ave 21117
Judy Baer VPC-Bashaw-Towson, Md 21214
Wilfred Keir 11812 Kensington Ave. O.M 21117
Jim Cox 36 Caveswood Ln 21117
George Doub 2700 CAVES RD 21117
Gretchen Feldman 27 Caveswood Ln - CM- 21117
(above got notice sent to them)



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Cobson, Maryland 21204
(301) 494-3180
December 26, 1985

NOTICE OF ASSIGNMENT

(CONTINUED FROM DECEMBER 19, 1985)

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

CASE NO. R-86-110

Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

ASSIGNED FOR:

WEDNESDAY, APRIL 30, 1986, at 10 a.m. AND THURSDAY, MAY 1, 1986, at 10 a.m.

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioners
"
"

Phyllis C. Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Cobson, Maryland 21204
(301) 494-3180
October 23, 1985

NOTICE OF ASSIGNMENT

(CONTINUED FROM OCTOBER 23, 1985)

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

CASE NO. R-86-110

Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

ASSIGNED FOR:

THURSDAY, DECEMBER 19, 1985, at 1:00 p.m.

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioners
"
"

Phyllis C. Friedman

People's Counsel

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIAVERMAN
Deputy People's Counsel

December 17, 1985

William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Conservation Associates, Petitioner
Kingdon Gould, Jr., Trustee
Zoning Case No. R-86-110

Dear Mr. Hackett:

Please issue a subpoena for Kingdon Gould, Jr., Petitioner, in the above-captioned matter, to appear at the County Board of Appeals hearing set for Thursday, December 19, 1985, at 1:00 p.m., in Room 218, Court House, Towson, MD 21204, and serve on Michael Gisriel, Esquire, 204 North Liberty St., Suite 400, Baltimore, MD 21201, Attorney for Mr. Gould.

Thank you for your assistance in this matter.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

PCF:sh

Mr. Sherliif:

Please issue the above summons.

John L. Damron
John L. Damron, Board of Appeals, Baltimore County

RECEIVED
COUNTY BOARD OF APPEALS
DEC 17 11 14 30

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204
October 31, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Hackett:

Enclosed are updated comments on Case Number R-86-110, Conservation Associates Property.

Two different pages of comments have been supplied because the two tracts of land in question are serviced by two different elementary schools at this time. The larger tract of land, 277.005 acres, would be serviced by the Franklin Elementary School. This information is on the first page.

The smaller parcel of land, 26.344 acres, would be serviced by the Owings Mills Elementary School, and is on the second page of comments.

Both tracts of land would be serviced by the Owings Mills Jr./Sr. High School.

All enrollment figures and pupil yields have been updated to reflect the most recent information available.

I hope this information will be useful for your hearing.

Sincerely,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JLD/1h

Enclosures - 2

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: 10/31/85

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1

RE: Item No: 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507' NW Caves Road (277.005 Acres)
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

School Situation September 1985

School	Enrollment	Capacity	Over/Under
Franklin Elementary	550	480	+70
Owings Mills Jr./Sr.	995	1210	-215

Student Yield With:

	Existing Zoning	And	Proposed Zoning
Elementary	8		41
Middle	5		24
High	4		21

Very truly yours,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JD/1h

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: October 31, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1

RE: Item No: 4
Property Owner: Conservation Associates
Location: NW/S Caves Road, SW of Park Heights Avenue (26.344 Acres)
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

School Situation September 1985

School	Enrollment	Capacity	Over/Under
Owings Mills Elementary	573	644	-71
Owings Mills Jr./Sr.	995	1210	-215

Student Yield With:

	Existing Zoning	And	Proposed Zoning
Elementary	1		4
Middle	1		2
High	1		2

Very truly yours,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JD/1h

9/23/85 - Re: Case No. R-86-110 - Conservation Associates

I received a call today from Richard Shofar stating that a sign for the above case was posted on his property on Park Heights Ave. He said this is undeveloped land and that he was not aware that the sign was on his property until this past weekend. The location of the property as reflected in the file, is NE/S Park Heights Ave., 467' and 1507' NW Caves Road. He said his property is about 1 1/2 miles above Caves Road or approximately 6500'.

In addition to this Mr. Shofar wanted to know about the requested reclassification, the adjacent zoning, etc. Finally, in order to have him receive proper advice I referred him to Jim Dyer, who could also straighten out the sign situation with him.

Perhaps you will remember, last week we had a call about the sign being on a property on Green Spring Ave. instead of Caves Road.

I then talked with Jim Dyer about the confusion of these signs and the fact that the location as shown in the file does not state that part of the petition is on Caves Road. After checking the file, Jim found that there had been a mixup in their office as the petition covers two separate parcels of land. Therefore, inasmuch as the case is being continued in open hearing tomorrow, he decided to have the property readvertized with the proper description and he will personally see that the signs are posted properly.

The new ad and the new signs will show the continued hearing date of 10/23 so that the public will be informed as to the date the case will be heard in its merits.

BTE

9/16/85 - Re: Case No. R-86-110 - Conservation Associates - Hearing 9/24/86

I received a call today from a Mr. Keir of 11812 Greenspring Avenue stating that a sign for the above case had been posted on his property, that he had removed it, and if we wanted it that it would be by his garage.

I called the posting man, Mr. Arata, and informed him of the situation. According to my records the property involved is on the NE/S of Park Heights Avenue 467' and 1507' NW of Caves Road. I requested Mr. Arata to go out to the property, retrieve the sign and check his records to find the proper location.

9/17/85 - Mr. Arata called me this morning to advise that he had consulted with Mr. Dyer as to the proper location of the signs as the Zoning Office marks the plats where the signs are to be posted. This case involves two parcels of land. Mr. Arata said he had posted the sign where it was shown on the plat but the person in the Zoning Office had marked the plat wrong. The sign on Greenspring Ave. should have been on the parcel on Caves Road. So --- for the record the sign on the Park Heights Ave. parcel was posted on 9/6, which was proper timing. However, the Caves Road sign was put up on 9/16, so there might be a question about this.

This is the case that is being continued after its opening on 9/24

PETITION FOR RECLASSIFICATION

LOCATION: Parcel 1: West side of Greenspring Avenue, 1300' Northwesterly from the centerline of the intersection of Caves Road & Greenspring Avenue.

Parcel 2: North side of Caves Road, 2400' Southwesterly from the intersection of the centerlines of Caves Road and Park Heights Avenue.

PUBLIC HEARING: Wednesday, October 23, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing for the reclassification of the zoning status from an R.C.-2 Zone to an R.C.-5 Zone. Parcel 1 containing 277.005 Acres and Parcel 2 containing 26.344 Acres; and that parcel of land in the 4th Election District of Baltimore County.

Being the property of Conservation Associates, as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 22, 1986

(CONTINUED HEARING)

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 24(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.

(CONTINUED HEARING -- FROM 12/19/86)

CASE NO. R-86-110
Item #4, Cycle I
CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE 467' AND 1507' NW CAVED ROAD
4th DISTRICT

TO BE CONTINUED ON: Friday, January 23, 1987 at 9:00 a.m.

cc: Michael Gisriel, Esquire	Counsel for Petitioner
Conservation Associates	"
Cavemen Properties	"
Kingdon Gould, Jr.	"
Doris C. Woodward	"
Weldon Hale	"
Avis Reed	"
Richard B. Buck	Protestant
Frances P. Matthai	"
Phyllis A. Zheutlin	"
Kathleen Fontone	"
Lisa Keir	"
Judy Baer	"
Wilfred Keir	"
Petty Beck	"
Jim Cox	"
George Routh	"
Gretchen Feldman	"
Phyllis Cole Friedman, Esquire	People's Counsel
Michael McMahon, Esquire	Office of Law
James Earl Kraft	"
Arnold Jablon	"
Jean M. H. Jung	"
James E. Iyer	"
Margaret E. du Bois	"
Norman E. Gerber	"
James G. Howell	"

Kathi C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Columbia, Maryland 21204

(301) 461-3180

December 4, 1986

CONTINUED HEARING

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.

CONTINUED HEARING FROM 12/03/86

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES

FOR RECLASSIFICATION FROM RC-2 TO RC-5

NE/S PARK HEIGHTS AVE. 467' and 1507'

NW CAVES ROAD

4th DISTRICT

Friday, December 19, 1986 at 9:00 a.m.

Counsel for Petitioner

Petitioner

Petitioner

Petitioner

Petitioner

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Kathi C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

Room 200 Court House

Columbia, Maryland 21204

(301) 494-3180

July 9, 1986

NOTICE OF POSTPONEMENT and REASSIGNMENT

CONTINUED HEARING FROM 12/19/85

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.

CASE NO. R-86-110

CONSERVATION ASSOCIATES

FOR RECLASSIFICATION FROM RC-2 TO RC-5

NE/S PARK HEIGHTS AVE. 467' and 1507'

NW OF CAVES ROAD

4th DISTRICT

Scheduled for hearing on Tuesday, August 12, 1986 and Wednesday, August 13, 1986 at 10 a.m. has been POSTPONED by agreement of counsel and has been

REASSIGNED FOR:

TUESDAY, DECEMBER 2, 1986 at 10 a.m. and

WEDNESDAY, DECEMBER 3, 1986 at 10 a.m.

cc: Michael Gisriel, Esquire

Counsel for Petitioners

Conservation Associates

Petitioner

Cavemen Properties

"

Kingdon Gould, Jr.

"

Phyllis Cole Friedman

People's Counsel

Michael McMahon, Esquire

Office of Law

James Earl Kraft

Board of Education

Doris C. Woodward

Requested Notification

Weldon Hale

"

Avis Reed

"

Richard B. Buck

Protestant

Frances P. Matthai

"

Phyllis A. Zheutlin

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Kathleen Pontone

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Lisa Kier

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Judy Baer

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Wilfred G. Keir

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Betty Beck

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Jim Cox

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George Doub

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Gretchen Feldman

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Arnold Jablon

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Jean M. H. Jung

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James E. Dyer

"

Norman E. Gerber

"

James G. Hoswell

"

George Davis - Kingdon Gould's

John E. Goldberg - Gould

Edith T. Eisenhart, Adm. Secretary

PETITION FOR RECLASSIFICATION

LOCATION:

Northeast side of Park Heights Avenue, 467 feet and 1507 feet North and West of Caves Road - Two Parts

PUBLIC HEARING:

Tuesday, September 24, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

Present Zoning: R.C. 2

Proposed Zoning: R.C. 5

All that parcel of land in the 4th District of Baltimore County

See attached Legal Description to be used in advertisements.

Being the property of Conservation Associates as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

TRACY, SCHULTE & ASSOCIATES INC. planning • architecture • engineering

8450 Baltimore National Pike • Suite 34 • Ellicott City, Maryland 21043 • (301) 465-6105

NOTES & RECORDS DESCRIPTION
PROPERTY OF: CONSERVATION ASSOCIATES,
CAVEMAN PROPERTIES & KINGDON GOULD, JR., TRUSTEE
FOR ZONING RE-CLASSIFICATION PETITION

Part 1

BEGINNING for the same at a point on the westerlymost side of Greenspring Avenue, said point being 1300 feet, more or less, north-westerly from the intersection of the centerlines of Caves Road and Greenspring Avenue, thence leaving said Greenspring Avenue and running along the lines of the property of Conservation Associates, et al., as recorded among the Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following five (5) courses and distances, viz:

- 1) South 58°00'00" West, 725.00 feet, thence
- 2) South 59°30'00" West, 1306.50 feet, thence
- 3) South 36°30'00" East, 673.20 feet, thence
- 4) South 57°50'00" East, 775.30 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point

being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, then leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said D.G. & E. Transmission line right-of-way the following course and distance,

- 6) North 70°46'25" West, 3279.96 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, said line, continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet

Page 4

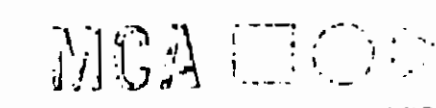
following course and distance,

- 2) North 64°24'48" East, 835.31 feet to a point on the outline of the property of Conservation Associates, et al., thence continuing along the outline of said property the following two (2) courses and distances,

- 3) South 55°30'10" East, 664.46 feet, thence
- 4) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,

- 5) South 28°15'00" West, 1080.75 feet, thence
- 6) South 31°00'00" West, 232.63 feet, thence
- 7) South 30°15'00" West, 97.35 feet to the point of beginning, Containing 26.344 acres of land more or less.

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum.



MCA ENGINEERING CORPORATION
CONSULTING
ENGINEERS
1020 Cromwell Bridge Road, Baltimore, Maryland 21204 • Tel. (301) 823-0900
Cable address: MCA/ENR

DESCRIPTION

60 ACRE PARCEL NORTHEAST SIDE OF
PARK HEIGHTS AVENUE, 467 FEET,
NORTHWEST OF CAVES ROAD
BALTIMORE COUNTY, MARYLAND

Beginning for the same on the center line of Park Heights Avenue at the end of the 78th or S 45° W 905.85 foot line of the land described in the deed from Janon Fisher, Jr. and others to Caves Development Corporation, dated October 1, 1964, recorded among the Land Records of Baltimore County in Liber R.R.G. 4369, page 305, running thence binding on the center line of said Park Heights Avenue (1) N 45° W 1040.40 feet, thence (2) N 45° E 3163.3 feet to a point on the 74th line of said land, thence binding on a part of said 74th line and continuing to bind on the 75th through the 77th lines of said land five courses: (3) S 31° E 78.6 feet, (4) S 52° 20' E 775.50 feet, (5) S 49° W 2323.20 feet (6) S 45° E 396.00 feet, and (7) S 45° W 905.85 feet to the place of beginning.

Containing 67.00 acres of land.

J.O. 1-64211A
August 21, 1977
W.O. 18742C
rw:bdg

Rec'd for record SEP 1 1977
For Elmer H. Kahler, Jr., Clerk
Mail to THE TITLE GUARANTEE COMPANY
Receipt No. 9-12-00

A Division of Walter Kilde & Company, Inc.

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
FROM R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS
AVENUE, 467' AND 1507' NORTH-
WEST OF CAVES ROAD
4th ELECTION DISTRICT
CONSERVATION ASSOCIATES,
ET AL, PLAINTIFFS
ZONING FILE NO. R-86-110

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 40
Folio No. 177
File No. 87-CG-2107

CERTIFIED
BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come 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 the Board of Appeals of Baltimore County:

ENTERED FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

No. R-86-110
March 1, 1985 Petition of Conservation Associates for a reclassification for 306 acres of total area of 682 acres from R.C. 2 to R.C. 5 on property located on the northeast side of Park Heights Avenue, 467 feet and 1507 feet northwest of Caves Road, in the 4th Election District of Baltimore County.
March 11, 1985 Amended Petition of Conservation Associates for a reclassification of 303.39 acres out of the total tract of 682 acres from R.C. 2 to R.C. 5.
April 17, 1985 Comments of Baltimore County Zoning Plans Advisory Committee - filed
Sept. 5, 1985 Certificate of Posting of Property - filed
Sept. 5, 1985 Publication in newspaper - filed

Conservation Associates
Case No. R-86-110

Sept. 24, 1985 Hearing held on petition by County Board of Appeals; continued.
Oct. 22, 1985 Hearing held on petition by County Board of Appeals; continued.
Nov. 23, 1985 Certificate of Posting of Property - filed
Dec. 19, 1985 Hearing held on petition by County Board of Appeals; first day of testimony.
Dec. 2, 1986 Hearing held by County Board of Appeals; continued.
Dec. 19, 1986 Hearing held by County Board of Appeals; continued.
Jan. 23, 1987 Hearing held by County Board of Appeals.
March -, 1987 Post-Hearing Memorandum submitted by Counsel for Petitioners.
March 24, 1987 Memorandum of Protestants in Opposition to the Petition submitted by Counsel for Protestants.
March 25, 1987 People's Counsel's Post-Hearing Memorandum submitted by People's Counsel for Baltimore County.
April 13, 1987 Petitioners' Reply Memorandum submitted by Counsel for Petitioners.
May 1, 1987 Order of the County Board of Appeals ordering that the requested reclassification from R.C. 2 to R.C. 5 as petitioned for be DENIED.
May 21, 1987 Joint Motion of Petitioners and Protestants for a 60-Day Extension of Time to File an Appeal and for this Board to Exercise its Revisory Power over its Opinion and Order submitted by Counsel for Petitioners.
May 29, 1987 Order of the County Board of Appeals ordering that the Petition for Extension of Time and Request for Reconsideration be DENIED.
May 29, 1987 Order for Appeal filed in the Circuit Court for Baltimore County by Michael Gisriel, Esquire, and Thomas J. Gisriel, Esquire, on behalf of Conservation Associates, et al.
June 4, 1987 Certificate of Notice sent to all interested parties.
June 8, 1987 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County.

Conservation Associates
Case No. R-86-110

Petitioner's Exhibit No. 1 - Resume of James R. Schulte
" " No. 2 - Topographic Map (Bd's closet)
" " No. 3 - Slope Condition Map (Board's closet)
" " No. 4 - Land Uses Map (Bd's closet)
" " No. 5 - Constraints on Septic Installation Map (Board's closet)
" " No. 6 - Buildable Area Composite Map (Board's closet)
" " No. 7 - Top. Map showing same area and surrounding area (Bd's closet)
" " No. 8 - Balto Co Zoning Map (Bd's closet)
" " No. 9 - Soil Conservation Map (Board's closet)
" " No. 10 - Planning Study for Valleys
" " No. 11 - Resume of James Tracey
" " No. 12 - Boundaries Site Plan (Bd's closet)
" " No. 13 - Ltr to Gisriel from Commodari
" " No. 14 - Worthington Valley Plat (Board's closet)
" " No. 15 - Resume of George A. Stevenson
" " No. 16 - Map of subject property
" " No. 17 - Aerial photo (Bd's closet)
" " No. 18 - Aerial photo (Bd's closet)
" " No. 19 - Tax exhibits -NOT ADMITTED
" " No. 20 - Estimate of income-various uses of Petitioners' property
" " No. 21 - Estimate of income-various uses of Petitioners' property

Conservation Associates
Case No. R-86-110

Petitioners' Exhibit No. 22 - Estimate of Income - Timber Production
" " No. 23 - Resume of Joseph E. Brown
Protestants' Exhibit No. 1 - Letter to J. Smith from George C. Doub, Jr. - 8/15/84
People's Counsel's Exhibit No. 1 - Resume of Jeremy Criss
" " No. 2 - Resume of G. Richard Curran
" " No. 3 - Tax Map (Bd's closet)
" " No. 4 - Soil Overlay Map (Board's closet)
" " No. 5 - Sheet headed -Caves Valley Properties for Reclass from R.C. 2 to R.C. 5
" " No. 6 - Rags -Md Agr Land Preservation Program
" " No. 7 - Overlay Topo Map - Caves Valley (Bd's closet)
" " No. 8 - Resume of Stephen William Kane
" " No. 9 - Forest Resource Mgmt Plan
" " No. 10A thru 10C - Three (3) Forest Management Maps (Bd's closet)
" " No. 11 - Resume of John McGrain
" " No. 12 - The Green Spring Valley cover sheet: Page 235 thru 241
" " No. 13 - Hist. Map and Info. on Caves Valley
" " No. 14 - 1984 Zoning Map Issues before County Council
" " No. 15 - Resume of Larry F. Duket
" " No. 16 - Letter to Wm. T. Hackett from Larry F. Duket -11/17/86

Conservation Associates
Case No. R-86-110

People's Counsel's Exhibit No. 17 - Resume of Paul Solomon
" " No. 18A & 18B - Scale Zoning Maps adopted by County Council 1984
" " No. 19 - Ground Water Pollution Exhibit (Board's closet)
" " No. 20 - Estimated Acquisition Cost based on Joint Exh. 1 through 4

Stipulated Joint Exhibit No. 1 - Deed dated 8/25/77
" " No. 2 - Deed dated 8/25/77
" " No. 3 - Deed dated 8/25/77
" " No. 4 - Mortgage dated 8/25/77

Record of Transcript Filed.
Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court. Together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomsoever institutes the request.

Respectfully submitted,

Kathleen C. Weidenbacher
County Board of Appeals
of Baltimore County

cc: Thomas J. Gisriel, Esquire
Michael Gisriel, Esquire
Phyllis Cole Friedman, Esq.
Michael McMahon, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT
* * * * *
* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE COUNTY
* CASE NO. 87CG2107
* 40/177
* * * * *

ADDITIONAL CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 1987 a copy of the Petition was mailed first class, postage prepaid to:

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

Thomas J. Gisriel
Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(301) 539-0531

cc: Phyllis C. Friedman, Esquire
George C. Doub, Jr., Esquire
County Board of Appeals

TJC/srb

RECEIVED
COUNTY BOARD OF APPEALS
JUN 10 10 11 AM '87

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
NE/S PARK HEIGHTS AVENUE
467' AND 1507' NW CAVES ROAD
FROM R.C. 2 TO R.C. 5
4th ELECTION DISTRICT
CONSERVATION ASSOCIATES
PETITIONERS/PLAINTIFFS
Zoning File No. R-86-110

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 40
Folio No. 177
File No. 87-CG-2107

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Patricia Phipps and LeRoy B. Spurrier, 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, Thomas J. Gisriel, Esquire, and Michael Gisriel, Esquire, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire, and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavemen Properties, Kingdom Gould, Jr., Trustee, c/o RMI, 1725 DeSales Street, N.W., Suite 900, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201; Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney, Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue,

Conservation Associates
Case No. R-86-110

Owings Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117; Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Buck, 11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthai, 12321 Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills, MD 21117; Lisa Keir, 11806 Greenspring Avenue, Owings Mills, MD 21117; Wilfred G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C., P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills, MD 21117; Jim Cox, 36 Caveswood Lane, Owings Mills, MD 21117; George Doub, 2700 Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane, Owings Mills, MD 21117, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenbacher
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas J. Gisriel, Esquire, and Michael Gisriel, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavemen Properties, Kingdom Gould, Jr., Trustee, c/o RMI, 1725 DeSales Street, N.W., Suite 900, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201;

AMENDED
PETITION FOR ZONING RE-CLASSIFICATION

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition the County Board of Appeals for the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an RC-2 Zone to an RC-5 Zone for the following reasons:

1. The subject property is located in the Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road.

2. The subject property is located in the Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road.

NOTE: The following information is relevant to the subject property:

Total Area: 682 acres
Zoning reclassification sought for 303.39 acres
Location: Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road
Map: 059; Block 01 & 02
Parcel 215/397/554; Liber 5797 folio 349 through 356
Property Number(s) 17-00-013399, 013399 and 013400.

Property is to be posted and advertised as prescribed by The Baltimore County Code

I, or we, agree to pay expenses of above reclassification, Special Exception and/or Variance, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: N/A
(Type or Print Name)
Signature: [Signature]
Street or Box: [Blank]
City and State: [Blank]

Legal Owner(s): CONSERVATION ASSOCIATES, a MD Limited Partnership
(Type or Print Name)
BY: [Signature]
Signature: General Partner
CAVEMEN PROPERTIES, a MD Limited Partnership
(Type or Print Name)
BY: [Signature]
Signature: General Partner
KINGDON GOULD, JR., Trustee

Attorney for Petitioner: Michael Gisriel, Esquire
(Type or Print Name)
[Signature]
204 North Liberty Street, Suite 400
Baltimore, MD 21201
City and State
Attorney's Telephone No.: (301) 539-0513

Name and telephone number of legal owner, contract purchaser or representative to be contacted: Michael Gisriel, Esquire
Name: Michael Gisriel
Telephone No.: (301) 539-0513

AMENDMENT AND SUPPLEMENT TO PETITION
FOR ZONING RE-CLASSIFICATION

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal representative of the legal owners of the subject property situate in Baltimore County, reaffirm its Petition to Reclassify from an RC-2 zone to an RC-5 zone, a portion of the subject property, as set forth in its original Petition filed with and accepted by the Baltimore County Board of Appeals on March 1, 1985, but said legal owners, through the undersigned as the legal representative, hereby amends and supplements its Petition by filing the following items to amend, accompany and support its original Petition filed on March 1, 1985:

1. Original and three (3) copies of the Amended Petition for Zoning Reclassification by the legal owners of the subject property
2. Twelve (12) copies of the site plan of the Amended Reclassified property tied in to the metes and bounds property description of the subject property
3. Seven (7) copies of a metes and bounds property description defining the amended area which we seek to have reclassified
4. Two (2) copies of the 1981 Baltimore County 200 scale zoning map delineating the amended area sought to be reclassified
5. Two (2) copies of the 1984 Baltimore County 1,000 scale zoning map showing the amended property to be reclassified

Respectfully submitted,

[Signature]
Michael Gisriel
Attorney for Conservation Associates,
Cavemen Properties, and
Kingdon Gould, Jr., Trustee

COUNTY BOARD OF APPEALS
RC-5 MAR 11 P 4-07 E

Page 4

following course and distance,

- 2) North 64°24'48" East, 835.31 feet to a point on the outline of the property of Conservation Associates, et al., thence continuing along the outline of said property the following two (2) courses and distances,
3) South 55°30'10" East, 664.46 feet, thence
4) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,
5) South 28°15'00" West, 1080.75 feet, thence
6) South 31°00'00" West, 232.65 feet, thence
7) South 30°15'00" West, 97.35 feet to the point of beginning, Containing 26.344 acres of land more or less.

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum.



TRACY, SCHULTE & ASSOCIATES INC.
planning • architecture • engineering

8450 Baltimore National Pike • Suite 31 • Ellicott City, Maryland 21043 • (301) 465-6105

METES & BOUNDS DESCRIPTION
PROPERTY OF CONSERVATION ASSOCIATES,
CAVEMEN PROPERTIES & KINGDON GOULD, JR., TRUSTEE
FOR ZONING RE-CLASSIFICATION PETITION

Part 1
BEGINNING for the same at a point on the westerlymost side of Greenspring Avenue, said point being 1330 feet, more or less, northwesterly from the intersection of the centerlines of Caves Road and Greenspring Avenue, thence leaving said Greenspring Avenue and running along the lines of the property of Conservation Associates, et al., as recorded among the Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following five (5) courses and distances, viz:

- 1) South 56°00'00" West, 725.00 feet, thence
- 2) South 59°30'00" West, 1330.50 feet, thence
- 3) South 36°30'00" East, 673.20 feet, thence
- 4) South 57°50'00" East, 775.50 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, thence leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said B.G. & E. Transmission line right-of-way the following course and distance,

6) North 70°46'25" West, 3379.95 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, thence continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet property, being common with the centerline of said thirty (30) feet

PETITION FOR RECLASSIFICATION
LOCATION: Northeast side of Caves Road, 407 feet and 1507 feet
North and West of Caves Road - Two Parts
PUBLIC HEARING: Tuesday, September 24, 1985 at 10:00 a.m.
The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing on the following petition for zoning reclassification:
Present Zoning: R-C-5
Proposed Zoning: R-C-5
All that parcel of land in the 4th District of Baltimore County, being the property of Conservation Associates, as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

METES & BOUNDS DESCRIPTION
PROPERTY OF CONSERVATION ASSOCIATES,
CAVEMEN PROPERTIES & KINGDON GOULD, JR., TRUSTEE
FOR ZONING RE-CLASSIFICATION PETITION

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- 4) South 57°50'00" East, 775.50 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, then leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said B.G. & E. Transmission line right-of-way the following course and distance, said B.G. & E. Transmission line right-of-way the following course and distance,
6) North 70°46'25" West, 3379.95 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, thence continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet wide road, the following course and distance,
7) North 30°50'00" East, 485.18 feet, thence leaving the centerline of said road and continuing along the outline of said property the following six (6) courses and distances,
8) North 82°22'00" East, 242.62 feet, thence
9) North 82°22'00" East, 224.65 feet, thence
10) South 87°51'00" East, 215.25 feet, thence
11) North 14°41'00" East, 293.00 feet, thence
12) North 05°58'00" West, 463.20 feet, thence
13) South 82°41'00" West, 309.60 feet to a point in the centerline of the aforesaid thirty (30) feet wide road, thence running along the outline of said road, being common with the outline of said property, the following course and distance,
14) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
15) South 84°30'00" West, 1379.60 feet to a point in the centerline of the Maryland Gas Transmission Corporation right-of-way, thence continuing along the outline of said property, being common with the centerline of said right-of-way, the following course and distance,
16) South 39°36'00" West, 532.96 feet to a point, thence leaving said right-of-way and continuing along the outlines of said property, the following fourteen (14) courses and distances,
17) South 84°30'00" West, 1016.10 feet, thence
18) North 08°15'00" East, 169.73 feet, thence
19) North 35°15'00" East, 198.00 feet, thence
20) North 05°30'00" East, 396.00 feet, thence
21) North 84°30'00" East, 1386.00 feet, thence
22) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
23) North 25°30'00" West, 1476.75 feet, thence leaving the outline of the property of Conservation Associates, et al., and running the centerline of said property the following two (2) courses and distances,
24) South 55°30'10" East, 664.46 feet, thence
25) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,
26) South 28°15'00" West, 1080.75 feet, thence
27) South 31°00'00" West, 232.65 feet, thence
28) South 30°15'00" West, 97.35 feet to the point of beginning, Containing 26.344 acres of land more or less.

Part 2
BEGINNING for the same at a point in Caves Road, said point being 2,400 feet, more or less, southwesterly from the intersection of the centerlines of Caves Road and Park Heights Avenue, thence leaving said Caves Road and running along the lines of the property of Conservation Associates, et al., as recorded among Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following course and distance viz:

- 1) North 25°30'00" West, 1476.75 feet, thence leaving the outline of the property of Conservation Associates, et al., and running the centerline of said property the following two (2) courses and distances,
2) South 55°30'10" East, 664.46 feet, thence
3) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,
4) South 28°15'00" West, 1080.75 feet, thence
5) South 31°00'00" West, 232.65 feet, thence
6) South 30°15'00" West, 97.35 feet to the point of beginning, Containing 26.344 acres of land more or less.

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum.

Page 2

wide road, the following course and distance,

- 7) North 39°30'00" East, 485.15 feet, thence leaving the centerline of said road and continuing along the outline of said property the following six (6) courses and distances,
8) North 83°22'00" East, 242.62 feet, thence
9) North 85°32'00" East, 224.65 feet, thence
10) South 87°51'00" East, 215.25 feet, thence
11) North 14°41'00" East, 293.00 feet, thence
12) North 05°58'00" West, 463.20 feet, thence
13) South 82°41'00" West, 309.60 feet to a point in the centerline of the aforesaid thirty (30) feet wide road, thence running along the centerline of said road, being common with the outlines of said property, the following course and distance,
14) North 05°30'00" West, 1053.60 feet to a point, thence leaving the centerline of said road and continuing along the outlines of said property the following course and distance,
15) South 84°30'00" West, 1379.60 feet to a point in the centerline of the Maryland Gas Transmission Corporation right-of-way, thence continuing along the outline of said property, being common with the centerline of said right-of-way, the following course and distance,
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17) South 84°30'00" West, 1016.10 feet, thence
18) North 08°15'00" East, 169.73 feet, thence
19) North 35°15'00" East, 198.00 feet, thence
20) North 05°30'00" East, 396.00 feet, thence
21) North 84°30'00" East, 1386.00 feet, thence

LAW OFFICES
GISRIEL & GISRIEL
SUITE 400
AMERICAN NATIONAL BUILDING
204 N. LIBERTY STREET
BALTIMORE, MARYLAND 21201-3999

March 1, 1985

Board of Appeals of Baltimore County
Old Court House
2nd Floor
Towson, MD 21204

RE: Petition for Zoning Reclassification of Kingdon Gould, Jr. et al for
Reclassification of 306 of 682 acres
Park Heights Avenue and Caves Road

Members of the Board of Appeals:

This statement is filed in support of the Petition for Zoning Reclassification of the above captioned property. Our firm represents Conservation Associates and Cavemen Properties, two limited partnerships, and Kingdon Gould, Jr., Associates and Cavemen Properties, two limited partnerships, which consists of 682 acres of land in the Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue, along and just to the north of Caves Road. The owners of the above captioned property seek a zoning reclassification from the existing zoning of R-C-2 (rural-agricultural) for the whole tract to R-C-5 (rural-residential) for approximately 306 acres with the remaining 376 acres to remain R-C-2.

The legal basis of our Petition for Reclassification is the mistake, i.e. the arbitrary and capricious decision, of the Baltimore County Planning Staff and County Council not to reclassify any of the 682 acres of the subject property from R-C-2 to R-C-5 which resulted in the de facto economic confiscation of the property rights of the owners of the Caves property. We are submitting together with our Petition and this supporting memorandum several drawings and maps which delineate the subject Caves property and the zoning reclassification requested. For the purposes of this Petition for Zoning Reclassification, all three of the above entities which are the owners of the Caves property, join in requesting the change as outlined in our Petition and the supporting maps, drawings and memorandum.

The owners of the subject property strongly maintain that the Baltimore County Planning Staff and County Council were clearly wrong and in variance with the existing Baltimore County Zoning Regulations when they left the current R-C-2 zoning intact for the entire 682 acre tract in November, 1984. The Planning Staff and County Council used the existing property boundary line to justify its decision to leave the entire property as R-C-2. We contend that the use of the existing property boundary line is the demarcation line to determine R-C-2 from existing property boundary line. The current R-C-2 zoning for the entire 682 acre tract is clearly not the proper zoning for the entire tract.

Mr. George C. Doub, Jr.
August 17, 1984
Page 5

"There is almost a complete circle of forest clothing the south facing slopes of the Green Spring Valley, the east-facing slope towards the Harrisburg Expressway, the north-facing slopes towards the Worthington Valley and nearly the entire perimeter of the Caves Valley. These forests are absolutely central to the genius loci of this landscape, and indispensable to the identity of the Valleys and the Plateau.

"The occurrence of forest cover is associated with several roles, diminution of runoff, erosion control on steep slopes, enclosure of valleys, and the establishment of open and closed landscapes on the Plateau. The forest cover has a vital role in establishing the visual character, not alone of the valley, but of the entire area.

"Even if development on the valley floors was prohibited but permitted on the valley walls, the effect would be quite catastrophic. It is essential to retain the valley walls effectively free of development to perpetuate their serene quality."

Development principles articulated in the Plan with respect to the valley walls are as follows:

- "1. Walls without Forest Cover. Such lands should be prohibited to development and should be planted to forest cover. When they are covered with the appropriate distribution of mixed hardwoods on an average height of 25' they may be considered as category (2).
- "2. Valley Walls in Forest Cover. Valley walls in forest cover, exclusive of slopes of 25% or greater, should be developed at such a density and in such a manner as to perpetuate their present wooded aspect. The maximum density permitted for development should be 1 house per 3 acres.
- "3. Walls and Slopes of 25% or Greater. Valley walls, and all slopes of 25% or greater should be prohibited to development and should be planted to forest cover."

⁸Plan for the Valleys, p. 36.
⁹Ibid, p. 38.

Mr. George C. Doub, Jr.
August 10, 1984
Page 6

It is apparent that development under the RC-5 zone which could permit one house per 1.5 acres would be directly contrary to the principles established by the Plan for the Valleys, and sustained to this day by the County's Growth Management Plan and zoning.

It is critical to maintain the existing zoning boundaries in order to sustain the County's commitment to preservation of the Caves Valley and its valuable natural resources. With regard to the smaller parcel on the west side of Caves Road, in addition to the reasons set forth above, the zoning change should be denied for the further reason that Caves Road is presently the dividing line between the Plateau and the Valley walls, and therefore, forms a logical boundary between the RC-5 and RC-2 zones. A violation of, for example, the Caves Road boundary would open up the valley to the very form and densities of development identified in both the Plan for the Valleys and the County Growth Management Plan as severe threats to these resources.

Since the County's Growth Management Plan provides for major new growth areas, including the Owings Mills New Development Area, which encompasses ample lands for new residential growth, there appears to be no public purpose to be served by the proposed rezoning.

In conclusion, it is clear that a change from RC-2 to RC-5 for the Gould properties is totally inappropriate and should not be approved.

Yours sincerely,

Antoinette F. Seymour
ANTOINETTE F. SEYMOUR
Senior Associate

AFS:sh



COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JAMES T. SMITH, JR.
COUNCILMAN, THIRD DISTRICT

COUNCIL OFFICE: 484-3387
484-5195

August 20, 1984

Mr. Mitchell Kolkin
Mr. George C. Doub, Jr.
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Dear George and Mitchell:

Thank you for your correspondence regarding zoning issues 3-60 and 3-86 including the comments from Wallace Roberts and Todd.

Be assured that I will carefully consider all of the information contained in their report before making my decision on these rezoning issues.

Again, thank you for this important input.

Sincerely,

James T. Smith, Jr.
James T. Smith, Jr.
Councilman, Third District

JTS,JR:jh

County Board of Appeals Of Baltimore County

IN THE MATTER OF * CASE NO. R-86-110
CONSERVATION ASSOCIATES, * ITEM 4
ET. AL. *

* * * * *

PETITIONERS' HEARING MEMORANDUM

Petitioners Conservation Associates, Caveman Properties and Kingdon Gould, Jr., Trustee, respectfully submit this Hearing Memorandum, as requested by the Board on December 19, 1985, at the first day of hearings on this matter.

Statement Of The Case

Petitioners in this case are Conservation Associates, a Maryland Limited Partnership; Caveman Properties, a Maryland Limited Partnership; and Kingdon Gould, Jr., Trustee. In August, 1977, Petitioners acquired three contiguous tracts of unimproved land, totaling 682 acres of land, more or less. The respective holdings of each Petitioner are as follows:

Conservation Associates 299.3 acres
Caveman Properties 221.7 acres
Kingdon Gould, Jr., Trustee 60 acres

Because the properties are owned and controlled by the Gould family, Petitioners will be collectively referred to as the Goulds.

The Gould property is located in an area of Baltimore County known as the Caves Valley. The property contains much of the floor of the Caves Valley, but is, by no means, limited to the floor of the valley. Indeed, approximately 303.39 acres of the property's 682 acres are located on the walls of the valley and on the ridge overlooking the valley. These 303.39 acres are the subject of this petition.

The 303.39 acres located on the valley walls and ridge are unlike the remaining acreage on the valley floor in environmental conditions. The valley floor is cleared while the walls and ridge are wooded. The floor is flat while the walls and ridge are steeply sloped. The soil types on the floor are different from the soil on the walls and ridge.

All 682 acres of the Gould property are presently zoned R.C. 2. By this petition, the Goulds seek to have the 303.39 acres of the property located on the valley walls and on the ridge overlooking the valley rezoned R.C. 5.

The Baltimore County Zoning Regulations expressly entitle R.C. 2 zoning as "Agricultural" and state that the purpose of the R.C. 2 zoning classification is "...to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." The fundamental mistake made in zoning the valley walls and ridge R.C. 2 is that they are not now, and never have been, productive agricultural land. Its topography is wrong. It's too steep. Its soil type is wrong. This land is fundamentally not suitable for R.C. 2 classification

The fact that this land is wooded plainly indicates that it has not been used for agricultural purposes for generations, if ever. It is noteworthy that it is not the expressed purpose of R.C. 2 zoning to expand agricultural use to new land. Rather, the purpose is to foster the "...continued agricultural use of productive agricultural areas..." Obviously, zoning which is intended to continue agricultural use is inappropriate and mistaken for land which is not in agricultural use, and has not been in agricultural use for generations.

The unsuitability of valley walls and ridge for R.C. 2 classification is recognized by the zoning throughout the remainder of the Caves Valley area. The Gould property is

virtually surrounded by valley walls and ridge zoned R.C. 5. The main exceptions are the properties along Caveswood Road. (See Exhibit 1, which is a copy of a portion of the County zoning map) The Caveswood properties, while zoned R.C. 2, were developed in a manner more consistent with the current R.C. 5 before the density regulations for R.C. 2 were made significantly more stringent in 1979. There is absolutely no difference in suitability for agricultural use or other environmental conditions between the property which is the subject of this petition and the surrounding property zoned R.C. 5.

Elsewhere in the Caves Valley area, the northern demarcation line between R.C. 2 and R.C. 5 is the power transmission line which follows the natural environmental break between the valley floor and the valley wall. (See Exhibit 1) Such a demarcation line is consistent with the expressed purposes of R.C. 2 and R.C. 5 zoning, because the valley floor is typically suitable for agriculture while the valley wall is not. When the zoning line reaches the Gould property, however, it no longer divides land which is suitable for agriculture from land which is not. Instead, it follows the Goulds' property line. (See Exhibit 1)

This change in the zoning demarcation line has no legitimate purpose. There is no environmental difference between the Gould R.C. 2 side of the property line and the

neighboring R.C. 5 side of the line. The land does not suddenly become agriculturally productive when the line is crossed. The zoning demarcation line no longer divides land which is suitable for agriculture from land which is not.

In this petition, the Goulds seek to have this Board correct this mistake. The 303.39 acres of valley walls and ridge which are not agriculturally productive land should be rezoned R.C.5. The demarcation line between R.C. 2 and R.C. 5 should be moved down to the power line, where it is elsewhere in the valley. This line marks the transition from valley floor to valley wall, and the transition from land which is appropriate for agriculture to land which is not.

The Legal Standard

It is, of course, fundamental that there is a strong presumption that original zoning and comprehensive rezoning are correct. *Trainer v. Lipchin*, 269 Md. 667, 673 (1973); *Boyce v. Semly* 25 Md. App. 43, 49 (1975). In order to overcome this presumption, Petitioners must produce strong evidence of mistake. *Trainer v. Lipchin*, *supra*; *Boyce v. Semly*, *supra*.

Mr. George C. Doub, Jr.
August 17, 1984
Page 5

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Yours sincerely,

Antoinette F. Seymour
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Senior Associate

AFS:sh



COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JAMES T. SMITH, JR.
COUNCILMAN, THIRD DISTRICT

COUNCIL OFFICE: 484-3387
484-5198

August 20, 1984

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Mr. George C. Doub, Jr.
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
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Be assured that I will carefully consider all of the information contained in their report before making my decision on these rezoning issues.

Again, thank you for this important input.

Sincerely,

James T. Smith, Jr.
James T. Smith, Jr.
Councilman, Third District

JTS,JR:jh

County Board of Appeals Of Baltimore County

IN THE MATTER OF * CASE NO. R-86-110
CONSERVATION ASSOCIATES, * ITEM 4

ET. AL. *

* * * * *

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The Gould property is located in an area of Baltimore County known as the Caves Valley. The property contains much of the floor of the Caves Valley, but is, by no means, limited to the floor of the valley. Indeed, approximately 303.39 acres of the property's 682 acres are located on the walls of the valley and on the ridge overlooking the valley. These 303.39 acres are the subject of this petition.

The 303.39 acres located on the valley walls and ridge are unlike the remaining acreage on the valley floor in environmental conditions. The valley floor is cleared while the walls and ridge are wooded. The floor is flat while the walls and ridge are steeply sloped. The soil types on the floor are different from the soil on the walls and ridge.

All 682 acres of the Gould property are presently zoned R.C. 2. By this petition, the Goulds seek to have the 303.39 acres of the property located on the valley walls and on the ridge overlooking the valley rezoned R.C. 5.

The Baltimore County Zoning Regulations expressly entitle R.C. 2 zoning as "Agricultural" and state that the purpose of the R.C. 2 zoning classification is "...to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." The fundamental mistake made in zoning the valley walls and ridge R.C. 2 is that they are not now, and never have been, productive agricultural land. Its topography is wrong. It's too steep. Its soil type is wrong. This land is fundamentally not suitable for R.C. 2 classification

The fact that this land is wooded plainly indicates that it has not been used for agricultural purposes for generations, if ever. It is noteworthy that it is not the expressed purpose of R.C. 2 zoning to expand agricultural use to new land. Rather, the purpose is to foster the "...continued agricultural use of productive agricultural areas..." Obviously, zoning which is intended to continue agricultural use is inappropriate and mistaken for land which is not in agricultural use, and has not been in agricultural use for generations.

The unsuitability of valley walls and ridge for R.C. 2 classification is recognized by the zoning throughout the remainder of the Caves Valley area. The Gould property is

virtually surrounded by valley walls and ridge zoned R.C. 5. The main exceptions are the properties along Caveswood Road. (See Exhibit 1, which is a copy of a portion of the County zoning map) The Caveswood properties, while zoned R.C. 2, were developed in a manner more consistent with the current R.C. 5 before the density regulations for R.C. 2 were made significantly more stringent in 1979. There is absolutely no difference in suitability for agricultural use or other environmental conditions between the property which is the subject of this petition and the surrounding property zoned R.C. 5.

Elsewhere in the Caves Valley area, the northern demarcation line between R.C. 2 and R.C. 5 is the power transmission line which follows the natural environmental break between the valley floor and the valley wall. (See Exhibit 1) Such a demarcation line is consistent with the expressed purposes of R.C. 2 and R.C. 5 zoning, because the valley floor is typically suitable for agriculture while the valley wall is not. When the zoning line reaches the Gould property, however, it no longer divides land which is suitable for agriculture from land which is not. Instead, it follows the Goulds' property line. (See Exhibit 1)

This change in the zoning demarcation line has no legitimate purpose. There is no environmental difference between the Gould R.C. 2 side of the property line and the

neighboring R.C. 5 side of the line. The land does not suddenly become agriculturally productive when the line is crossed. The zoning demarcation line no longer divides land which is suitable for agriculture from land which is not.

In this petition, the Goulds seek to have this Board correct this mistake. The 303.39 acres of valley walls and ridge which are not agriculturally productive land should be rezoned R.C.5. The demarcation line between R.C. 2 and R.C. 5 should be moved down to the power line, where it is elsewhere in the valley. This line marks the transition from valley floor to valley wall, and the transition from land which is appropriate for agriculture to land which is not.

The Legal Standard

It is, of course, fundamental that there is a strong presumption that original zoning and comprehensive rezoning are correct. *Trainer v. Lipchin*, 269 Md. 667, 673 (1973); *Boyce v. Semly* 25 Md. App. 43, 49 (1975). In order to overcome this presumption, Petitioners must produce strong evidence of mistake. *Trainer v. Lipchin*, *supra*; *Boyce v. Semly*, *supra*.

In the present case, the Goulds seek to have a portion of their property rezoned from one resource conservation subcategory (R.C. 2) to another resource conservation subcategory (R.C. 5). Where the reclassification sought is from one subcategory to another, a more liberal and relaxed standard is applied to determine whether the presumption of correctness has been overcome than would be applied in an attempt to reclassify property from one use category to another. Chapman v. Montgomery County Council, 259 Md. 641, 648 (1970); Missouri Realty, Inc. v. Ramer, 216 Md. 442 (1958); Tennison v. Shomette, 38 Md. App. 1, 5 (1975), cert. den., 282 Md. 739 (1978).

Once evidence is produced which is strong enough to render the issue of mistake fairly debatable, the Board may properly reclassify a property, and the change in zoning will be upheld by the Courts. Tennison v. Shomette, supra, 38 Md. App. at 5. If the evidence before the Board is substantial enough to permit reasoning minds reasonably to conclude that the presumption of correctness of the zoning has been overcome, then the Board acts correctly in rezoning the property. Dill v. The Jobar Corporation, 242 Md. 16, 23 (1955).

Where property is zoned for a use for which it is not suitable, that zoning is a mistake which may properly be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966);

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Dill v. The Jobar Corporation, supra; Kracke v. Weinberg, 197 Md. 339 (1950); Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular... application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Specifically, property may not be zoned for an unsuitable use in order to act as a buffer for other property. Kracke v. Weinberg, supra; Northwest Merchants Terminal, Inc. v. O'Rourke, supra.

Accordingly, evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

In addition, zoning cannot be unfairly discriminatory. Land of like conditions must be zoned in like manner.

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.

Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

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Thus, zoning is improper if a property is devoted to a use which is inconsistent with the uses to which similarly situated property in the district is devoted. Hewitt v. Baltimore County, 220 Md. 48, 58 (1958); Cassel v. City of Baltimore, supra.

Therefore, evidence that neighboring properties of like character are zoned in a different manner is strong evidence of mistake absent a compelling public purpose which justifies the discrimination.

Application Of The Legal Standard

The 303.39 acres which are the subject of this petition are now zoned R.C. 2. The Baltimore County Zoning Regulations expressly entitle R.C. 2 zoning "Agricultural" and state that the purpose of R.C. 2 zoning is to protect the "...continued agricultural use of the productive agricultural areas of Baltimore County..." Accordingly, agricultural operations are the preferred use and are accorded preferred treatment over and above all other uses of R.C. 2 zoned land.

As is recognized in zoning classifications elsewhere in the Caves Valley area, valley walls and ridges are not

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productive agricultural areas. This type of land is not suitable for agricultural use.

The 303.39 acres which are the subject of this petition are all located on the valley walls and ridge. This land has never been used for agricultural purposes, and is not now used for agricultural purposes. Indeed, the land is forested, which plainly indicates that it has not been used for agricultural purposes for generations, if ever. Because the land has never been used for agricultural purposes, the purpose of R.C. 2 zoning, to foster the continued agricultural use of agriculturally productive land, cannot possibly be fulfilled.

The land under consideration is not suitable for agricultural use. Evidence of the unsuitability of the land for agricultural use is sufficient to establish that zoning the land R.C. 2 was a mistake which should be corrected by this Board.

Moreover, there is no difference in characteristics and environmental conditions between the 303.39 acres under consideration and surrounding property zoned R.C. 5. Both are valley walls and ridges. Neither is suitable for agriculture. Evidence that neighboring properties with the same environmental conditions as the 303.39 acres under consideration are zoned R.C. 5 is strong evidence that

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zoning the 303.39 acres R.C. 2 was a mistake which should be corrected by this Board.

CONCLUSION

The 303.39 acres under consideration are unsuitable for agricultural use. The R.C. 2 zoning imposed on the property restricts the property to agricultural use. Because present zoning restricts use of the property to a purpose for which it is not suited, it has been imposed in error.

In addition, the 303.39 acres under consideration have the same characteristics and environmental conditions as neighboring properties zoned R.C. 5. Thus, imposing R.C. 2 zoning on the property is unfairly discriminatory. Because the R.C. 2 zoning for the 303.39 acres is unfairly discriminatory, it has been imposed in error.

The mistake made in zoning the 303.39 acres under consideration R.C. 2 should be corrected by this Board. Accordingly, Petitioners request that the property under consideration be reclassified R.C. 5.

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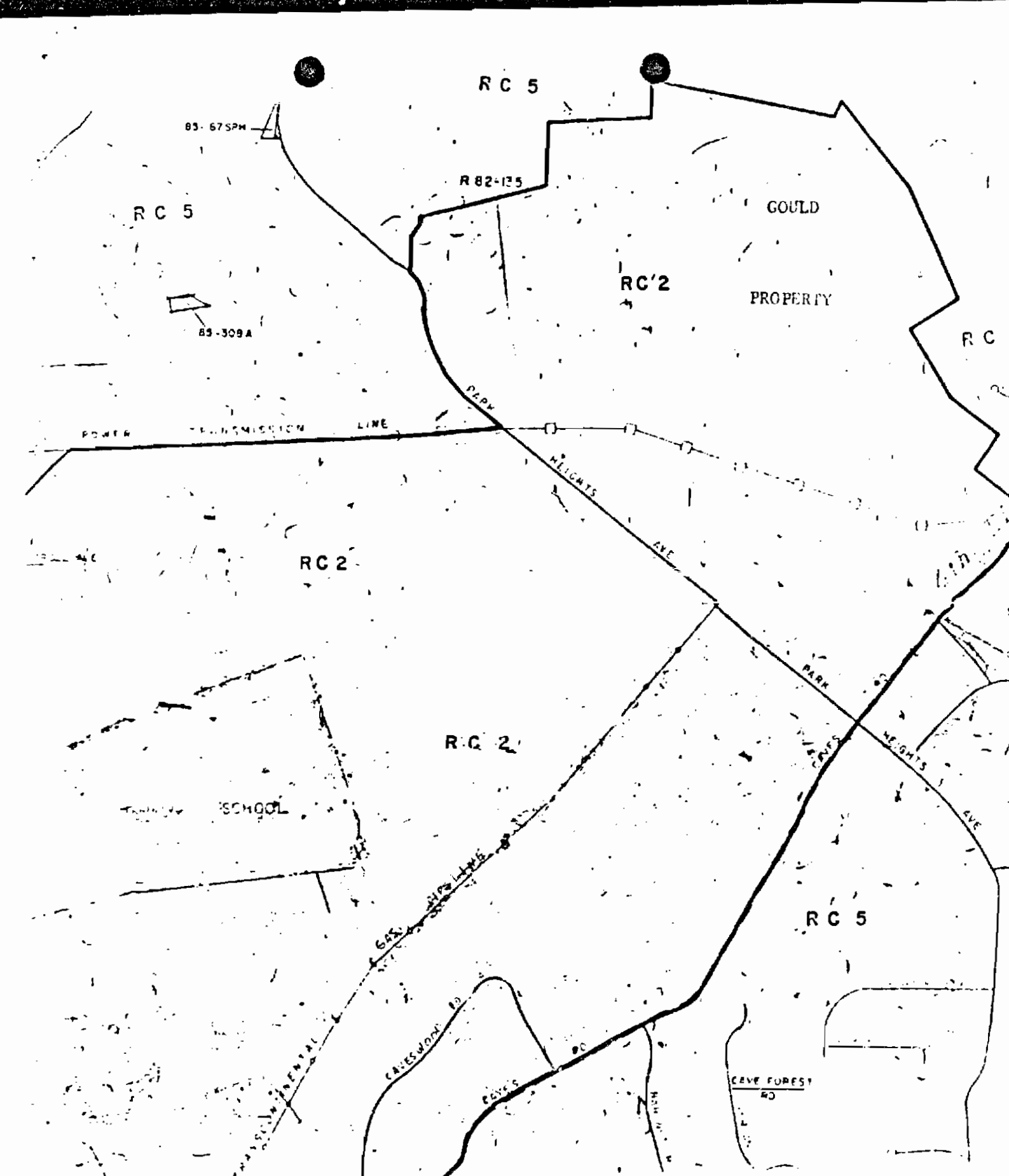
Michael Gisriel

Gisriel, Gisriel
210 E. Lexington Street
Suite 400
Baltimore, Maryland 21202
(301) 539-0513
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 1986, a copy of the foregoing Petitioners' Hearing Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204

Thomas J. Gisriel
Thomas J. Gisriel



CONSERVATION ASSOCIATES
NE/s Park Heights Avenue
467' and 1507' NW Caves Road
RC2 to RC-5

#B-86-110
Item #4, Cycle 1, 1985
4th District
306 acres

March 1, 1985	Petition filed for reclassification from RC2 to RC 5 by Michael Gisriel, Esquire on behalf of Conservation Associates
Sept. 24, 1985	Hearing held before Board; continued.
Oct 23	" " " " " "
Dec 19	Hearing held before Board -first day of testimony.
Dec 2, 1986	Hearing held before Board; continued
Dec 3	" " " " " "
Dec 19	" " " " " "
Jan 23, 1987	" " " " " " ; completed.
May 1	Board DENIED R.C. 5 zoning. (Franz, Phipps, Spurrier)
May 21	Joint Motion of Petitioners and Protestants for a 60-day Extension of Time to File an Appeal and for this Board to Exercise its Revisory Power over its Opinion and Order filed by Michael Gisriel, Esquire, and Thomas J. Gisriel, Esquire.
May 28	Board DENIED Petition for Extension of Time and Request for Reconsideration. (Spurrier, Phipps)
May 28	Order for Appeal filed in Circuit Court by Michael Gisriel Esquire and Thomas J. Gisriel, Esquire, on behalf of Petitioner.
June 4	Certificate of Notice sent to all interested parties; Circuit Court.
June 29	Transcript of Testimony filed.
June 29	Record of Proceedings filed in Circuit Court.
July 24	Order of Court that Valleys Planning Council, Inc. may participate in this appeal. (JWH)
September 15	Order of Court that State of Md and the Md Dept of State Planning may participate in this appeal. (JWH)
October 6	Hearing had in CCT; ruling held sub-curia; opinion to be filed.
October 28	Order of CCT that decision of CBoFA is AFFIRMED. (Hennegan)
November 25	Order for Appeal to Court of Special Appeals by Michael Gisriel, Esq. on behalf of Petitioner.

continued on page 2

CONSERVATION ASSOCIATES
NE's Park Heights Avenue
467' and 1507' NW Caves Road
RC 2 to RC 5
306 acres

#R-66-110
Item #4, Cycle 1, 1985

4th Election District

June 14, 1988 E Hearing had at Court of Special Appeals.

November 28 Vc Order of the Court of Special Appeals, on its own motion, that the appeal "be, and it is hereby, dismissed as moot." (Gilbert, Moylan, Wilner, JJ.)



Court of Special Appeals

Courts of Appeal Building
Annapolis, Md. 21401-1699

(301) 974-3646
WASHINGTON AREA (301) 261-2920

November 29, 1988

Michael Gisriel, Esquire
Thomas J. Gisriel, Esquire
210 East Lexington Street
Baltimore, Maryland 21202

Re: Conservation Associates et al. vs. People's Counsel
for Baltimore County et al.
No. 1724, September Term, 1987 CASE NO. R-86-110

Dear Counsel:

Enclosed find a copy of an Order of this Court dated November 28, 1988 dismissing the captioned appeal for the reason stated therein. The mandate of this Court will issue pursuant to Maryland Rule 8-606 (b).

Very truly yours,

Leslie D. Grader
Leslie D. Grader
Clerk

LDG:ls

Enclosure

cc: All counsel of record

TTY FOR DEAF:
BALTO-ANNAPOLIS AREA (301) 974-3646
WASHINGTON AREA (301) 566-0450

Conservation Associates
et al.

Appellants

vs.

People's Counsel for
Baltimore County et al.

Appellees

In the

COURT OF SPECIAL APPEALS

No. 1724

September Term, 1987

ORDER

It is this 21st day of November, 1988, by the Court of Special Appeals, on its own motion,

ORDERED that the captioned appeal be, and it is hereby, dismissed as moot. Maryland Rule 8-602 (a) (10).

Chief Judge Gilbert
CHIEF JUDGE GILBERT

Chief Judge Moylan
JUDGE MOYLAN

Chief Judge Wilner
JUDGE WILNER

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

DOCKET 40 PAGE 177 CASE NO. 87CG2107 CATEGORY APPEALS

ATTORNEYS

IN THE MATTER OF
THE PETITION OF CONSERVATION ASSOCIATES, ET AL.
FOR ZONING RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK HEIGHTS AVENUE,
467' and 1507' NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Protestant/Appellee

THE VALLEYS PLANNING COUNCIL, INC.
Deft.-Intervenor
THE MARYLAND DEPARTMENT OF STATE PLANNING

True Copy Test

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COSTS
CV GEN 872107
CLK 10.00
LERY 5.00
POST 2.00
CASH TL 77.00
#13524 C001 R02 T1240
05/28/88

- (1) May 28, 1987 - Conservation Associates, Cavenen Properties and Kingdom Gould, Jr., Trustee Order for Appeal from the Order of County Board of Appeals of Baltimore County fd.
- (2) June 4, 1987 - Certificate of Notice fd.
- (3) June 5, 1987 - Petition fd.
- (4) June 9, 1987 - Correspondence fd.
- (5) June 10, 1987 - Pltff's Additional Certificate of Service fd.
- (6) June 23, 1987 - App. of Peter Max Zimmerman for People's Counsel for Balto. Co. and Same Day Answer fd.
- (7) June 29, 1987 - App. of (George C. Doub, Jr.) for Protestant/Appellee & Same Day Answer to Petition fd.
- (8) June 29, 1987 - Transcript of Record fd.
- (9) June 29, 1987 - Notice of Filing of record fd.
- (10) July 2, 1987 - App. of (Kathleen Pontone & Donald R. Delorenz) for Deft./Intervenor (The Valleys Planning Council, Inc.) & Same Day Answer, fd.
- (11) July 2, 1987 - Deft./Intervenor (The Valleys Planning Council, Inc.) Motion to Participate or Intervene, Memorandum & Exhibits, fd.
- (12) July 6, 1987 - App. of (J. Joseph Curran, Jr. & Judith A. Arnold) for (Maryland Dept., of State Planning) & Same Day Answer, fd.
- (13) July 24, 1987 - Order of Court that the Valleys Planning Council, Inc. may participate in this appeal. (2007)

DOCKET 40 PAGE 177 CASE NO. 87CG2107

appropriate to remain in an 'agricultural' zone in order to foster conditions favorable to a continued agricultural use of productive agricultural areas by preventing incompatible forms and degrees of urban uses.

Under present zoning, Appellants could develop the subject property into one homesite for every fifty (50) acres of land. If reclassification of the parcels to R.C. 5 zoning were approved, Appellants could construct one homesite for every one and one-half (1½) acres of land. In determining whether this proposed change would foster conditions that are unfavorable to a continued agricultural use of the Caves floor, the Board heard substantial testimony. This Court notes the testimony of Larry F. Duket and Paul J. Solomon, which the Board of Appeals found most persuasive.

Mr. Duket is Chief of the Current Planning Unit of the Maryland Department of State Planning. He concluded that necessary services which would be provided to the proposed homeowners would cause an impact well beyond the specific property over which their homes were located. Additionally, it was Mr. Duket's opinion that homesites at the proposed density would compromise the aquifer that supports the farmland and reduce nutrients in the soil.

Mr. Solomon is Environmental Planner for Baltimore County. It was his opinion that homesites of the density allowable under the proposed zoning would create the potential for a serious problem with the aquifer.

In regard to the present appeal, this Court has had numerous memoranda placed before it and additionally has heard lengthy argument.

If this Court had de novo review over the present appeal, it could draw its own conclusions from the evidence placed before it; but since this Court has a standard of review to apply, any conclusions of its own are irrelevant.

CASE NO. 87 CG 2107

- (14) July 27, 1987 - Order to Show the App. of Judith A. Arnold & Enter the App. of Andrew H. Balda for the DEPT. OF STATE PLANNING fd.
- (15) Aug. 3, 1987 - Appellant's Memorandum fd.
- (16) Aug. 24, 1987 - App. of J. Joseph Curran, Jr. & Andrew H. Balda for THE STATE OF MARYLAND AND THE MARYLAND DEPARTMENT OF STATE PLANNING Motion to Participate or Intervene, Memorandum & Exhibits fd.
- (17) Aug. 24, 1987 - Protestants Memorandum of Appellees fd.
- (18) Aug. 31, 1987 - People's Counsel's Memorandum fd.
- (19) Sept. 4, 1987 - Deft. (The Valleys Planning Council, Inc.) Memorandum fd.
- (20) Sept. 15, 1987 - Order of Court that the State of Maryland and the Maryland Department of State Planning May Participate in this Appeal fd. (JWH) Copies Sent.
- (21) Sept. 22, 1987 - Appellants' Reply Memorandum fd.
- Oct. 6, 1987 Hon. A. Owen Hennegan, Hearing had, ruling held sub-curia. Opinion to be filed.
- (22) Oct. 28, 1987 - Memorandum Opinion & Order of Court that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED FD. (AOH)

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ASSIGN CLERK

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

CASE NO. 87-CG-2107

MEMORANDUM OPINION AND ORDER

This case comes before the Court on appeal from the Board of Appeals, denying a petition for reclassification of two parcels of land with a total size of approximately three hundred three (303) acres, confined within a contiguous parcel of approximately six hundred eighty-two (682) acres. Appellants appeal from a finding that although the subject parcels are not suitable for profitable agricultural use, they nevertheless should remain zoned R.C. 2 to protect the agricultural land on the floor of the Caves Valley. The Court, having reviewed the entire record below, together with memoranda and argument of counsel, renders the following opinion.

The property at issue is located in the Caves Valley area of northern Baltimore County. The present zoning for the property is Resource Conservation 2 (R.C. 2).

Appellants bought the subject property in 1977. In 1980, during the Comprehensive Rezoning Process, attempt was made to have the whole property rezoned from R.C. 2 to R.C. 5. Both the Planning Board and the County Council refused to make this change, leaving the land zoned R.C. 2.

During the 1984 Comprehensive Rezoning Process, Appellants brought a petition to have 303 acres of the subject property rezoned to R.C. 5. This

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William Wilner
JUDGE WILNER

request dealt with the same land at issue in the present appeal. Again, both the Planning Board and the County Council concluded that R.C. 2 was the appropriate classification.

Appellants took appeal of the decision to the Board of Appeals, which heard five days of testimony on the matter. On May 1, 1987, the Board of Appeals issued an opinion denying Appellants request for reclassification. Unsatisfied with the Board of Appeals' decision, Conservation Associates brought appeal before this Court.

In reviewing the decision of the Board of Appeals, this Court can not substitute its judgment in a zoning case as to the wisdom or soundness of the action of the Board of Appeals if its decision is supported by substantial evidence and the issue is fairly debatable. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 706, 376 A.2d 483 (1977), cert. den. 434, U.S. 1067, 98 S. Ct. 1245, S.S. L. Ed. 2d 769.

The Board of Appeals said in its May 1, 1987 opinion that "the testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen." There were a total of thirteen (13) expert witnesses who participated in five days of testimony.

Based on its narrow scope of review, this Court can not say that the decision of the Board of Appeals in this case was not fairly debatable or that the decision was not supported by substantial evidence.

The Board stated in its opinion that:

The fundamental issue before this Board therefore is not necessarily whether or not those parcels contained in the herein petition are appropriately considered agricultural; but rather are they

Under the applicable standard, this Court is restricted to a determination of whether the Board's decision to deny reclassification of the subject parcels was based on substantial evidence and was fairly debatable. Using this standard, the Court finds that the Board's action was based on substantial evidence and was fairly debatable.

In light of the above, it is this 28th day of October, 1987, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED.

A. Owen Hennegan
A. OWEN HENNEGAN, JUDGE

OFFICIALS:
Michael G. Gisel, Esquire &
Thomas J. Gisel, Esquire
Peter Max Zimmerman, Esquire &
Phyllis C. Friedman, Esquire
George C. Dab, Jr., Esquire
Andrew H. Balda, Esquire
Kathleen Pontone, Esquire &
Donald R. Delorenz, Esquire

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BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF *
CONSERVATION ASSOCIATES, * CASE NO. R-86-110
ET AL. * ITEM 4, CYCLE 1
* * * * *

MEMORANDUM OF PROTESTANTS IN OPPOSITION TO THE PETITION

The Protestants, Robb Tyler, Elizabeth Tyler, Mitchell Kolkin, Kathleen Pontone and George Doub, by their undersigned counsel, submit the following memorandum in opposition to the proposal to reclassify the 25-acre triangle on the northwest side of Caves Road.

INTRODUCTION

The Petitioners contend that the 25-acre triangle on the northwest side of Caves Road, the Caves Valley side, should be reclassified from agricultural (RC-2) to residential (RC-5) because all of the other property on the valley side of Caves Road has been developed into residential lots. In fact, a great deal of the property on the Caves valley side of Caves Road has not been developed into residential lots of any size. Those residential lots which exist are a great deal larger than the one acre lots or 1.5 acre average density permissible under RC-5 zoning.

Furthermore, even if all of the properties abutting the valley side of Caves Road had been developed into small residential lots, that fact would not suggest that the County

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Council made a "mistake" in zoning RC-2 all property northwest of Caves Road including the petitioners 25-acre triangle. Caves Road is the logical zoning line. It would create hopeless confusion to attempt to move that line closer to the floor of Caves Valley.

Petitioner also contends that the triangle is unsuited for agricultural purposes because it is too steep, of the wrong type of soil and wooded. However, the triangle is not too steep for agricultural purposes. More than half is located on the relatively flat valley floor. (See Attachments 1, 2, and 3.) The rest slopes gently. A nearby field with steeper slopes is in corn. Nearly all of the soils are suitable for agricultural purposes. The fact that the property has not been farmed recently and that trees have been allowed to grow on the property is not a basis for concluding that the property is unsuitable for agricultural purposes, nor that it was a mistake to classify the property RC-2.

Even if all of the Petitioners' contentions were correct, the Petition must be denied because Petitioners have misunderstood their burden of proof. (1) To prove "mistake," they must prove that the County Council failed to consider relevant facts. Petitioners did not even attempt to prove the County Council failed to consider relevant facts. (2) To prove the land is unsuitable for the zoning, Petitioners must prove that the property cannot be used for any of the special exception uses. They did not even attempt to do so.

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STATEMENT OF THE FACTS

The 25-acre triangle is situated on the northwest side of Caves Road and is a portion of a 299 acre property located primarily on the floor of Caves Valley which is presently actively farmed. At least half of the triangle is on the valley floor. The rest is on the valley walls. None is on the plateau. (Plan for the Valleys, page 33, People's Exhibit 10 and 16, a copy of which is annexed hereto marked Attachment 1 and enlarged as Attachments 2 and 3. See also Petitioners' Exhibit 7.)

Caves Road is the dividing line between RC-2 and RC-5 zoning over its entire three mile length (with the exception of several hundred yards at the northern end of Caves Road near Greenspring Avenue). Caves Road runs along the ridge line which separates the walls of Caves Valley from the plateau to the southeast. (See Attachments 1, 2, and 3.)

The Petition was rejected during the last comprehensive map revision process by the staff of the Planning Office, by the Planning Board and by the County Council.

ARGUMENT

The Petitioners' post-hearing memorandum is somewhat unclear as to the basis of the Petitioners' contention regarding the triangle. The triangle is not discussed separately in the memorandum, and many of the arguments relating to the large parcel north of the power transmission line do not appear to apply to the triangle. (For example, there are no streams on the triangle.) Petitioners' arguments

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regarding the triangle appear to be set forth at pages 4, 8, 14, 16, 20-21 and 44.

1. Development on Caves Road. The Petitioners contend first that all of the property on Caves Road with the exception of the triangle has been developed residentially and therefore that it is a mistake to zone the triangle RC-2.

The assertion that all of the property on the valley side of Caves Road has been developed inconsistently with RC-2 zoning simply is not true. For example, the properties immediately to the southwest of the triangle on the valley side of Caves Road are large, undeveloped tracks. These property owners are affected by the RC-2 zoning just as are the Petitioners. The assertion that "the zoning has no effect on any property owner on Caves Road other than the Goulds" (Petitioners' Memo p. 44) is not correct. Furthermore, there are few if any lots on the valley side of Caves Road throughout its entire length which are nearly as small as one acre lots permissible under RC-5 zoning.^{1/}

Moreover, the triangle extends approximately a quarter of a mile from Caves Road and onto the valley floor. (Attachment 1.) The requested rezoning of the triangle does

^{1/} Petitioners memorandum (p. 44) quotes Mr. Schulte as testifying: "RC-5 on this side [of Caves Road], RC-2 on this side, but driving down the road the difference in zoning would not be apparent." That the two sides of Caves Road look the same is hopelessly irrelevant. Furthermore, it is mere opinion. It has repeatedly been held that mere opinions of experts may not serve as the basis of a finding of mistake. Any such finding must be based on the facts on which the expert relies. *Coppolino v. County Board of Appeals*, 23 Md. App. 358, 371-372 (1974); *Howard County v. Dorsey*, 292 Md. 351, 359 (1982).

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not extend simply the width of one lot from Caves Road. Therefore, the presence of houses on lots abutting the valley side of Caves Road bears no relationship to the requested rezoning.

Even if all of the residential property fronting on the valley side of Caves Road were developed in one and 1.5 acre lots, that fact would not justify a claim of mistake with respect to the RC-2 zoning of the triangle. Caves Road is the dividing line between RC-2 and RC-5 throughout its entire length, approximately three miles (with the exception of several hundred yards near Greenspring Avenue). Caves Road is a clear and uniform and therefore rational dividing line between RC-2 and RC-5. Any effort to locate the RC-2 boundary closer to the floor of Caves Valley would require adopting more arbitrary and less well-defined boundary lines than Caves Road.

Furthermore, Caves Road runs essentially along the crest of the Caves Valley walls. It is a good approximation of the dividing line between the walls of Caves Valley and the plateau to the southeast. (See Attachments 1, 2, and 3.) Both Ducet and Solomon testified that ideally the dividing line between RC-2 and RC-5 should be located at the crest of the valley walls. Therefore, Caves Road is an especially sensible line of demarcation between RC-2 and RC-5 zoning.

For the County Council to have selected Caves Road as a dividing line between RC-2 and RC-5 therefore could not rationally be considered a "mistake" even if the valley side of

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Caves Road were developed along its entire length with 1.5 acre and one acre lots.

The contention that the triangle should be zoned RC-5 leads the Petitioner to other insurmountable intellectual difficulties.

If the triangle were zoned RC-5, the dividing line between RC-2 and RC-5 on the west side of the triangle would be the property line. The owner of the property to the west of the triangle (marked in blue on Attachments 1, 2, and 3) would then have an irresistible argument that his property should also be zoned RC-5. The camel's nose would be firmly under the tent. A domino effect would then sweep west from the triangle along the south wall of Caves Valley all the way to Garrison Forest Road. The same argument would justify rezoning the west wall of Caves Valley (on the east side of Garrison Forest Road) and on the north side of Caves Valley as well.

In other words, if the County Council had zoned all of the property on the valley side of Caves Road RC-2 except the triangle and had zoned the triangle RC-5, such zoning would have discriminated against the other owners of the valley walls.

In addition, most of the northern side of the triangle is not bounded by a property line or road or any other line at all. (See Attachments 1, 2 and 3.) More than half of the triangle lies on the valley floor. If the County Council had selected Caves Road to divide the RC-2 and RC-5 zoning, but had zoned the triangle RC-5, it would have discriminated against

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the owners of the valley floor. No logical basis would exist to oppose rezoning to RC-5 many if not all additional portions of the Caves Valley floor.

To rezone the triangle RC-5 would therefore create an enormous threat to the continued agricultural character of Caves Valley.

There is simply no logic to the Petitioners' contention that it was a "mistake" for the County Council to zone the triangle RC-2 because portions of the valley side of Caves Road have been developed.

2. Soils. Petitioners' memorandum argues that soils of the triangle are unsuitable for agricultural purposes. People's Council's Exhibit 5 indicates, however, that the triangle is composed virtually entirely of soils in the categories of capability units 2 and 3. Even according to the testimony of the Petitioners' own experts, those soils are suitable for agricultural purposes. (Petitioners agricultural expert, Stephens, testified that capability unit 3 soils are farmed, although they tend to be less productive than categorizes 1 and 2.)

The legislative statement of findings of the RC-2 zoning (a copy of which is annexed hereto as Attachment 4) states first that "Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development. From that testimony and that legislative

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finding, Petitioners' counsel argues that land having capability unit 3 soils should not be zoned RC-2, and that it is a mistake to zone properties with such soils RC-2. This contention, however, is not supported by the legislative findings or by the statement of purposes of the RC-2 zoning. When read in their entirety, the statement of findings and purposes suggest that it was the intention of the County Council in establishing RC-2 zoning to protect all land suitable for agricultural purposes even though some of such lands may not be in capability unit 1 or unit 2 categories. (See Attachment 4) Clearly, it would not be a "mistake" for the County Council to decide to protect some category 3 soils by RC-2 zoning.

The Petitioners' contention that the triangle should be zoned RC-5 because it contains some capability unit 3 soils or soils of a higher category contains a logical fallacy. If only capability unit 1 and unit 2 soils could be zoned RC-2, very little if any RC-2 zoning could be sustained in Baltimore County because there are usually some soils of ratings of 3 or higher scattered among category 1 and 2 soils. The County Council cannot be expected, much less required, to draw its RC-2 zoning boundaries along the tortuous boundary lines of capability unit 1 and unit 2 soils throughout the County. Not only would that require an absurd expenditure of effort by the County Council, but, in addition, it would create a wildly tangled and unworkable patchwork of zoning boundaries.

3. Slope. It is not entirely clear whether the Petitioner contends that the triangle is too steep to be used for agricultural purposes. In any event, the topographicals in evidence make it clear that the triangle is not too steep. Petitioners' Exhibit 3 and the Plan for the Valleys p. 33 (Attachments 1, 2, and 3) show that most of the triangle is located on the relatively flat valley floor. The balance is located on a relatively gentle slope. The field several hundred yards to the west of the triangle, marked "F" on Petitioners' Exhibits 3 and 18 is considerably steeper than the sloping portion of the triangle and that field is and for at least several years has been in corn. (Cox testimony; aerial photographs; Petitioner's exhibits 3 and 18.) This fact conclusively proves that the sloping portion of the triangle is not too steep to farm (much less to use for other agricultural purposes such as orchards).

Furthermore, the triangle is a small portion of a large working farm. It would make no sense to conclude that every steep area of a farm must be zoned RC-5. As Paul Solomon testified, every farmer has some steep land on his property, and it would be destructive of the RC-2 zoning to allow farmers to rezone to residential zoning every steep area on their farms.

4. Forest Cover. Petitioners argue that the property is forested and that residential development preserves forest cover. This argument is irrelevant. The Petitioner must show that the RC-2 zoning of the triangle was the result of a

"mistake." It cannot seriously be suggested that it would be a mistake for the County Council to preserve agricultural land that is wooded and that all woodlands must be zoned residential.

5. Lack of Existing Cultivation. The Petitioner contends that RC-2 zoning was not intended to be used to protect from residential development land which is suitable for agricultural purposes but which is not presently being actively farmed. This contention is not supported by the statement of legislative findings or purposes (Attachment 4). Certainly the County Council is not foreclosed by the statement of legislative findings and purposes from zoning RC-2 land which is suitable for agricultural use even though the owner has chosen not to farm that land. Otherwise RC-2 zoning would have no meaning at all.

Furthermore, the triangle is a small part of a larger working farm. To allow farmers to obtain residential zoning for all parts of the farm which are not in active cultivation or which the farmer elects to withdraw from active cultivation would be destructive of the RC-2 zoning and contrary to its purposes.

6. Additional Testimony. There are additional testimony and exhibits of the People's Council and Protestants which further justify the RC-2 zoning of the triangle. (Attachment 5 is a very brief summary of the testimony of all of the witnesses. It is attached simply to provide a very general overview and does not purport to be complete.) For example, Antionnette Seymour of Wallace, Roberts & Todd, the

land planning firm which developed the 1966 Plan for the Valleys, testified that RC-5 zoning of the triangle would be inconsistent with the Plan for the Valleys because the Plan for the Valleys called for no development of the valley floor, development no more dense than 3-acre lots on the valley walls and more dense development only on the plateaus. The majority of the triangle is located on the valley floor with the balance on the valley wall and virtually none on the plateau.

Curran testified that land could be used for cultivation at slopes of up to 12-15% and for pasture at steeper slopes and Solomon testified that the average farm land is on a slope of between 8-15%. Attachment 3 indicates that virtually all of the triangle is well within those grades.

Duket testified that the existing RC-2 zoning was consistent with the County plans. He pointed out that the Owings Mills corridor is planned for dense residential growth and that large sums of money have been spent to provide support for that residential growth. Accordingly, no need exists for the proposed residential development of Caves Valley and there is no need for the County and State to incur the costs to support such residential development. (With respect to costs of supporting residential development see also Attachment 4, p. 24, §A000.1(f)(1).)

Duket further testified that the proposed RC-5 zoning could easily be used to show a change in the neighborhood justifying further reclassification of RC-2 property to RC-5 in

the future, that Petitioners' properties were a "keystone" for many very large tracks to the north and that if the properties were rezoned RC-5 other properties were likely to be lost to residential development pressures.

Duket is the Chief of Current Planning of the Department of Planning of Maryland. His testimony that the State supports the retention of existing RC-2 zoning on the Petitioners' property is entitled to considerable weight, certainly more weight than the hired testimony of experts of the Petitioners.

Paul Solomon testified that in establishing boundaries of RC-2 zoning in 1978, no farms were divided and that boundary lines were followed to a substantial extent. Accordingly, to grant the Petition with respect to the triangle would be completely inconsistent with the principals and procedures which were followed in establishing the RC-2 boundary lines throughout the County.

Solomon further testified with manifest logic that every farm has some forest, some steep areas and some wet areas and that if portions of the Petitioner's property were to be rezoned because they were wooded, steep or wet, every farmer would apply to have some portion of his property rezoned with consequences that were likely to be destructive of RC-2 zoning.

Solomon further testified that since the 1978 RC-2 zoning, virtually no property zoned RC-2 has been changed to RC-5. Accordingly, granting the petition would constitute a major step toward breaking the RC-2 zoning of Baltimore County.

THE APPLICABLE LAW

1. This case is governed by the principles set forth in Shadynook Improvement Association, Inc. v. Molloy, 232 Md. 265 (1963). In that case, the Petitioner sought a rezoning of a 4.7 acre track on the west side of Maiden Choice Lane in Baltimore County from R-6 which permitted one or two family residential use to R-A which permitted apartments. All of the nearby properties fronting on the west side of Maiden Choice Lane were zoned R-6.

The Court referred to the "well established rule in this State, [that] there is a strong presumption of the correctness of original zoning and of comprehensive zoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive zoning or else of a substantial change in conditions." (pp. 270-271). The Petitioner contended that the subject track was not suitable for R-6 development because of its shape and topography and because of a railroad line along its southwest side. The Court concluded that the Petitioner had failed to show that the R-6 zoning deprived the Petitioner of any reasonable use of this land and concluded that "no mistake" in the legal sense had been proven:

None of [the Petitioner's contentions] singly, nor all of them together, show that the R-6 zoning deprives the owner of any reasonable use of his land; and there is thus no taking of the appellees' property in the constitutional sense which would

invalidate the R-6 zoning Nor is the fact that the property might be put to a more profitable use under another zoning classification sufficient to show a mistake in its existing zoning. (p. 272)

By the same reasoning, the Petitioners in the Gould case have failed to prove that the RC-2 zoning deprives them of any reasonable use in their land. The evidence shows the property can be used for agricultural purposes under its existing RC-2 zoning. Furthermore, under the RC-2 zoning, the Petitioners could sell approximately 15 lots of the least productive property, and according to the uncontraverted evidence in the case would probably obtain several million dollars from such development, far in excess of the purchase price which the Petitioners paid for the entire 600 acres.

The Court in Shadynook also pointed out that the rezoning of the subject property R-A would create "the entering wedge" of such zoning in the land between Maiden Choice Lane and the Beltway to the west, adding boundaries, as we have said, must be drawn somewhere, and that street appears to be a logical or natural place at which to draw the dividing line in this area." (p. 273.) Precisely the same reasoning applies to the triangle in the case at bar. Reclassification of the triangle RC-5 would create the entering wedge of such zoning on the valley side of Caves Road and on the valley walls and floor. The County Council's selection of Caves Road as the boundary between RC-2 and RC-5 zoning is "a logical or natural place at which to draw the dividing line."

Finally, the Court in Shadynook concluded that to reclassify the subject property R-A would amount to "improper spot zoning which would be inconsistent with the comprehensive zoning for this area" shown on the rezoning map. (p. 273.) Precisely the same is true of the proposed rezoning of the triangle.

See also Francis v. Misc Gill, 196 Md. 77, 84 (1950) pointing out that "if where they draw the division line . . . is fairly debatable, their action must be sustained."

2. The Petitioners' case actually is predicated upon a misunderstanding regarding their burden of proof. Even if all of the contentions made by the Petitioners, legal and factual, were correct and had been proven nevertheless it would be necessary to deny the Petition in this case. The reason is that in order to obtain rezoning of a property on the basis of "mistake," the Petitioner must prove by strong evidence not only that a mistake was made (and that the location of the boundary line was not fairly debatable) but also the Petitioner must prove that the relevant facts were not considered by the County Council.

Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show (1) the facts that existed at the time of the comprehensive zoning but also (2) which, if any, of those facts were not actually considered by the Council. The evidentiary burden can be accomplished by . . . addressing

testimony on the part of those preparing the plan that then existing facts were not taken into account.

The evidence addressed was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate readings of facts. Second, there is no evidence to show that at the time of comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. *Howard County v. Dorsey*, 292 Md. 351, 358, 365 (1982).

The Petitioners have not offered any evidence that the County Council failed to consider any relevant facts. Mr. Gould's attorneys had made oral and written presentations to Councilman Smith and the other members of the County Council (as well as to the Planning Board and its staff).

Coppolino v. County Board of Appeals, 23 Md. App. 358 (1974) deals with the "mistake" basis for a rezoning and also with the contention that rezoning is required because the property cannot be used for any purpose under the existing zoning and accordingly that the existing zoning constitutes an unconstitutional confiscation. In order to meet the latter standard, the Petitioner must establish not only that the property cannot be used for the uses expressly permitted under the zoning but also that it is unsuitable for development by way of any of the special exception uses.

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In addition, there was no evidence presented to show that the subject property was unsuitable for development by way of special exception uses. Thus the expert opinions that the subject property was not suitable for development in the DR5-5 zone were totally unsupported by facts.

Moreover, the Court of Appeals has repeatedly held that in order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and it cannot be used for any of the permitted uses in the existing zone. *Coppolino*, p. 371-372.

The Petitioners have not offered any evidence with respect to special exception uses.

3. Petitioner acknowledges that a strong presumption generally supports original zoning but suggests that with respect to the Petition in this case which involves reclassification from one rural conservation subcategory to another, a more liberal and relaxed standard should apply. This is not supportable. RC-2 zoning is designed to preserve productive land for future agricultural uses and to protect such land from "scattered development" and "urban intrusion" (Attachment 4, p. 26 §1A01.1(A)(1)(c) and (d)). Its purpose is entirely different from that of RC-5 zoning which permits one acre lots and 1-1/2 acre average density and does not have any relationship to the preservation of agricultural property.

The purposes of these two zoning classifications are so entirely different and the preservation of agricultural land

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is of such value to Baltimore County and to the State of Maryland, that it would be illogical to apply a more liberal standard in this case than is applied with respect to reclassifications from one use category to another.

CONCLUSION

For the foregoing reasons the Petition should be denied.

Respectfully submitted,

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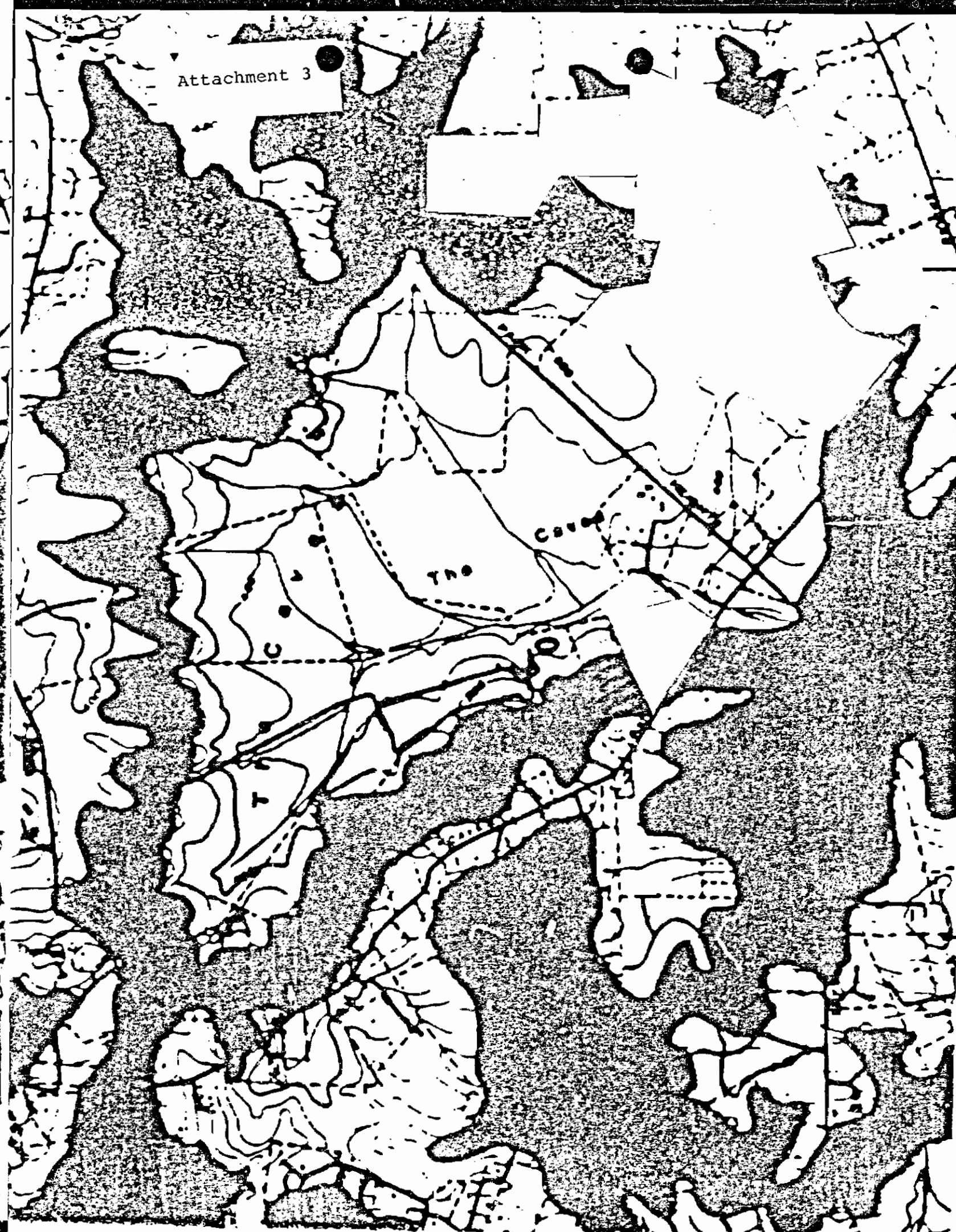
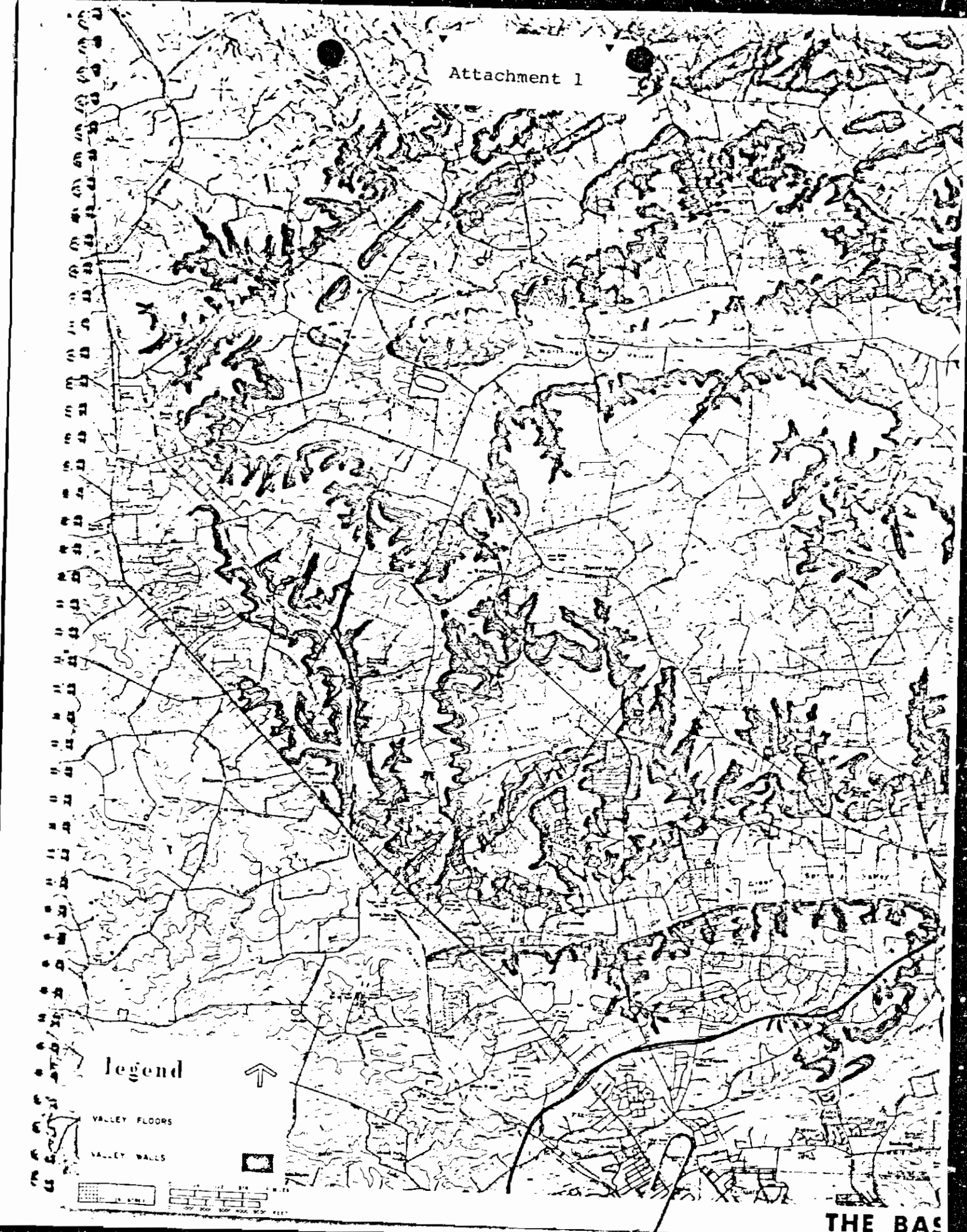
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 1987, a copy of the foregoing Memorandum of Protestants in Opposition to the Petition was mailed, first class, postage prepaid to Michael Gisriel, Esquire, Thomas J. Gisriel, Esquire, Gisriel & Gisriel, 210 East Lexington Street, Suite 400, Baltimore, Maryland 21202, and Phyllis C. Friedman, Esquire, Peter Zimmerman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204.

George C. Doub, Jr.

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ARTICLE 1A-RESOURCE-CONSERVATION ZONES [Bill No. 98-75]

Section 1A00-GENERAL PROVISIONS: ALL R.C. CLASSIFICATIONS [Bill No. 98-75]

1A00.1-Findings. It is found:

- That development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate; [Bill No. 98-75]
- That this development has occurred without the framework of a land use plan or other planning components; [Bill No. 98-75]
- That due to this and other factors, this development has formed very undesirable land use patterns; [Bill No. 98-75]
- that in general, these patterns are, or can be described as, urban sprawl; [Bill No. 98-75]
- that a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the County as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues; [Bill No. 98-75]
- that it has been established that this development carries with it an extremely high cost to the County in a number of respects including: [Bill No. 98-75]
 - the cost of servicing this pattern of development; [Bill No. 98-75]
 - the cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas; [Bill No. 98-75]
 - the cost of future development opportunities due to the fact that viable, rational alternatives will be lost totally or comprised significantly by the present form of development; [Bill No. 98-75]
- that the aspect of the comprehensive plan that is applicable and which is being considered for rural Baltimore County embodies solutions to the various problems; and [Bill No. 98-75]
- that the effective implementation of this plan requires additional zoning classifications. [Bill No. 98-75]

- Article 1A and Sections 1A00 and 1A01 enacted by Bill No. 100, 1970 were repealed by Bill No. 98, 1975 and new sections 1A00, 1A01, 1A02, 1A03 and 1A04 under new Article 1A were enacted by Bill No. 98, 1975
- Thus in Bill 98, 1975

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The following is an extremely brief summary of the testimony to give a very general overview. It does not purport to be complete.

Petitioners' Witnesses

- (1) Shulte, a land use planner, testified that the Gould property north of the power line on the Krongard side of the valley should be rezoned RC-5 (1.5 acre lots) because the demarcation, and that the triangle should be zoned RC-5 because it has considerable road frontage and because Caves Road has a number of houses on both sides, which makes its use more compatible with residential use than with agricultural use.
- (2) Tracey, a civil engineer, testified generally to the same effect.

Respondents' Witnesses

- (1) Jeremy Chriss, of the Maryland Agricultural Land Preservation Program, testified that the soils on the Gould property were of the three highest agricultural classifications and that the property would qualify for acceptance into the program by which the State purchases development rights in order to preserve farm land.
- (2) Kingdon Gould identified the deeds and mortgage showing that he paid \$750,000 for the property.
- (3) Richard Curran, Director of the County Agricultural Extension Service, testified that the soils on the Gould property were of the best agricultural classifications, that the slopes were in general not too steep for farming and purposes.
- (4) Toni Seymour (from the Philadelphia land use planning firm of Wallace, Roberts & Todd which prepared the original plan for the Valleys in 1965) testified that the Gould proposal was not consistent with the Plan for the Valleys.
- (5) Mr. Kane, an expert in timbering and forest resource management testified that timber from the Gould property could be harvested on an annual basis producing at least \$30,000 per year.

(6) John McGrain, an historian, gave some background relating to the history of Caves Valley.

(7) Mr. Haswell, a member of the Baltimore County Planning staff, testified to some of the prior proceedings relating to the Gould property before the planning staff, Board of Planning Appeals and County Council in connection with the last comprehensive revisions of the zoning maps.

(8) Larry Duket, Chief of the Department of State Planning testified on behalf of the State of Maryland to the importance of RC-2 zoning, the importance of preserving agricultural land in Maryland, and the importance of the aquifer underlining Caves Valley and supported the existing RC-2 zoning of the Gould property.

(9) Jim Cox testified that he and the community opposed the proposed zoning and that it would produce a substantial change in the neighborhood inconsistent with its present rural character.

(10) Paul Solomon of the Baltimore County planning office, explained the basis for the RC-2 zoning of the Gould property, pointing out that with only a handful of very minor exceptions, none of the property zoned RC-2 in 1978 has been changed to RC-5, that in drawing the RC-2 zoning lines the planning office followed property lines rather than dividing farms, and that if the Board allowed Gould a change with respect to part of his property because it is partly wooded, partly steep and partly traversed by streams, every farmer in the County will seek rezoning of some of his farm on that basis.

(11) Joan Lott who had been the number one salesperson for Piper & Company for several years testified that the Gould property could be divided under existing zoning into 15 20-acre lots each of which could be marketed for approximately \$250,000 to \$350,000 with minimal development expenses, and, accordingly, that Gould could develop the property under existing zoning today for approximately \$4,000,000.

Petitioners' Rebuttal

Gould's attorneys then called Shulte and Stephens briefly essentially to repeat some of their earlier testimony. They also called a land use planner, Joseph Brown, who testified that timbering the Gould property was not a suitable use in view of the proximity of residential communities.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF * CASE NO. R-85-110
CONSERVATION ASSOCIATES, * ITEM 4, CYCLE 1
ET AL *

* * * * *

PETITIONERS' REPLY MEMORANDUM

Petitioners Conservation Associates, Cavemen Properties and Kingdon Gould, Jr., Trustee respectfully submit this memorandum in reply to the memoranda submitted in this matter by People's Counsel and Protestants.

PRELIMINARY COMMENTS REGARDING PEOPLE'S COUNSEL'S MEMORANDUM

The memorandum submitted by People's Counsel consistently mischaracterizes the positions taken by Petitioners in this proceeding and makes broad sweeping statements regarding the testimony in the proceeding which are misleading, inaccurate and totally unsupported by

transcript references. It trivializes this proceeding by its reliance on so-called myths and its cavalier tone.

People's Counsel claims that Petitioners seek "concentrated development" on the petition property. (People's Counsel Memorandum, hereafter "PCM", page 2) This is patently false. The rezoning requested is R.C.5. The requested zoning not only remains within the Resource Conservation category, it is also the least dense residential zoning classification in the Baltimore County Zoning Regulations.

People's Counsel claims that Petitioners' case regarding the unsuitability of the petition property for agricultural use is limited to its unsuitability for growing crops, ignoring potential uses as pasture or for timbering operations. (PCM pp. 3-4) Again, this is false. Substantial testimony was offered regarding the unsuitability of the petition property for pasture and timbering operations. Petitioners spent seven pages of their memorandum (pp. 33-40) specifically addressing the unsuitability of the petition property for pasture or timbering operations. This seven page analysis is the same length as People's Counsel's entire memorandum.

People's Counsel characterizes Petitioners' position regarding the desirability of maintaining the existing forest cover on the petition property as a mere attempt to please the developer and "the natives", and an attempt at zoning by plebiscite. (PCM p. 4) Again, this is false, totally mischaracterizing Petitioners' position. The issue of forest cover preservation is a significant environmental issue.

Mr. Duket, who was offered by People's Counsel as a witness, testified regarding the beneficial environmental effects of forest cover in controlling sedimentation and storm water runoff. (12/19/86 M p. 79, 12/19/86 A pp. 13, 23-24) Accordingly, Mr. Duket recommended that no trees be removed along the stream valley or on the steep slopes. (12/19/86 A pp. 18, 26) Every agricultural use proposed by People's Counsel calls for removal of trees on the steep slopes and in the stream valley. Low density residential development, as sought by Petitioners, preserves forest cover. Petitioners have pointed out, at pages 27-32 of our memorandum, that the low density residential development they propose is more desirable environmentally than the agricultural uses proposed by People's Counsel because it will preserve far more of the forest cover.

Agricultural use of property is not environmentally benign, especially on property subject to severe erosion hazard as is the petition property. (See Petitioners' Memorandum pp. 24-27) Recent news coverage of the plight of the Chesapeake Bay indicates that the largest source of non-point pollution in the bay is agricultural runoff. The agricultural uses proposed by People's Counsel will significantly increase erosion and runoff from this property. Low density residential development, with the associated preservation of forest cover, will minimize the erosion and runoff. One of the reasons the R.C.2 agricultural zoning of the property is a mistake is because agricultural use of the property will significantly increase erosion and runoff thereby damaging the environment, a factor the County Council failed to consider.

PRELIMINARY COMMENTS REGARDING PROTESTANTS' MEMORANDUM

Protestants' memorandum focuses virtually exclusively on the portion of the petition property which fronts on Caves Road. This reflects the specific concerns of those protestants who, like their counsel Mr. Doub, live on or near Caves Road. Indeed, Mr. Doub's residence lies not only

on Caves Road, but also borders on this portion of the petition property.

As is the case with People's Counsel, Protestants seek to characterize testimony in the case without any transcript references. Indeed, Protestants go so far as to attach a "summary" of the testimony to their memorandum. This "summary" not only lacks any reference to the transcript to support it, it is also self serving in the extreme and glaringly inaccurate, making such basic mistakes as misspelling the names of some of the witnesses. It should not be relied upon.

As is the case with People's Counsel, Protestants also mischaracterize the positions of Petitioners. For example, Protestants suggest that Petitioners are urging the use of boundary lines of capability unit 2 soils as zoning boundary lines. (Protestants' Memorandum hereafter "PM" p. 6) Of course, no such suggestion was made by Petitioners.

The agricultural capability ratings by the U.S.D.A. Soil Conservation Service of the soils on a property necessarily must be an important factor in determining whether a property is suitable for agricultural use. Capability unit 3 soils are characterized by the Soil Conservation Service as having severe limitations for

agricultural use. (12/2/86 p. 37, 12/3/86 p. 77) Petitioners do not suggest, as Protestants claim on page 8 of their memorandum that any property that "contains some capability 3 soils" would be inappropriate for R.C.2 zoning.

In the present case, however, capability 3 and worse soils, with severe limitations for agricultural use, predominate consisting of 60% of the petition property above the transmission line and 70% of the petition property on Caves Road. (See People's Counsel Exhibit 5) The capability 2 soils which do exist on the petition property are scattered about the property in noncontiguous parcels separated from one another by steep slopes exceeding 20% and by stream bed. (Petitioners' Exhibit 9)

Where a property is predominantly capability 2 or better soils, the presence of some capability 3 soils would not foreclose proper R.C. 2 zoning. However, where a property is predominantly capability 3 or worse soils and the remaining capability 2 soils are scattered about the property in noncontiguous patches separated from one another by steep slopes and stream bed, that property is not suitable for agriculture. On that basis, the petition property is unsuitable for agriculture and R.C. 2 zoning for it is a mistake.

THIS BOARD MAY PROPERLY PLACE THE ZONING BOUNDARY WITHIN PETITIONERS' PROPERTY

People's Counsel appears to suggest that it would be improper for this Board to reclassify the 303.39 acres which are the subject of this petition because they are part of a larger 682 acre tract. (PCM pp. 2 and 3) Factually, People's Counsel's position is inaccurate. The 682 acres do not consist of one tract, but rather is made up of three tracts owned by the three Petitioners, as described at page two of our previous memorandum.

To support their position, People's Counsel has cited a string of cases having absolutely no relevance to the present case or to the issue of the propriety of this Board reclassifying the 303.39 acres under consideration. Penn Central Transportation v New York City, 438 U.S. 104 (1978) (dealing with constitutionality of development restrictions on Grand Central Station); Bureau of Mines v George's Creek, 272 Md. 143 (1974) (dealing with constitutionality of Maryland's strip mining bill); Potomac Sand and Gravel Company v Governor, 266 Md. 358 (1972) (dealing with the constitutionality of a Maryland law prohibiting dredging for sand or gravel in tidal water or marshlands). Finally,

People's Counsel quotes at length from a dissent in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), a case dealing with the constitutionality of a Pennsylvania coal law. Again, the entire quotation has no relevance to this case.

To the degree People's Counsel means to suggest that this Board must consider all aspects of the petition property in making its decision in this case, we agree. When all aspects of the petition property are considered, however, the unsuitability of the petition property for agriculture is apparent.

Elsewhere in their memorandum, at page 5, People's Counsel states:

If it is suggested that property lines are not pertinent to comprehensive zoning, then there will be chaos. Indeed, the usual contention is that it is error to split a tract.

Of course, Petitioners have never suggested that property lines are not pertinent to comprehensive zoning. Moreover, we have little doubt that in some circumstances it may be error to split a property. These factors, however, must be applied in the facts of a particular case.

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Petitioners do not suggest that property lines may never be used as zoning lines. It is clear, however, that zoning lines need not follow property lines. The Baltimore County Zoning regulations regarding resource conservation zones expressly allow single tracts to be split by zoning boundaries. Section 1A00.5 states:

Application to tract divided by zone boundary.

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels.

Moreover, People's Counsel has conceded that a single tract has been split by a zoning boundary in the immediate Caves Valley area. The property involved is the S & R Investors property across Park Heights Avenue from the petition property. It is the property for which the zoning boundary was moved down to the transmission line, the same boundary requested by Petitioners. People's Counsel concedes that the portion rezoned was 65 acres of a 240 acre tract. (PCM p.5) This is also consistent with the testimony of Mr. Solomon. (12/19/86 A p.67)

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Where small properties are involved which would be rendered unusable if they were split by zoning lines, strict adherence to property lines may be necessary. Where large tracts of land are involved, it simply is not necessary for zoning boundaries to follow property lines. There is no allegation that rezoning the petition property in this case would render the remaining land unusable for agriculture. Indeed, Mr. Solomon has conceded that the remaining land would be larger than the average farm in Baltimore County. (12/19/86 A p.97)

Mr. Hoswell, a Baltimore County planner, testified that the appropriateness of using a property line as a zoning boundary is determined on a case by case basis. Neither using the property line or failing to use the property line is inherently illogical. It depends on the specifics of each property. (12/19/86 M pp.50-51).

In any case, the end result of any rule which required that zoning boundaries be on property lines would be subdivision of large tracts as a preliminary step before requesting reclassification. Requiring such a step would be needless and wasteful.

People's Counsel can cite no authority which prohibits this Board from dividing a property with a zoning boundary,

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or requires the Board to place all zoning boundaries on property lines. The Baltimore County Zoning Regulations expressly allow zoning boundaries within a tract, and such zoning boundaries have been created in the immediate Caves Valley area. Testimony of Mr. Hoswell, a County planner, indicates that there is no inherent problem in placing the zoning boundary line away from the property line. The new zoning boundary which would arise from the reclassification sought by Petitioners is proper.

THE LEGAL STANDARD PROPOSED BY PROTESTANTS IS WRONG

In their memorandum, Protestants confuse the legal standard necessary to establish mistake in zoning with the standard necessary to establish an unconstitutional taking. Protestants suggest that Petitioners must establish that they are deprived of any reasonable use of the property in order to establish a mistake in the zoning. (PM p. 13) This standard is the standard for establishing an unconstitutional taking of the property, not the standard for establishing mistake in zoning.

Petitioners do contend that the zoning of the subject property is unconstitutional in that it deprives them of all

- 11 -

reasonable use of the property by mandating agricultural use for which the property is not suited. However, Petitioners need not establish an unconstitutional taking to prevail on the issue of mistake.

Similarly, Protestants suggest that if the appropriateness of the present zoning boundary line is fairly debatable, the existing zoning must be sustained by this Board. (PM p.15). Again, Protestants misstate the law. If the evidence produced in this proceeding renders the issue of mistake fairly debatable, this Board may properly rezone the petition property and that reclassification must be upheld by reviewing Courts.

Once evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the courts to substitute their judgment for that of the zoning authority.

Tennison v. Shomette, 38 Md. App. 1, 5 (1977), cert. denied, 282 Md. 739 (1978); quoted with approval, People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 624 (1980). The standard referred to by Protestants is the standard of review of a court reviewing this Board's decision upon appeal, not the standard this Board applies in making its decision.

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Error or mistake is established if there is probative evidence that the assumptions or premises relied upon by the Council at the time of comprehensive rezoning were invalid. People's Counsel v. Williams, supra, 45 Md. App. at 624. In the Williams case, the invalid assumption or premise of the Council in zoning a property industrial was that it was a prime industrial site. Similarly, the invalid assumption or premise of the Council in zoning the petition property for agricultural use was that it is productive agricultural land.

A substantial amount of the evidence presented in this proceeding simply was not available to the Council in 1984 when it went through the comprehensive zoning process. For example, Mr. Koehn's Forestry Management Plan, People's Counsel Ex. 9, which states the maximum amount of economic return the property could generate from an extremely aggressive timber harvesting program, was not generated until April 27, 1986. Dr. Stevens' economic analysis which shows that this economic return would not even cover the interest on the value of the land, Petitioner's Exhibit 22, was also unavailable to the Council. Similarly, Dr. Stevens' economic analysis which showed that using the property for beef or sheep pasture would lose money,

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Petitioners' Exhibits 20 and 21, were not available to the Council.

Indeed, the evidence shows that the Council relied on false information. The Planning Board's recommendation to the Council, on which the Council relied, (People's Counsel Exhibit 13, p.81) states that the U.S.D.A. Soil Survey listed the areas on the property with 8% to 15% slope as "productive farmland". As can be seen from People's Counsel Exhibit 5, all areas on the petition property with 8% to 15% slope are classified as capability unit 3. This soil is not characterized by the U.S.D.A. as productive farmland, it is characterized as having severe limitations for agricultural use. (12/2/86 p.37, 12/3/86 p.77) The Council's reliance on this false information was a critical factor in its mistaken assumption that the petition property is productive agricultural land.

The appropriate legal standard in determining mistake in this case was set forth in Petitioners' Memorandum at pages 4 to 9. In summary, where property is zoned for a use for which it is not suitable, that zoning is a mistake which should be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966); Dill v. The Jobar Corporation, 242 Md. 16 (1965); Kracke v. Weinberg, 197 Md. 339 (1950);

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Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular...application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

This standard has been amply met by the evidence presented in this proceeding.

R.C. 2 ZONING FOR THE PETITION PROPERTY IS UNFAIRLY DISCRIMINATORY

People's Counsel, citing County Commissioners of Queen Anne's County v. Miles, 246 Md. 355 (1967), claims that Petitioners have not met their burden of proving unlike treatment of like properties necessary to establish discriminatory zoning. In the Miles case, People's Counsel argues, property owners claimed that two properties were similar because of similar soils and topography but the

- 15 -

Conservation Associates
Case No. R-86-110

3.

Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney,
Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore
County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue, Owings
Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117;
Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Buck,
11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthal, 12321
Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood
Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills,
MD 21117; Lisa Keir, 11826 Greenspring Avenue, Owings Mills, MD 21117; Wilfred
G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C.,
P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills,
MD 21117; Jim Cox, 35 Caveswood Lane, Owings Mills, 21117; George Doub, 2700
Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane,
Owings Mills, MD 21117, on this 4th day of June, 1987.

Kathleen C. Weidenhamer
Kathleen C. Weidenhamer
County Board of Appeals of Baltimore County



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

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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,

Encl.

cc: Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Weldon Hale
Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

Judith A. Arnold, Esquire
Michael McMahon, Esquire
Doris C. Woodward
Avis Reed
Frances P. Matthal
Phyllis A. Zheutlin
Lisa Keir, V.P.C.
Betty Beck
George Doub
Arnold Jablon
James E. Dyer
Margaret E. du Bois



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

June 4, 1987

Thomas J. Gisriel, Esquire
210 E. Lexington Street, Suite 400
Baltimore, MD 21202

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Gisriel:

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.

Very truly yours,

Enclosures

cc: Michael Gisriel, Esquire
Conservation Associates

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

IN THE
CIRCUIT COURT
OF MARYLAND
FOR
BALTIMORE COUNTY
CASE NO.

ORDER FOR APPEAL

Conservation Associates, Cavenem Properties and
Kingdon Gould, Jr., Trustee, pursuant to Rule B2, order an
appeal of the order of the County Board of Appeals of
Baltimore County issued on May 1, 1987.

The undersigned certify that a copy of this order
of appeal was served on the County Board of Appeals prior to
the filing of this order.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Baltimore, Maryland 21202
(301) 539-0513

Attorneys for Conservation
Associates, Cavenem Properties
and Kingdon Gould, Jr.,
Trustee

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County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
May 1, 1987

Michael Gisriel, Esquire
210 E. Lexington Street
Suite 400
Baltimore, MD 21202

RE: Case No. R-86-110
Conservation Associates

Dear Mr. Gisriel:

Enclosed is a copy of the signed Opinion and Order passed
today by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhamer
Kathleen C. Weidenhamer
Administrative Secretary

Encl.

cc: Thomas J. Gisriel, Esquire
W. Thomas Gisriel, Esquire
George C. Doub, Jr., Esquire
Conservation Associates
c/o PUL
Doris C. Woodward
Weldon Hale
Avis Reed
Judith A. Arnold, Esquire
Michael McMahon, Esquire
James Earl Kraft
Phyllis A. Zheutlin
Kathleen Pontone
Lisa Keir (Home)
Wilfred G. Keir
Betty Beck
Jim Cox
Gretchen Feldman

Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Norman E. Gerber
James G. Hoswell

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
FROM R.C. 2 TO R.C. 5
FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS
AVENUE, 467' AND 1507' NORTH-
WEST OF CAVES ROAD
4th ELECTION DISTRICT

OPINION

This matter comes before the Board on a petition for reclassification of
two parcels with a total size of approximately 303 acres confined within a con-
tiguous parcel of approximately 682 acres. The parcel owned by Petitioners is
located north of Caves Road on both sides of Park Heights Avenue, extending to
the southwest almost as far as Garrison Forest Road and extending to the north-
east almost as far as Greenspring Avenue. This property comprises in substantial
measure that portion of Maryland historically known as the Caves Valley. The
existing zoning for the tract is R.C. 2. Petitioners have requested that approxi-
mately 277 acres of the northern portion of the tract be reclassified as R.C. 5
zoning and approximately 26 acres of the southern portion of the parcel, fronting
on Caves Road, be reclassified as R.C. 5 zoning.

The issues presented to this Board were as broad in their impact of land
use in Baltimore County as any in the history of the Board of Appeals. As would
have been expected given the scope of this project, the testimony before this
Board was as comprehensive and detailed on the issues raised as we have ever seen.
In particular the testimony from the expert witnesses, a total of thirteen of
whom testified during the five days during which this matter was heard, demon-
strated authority of the highest order. The Board was extremely impressed by the
quality of content presented by all sides in this matter.

Case No. R-86-110
Conservation Associates

2.

The decision in this case was a most difficult one for the Board. In the
thirteen years since resource conservation zones were established in Baltimore
County, no parcel close to this size has been reclassified. The historical per-
spective of this case shows that prior to the 1984 Comprehensive Zoning Map the
property was zoned R.C. 2. During the comprehensive review in 1984, the
Petitioner identified this property as a specific issue. At that time the
Planning staff and Planning Board recommended retention of R.C. 2 zoning and the
Baltimore County Council reaffirmed R.C. 2 zoning for the parcel. In considering
the herein petition, the Planning Board said significant deference to the
suitability of this property for active agricultural pursuits and the potential
harm to the water supply source under this property. It was the Planning
Board's belief that the existing zoning is consistent with the Baltimore County
Master Plan and that the agricultural qualities of the property argued strongly
for retention of the R.C. 2 zoning.

Petitioners have acknowledged the obvious agricultural profile of a sub-
stantial portion of their full tract and are not requesting rezoning of the
entire parcel. They have carefully extracted those portions that comprise the
Caves Valley floor and are requesting reclassification solely of the valley walls
and ridge.

The conditions on the petitioned acreage are significantly different than
conditions on the valley floor. The valley floor is cleared while the walls and
ridge are heavily wooded. The floor is flat while the walls and ridge are
steeply sloped. The soil types on the floor are significantly different than
the soils on the walls and ridge. Clearly the use of the valley floor is for
active agricultural pursuits. Equally clear is that those parcels contained in

Case No. R-86-110
Conservation Associates

3.

the petition are not tillable in their present condition, do not possess essen-
tial qualities that would make the land profitable agriculturally, are not being
used presently for any agricultural pursuit of a commercial nature and from all
indications have not been used for such pursuits over the course of the last
century, if ever.

Nevertheless these parcels are zoned to promote the conservation of
agricultural property. The fundamental issue before this Board therefore is not
necessarily whether or not those parcels contained in the herein petition are
appropriately considered agricultural; but rather are they appropriate to remain
in an "agricultural" zone in order to foster conditions favorable to a continued
agricultural use of productive agricultural areas by preventing incompatible
forms and degrees of urban uses. This Board notes that the petitioned properties
are not agricultural in the sense that they can be used commercially in a pro-
fitable manner. We further hold that the qualities of these parcels and in
particular their proximity to and effect on active farmland is wholly consistent
with the purposes and legislative statement of findings of the R.C. 2 zoning
classification as stated in Sections 1401.12 and 1401.14.13 and 5 of the
Baltimore County Zoning Regulations. Quite simply we are stating that the peti-
tioned property is not suitable for profitable agricultural pursuits. This does
not conclude however that the present or possible uses permitted by a zoning of
R.C. 2 under the R.C. 2 classification deny the property owners their reasonable
use of the property; nor does it require us to permit a significantly more
intensive development of the property solely because agricultural pursuits are
not likely to be profitable at this location. We believe that potential devel-
opment of the petitioned property of the nature permitted in R.C. 5 is a more

court found the properties distinguishable. (PCM pp. 5-6). Of course, People's Counsel neglects to inform the Board what differences the court found in Miles.

The differences in Miles were many. The two properties were of different caliber and character, quality and condition. One was on a peninsula, one was not. One had two or three miles of waterfront on broad waters while the other had far less waterfront on back creeks. Moreover one property, unlike the other, bordered on industrial development, including a gravel pit, a dump for old automobiles, a storage building housing beer and building materials, a ready mix concrete business and an automobile repair shop. 264 Md. at 375-376. The Miles court concluded that the subject property was properly zoned within a homogeneous group of properties whose characteristics it shared, and differed from the properties zoned in the category sought in that case. 246 Md. at 379.

Unlike the Miles case, witnesses for both Petitioners and People's Counsel agree that the petition property is unlike other properties zoned R.C. 2 and identical in all material respects with properties zoned R.C. 5. Consider the testimony of Mr. Solomon, a witness for People's Counsel:

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Examination by Mr. Zimmerman

Q. ...Can you comment on any other [than size] relevant differences between that property [the S&R Investors property] of sixty-five acres and the property under consideration here in terms of productive soils, topography, or anything else that is important?

A. Well, I don't think there are -- I would love to say there are some significant differences...

(12/19/86 A p. 69).

The only difference between the properties to which People's Counsel can point is the size of the properties. They also claim the smaller property is situated closer to existing centers of population.

The claim that the S&R Investors property lies closer to centers of population is totally unsupported by any testimony in the record. We assume, since People's Counsel has failed to explain this point, that People's Counsel means the S&R Investors property is closer to Owings Mills. We note that the petition property is closer to Pikesville, but question the significance of either point.

The aerial photographs (Petitioners' Exhibits 17 and 18) and the tax map (People's Counsel Exhibit 3) plainly show that both properties border on R.C. 5 residential

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development. The development bordering on both properties is identical in character.

The difference in size between the two properties is both obvious and inconsequential. People's Counsel do not even attempt in their memorandum to explain why the difference in size is significant. The mere fact that the petition property is large enough to be a farm unto itself does not make it suitable for agriculture. All of its other characteristics, soil quality, slope, erosion danger, and forest cover, make it unsuitable for agriculture. In these significant characteristics the petition property is identical to the S&R Investors property which was rezoned R.C. 5 using the same zoning boundary proposed by Petitioners in this case. This unlike treatment of like property is discriminatory and must be corrected by this Board.

While focusing on the Caves Road portion of the petition property, Protestants follow the opposite strategy from People's Counsel. They do not argue that the Caves portion of the petition property is different from the other properties on the northwest side of Caves Road which have been developed in a manner inconsistent with R.C. 2 zoning but consistent with R.C. 5 zoning. Protestants say the

- 18 -

Caves portion of the petition property is so similar to the other properties on the northwest side of Caves Road that rezoning the petition property would start a domino effect resulting in the rezoning of the entire northwest side of Caves Road. (PM p.6)

What Protestants fail to note is that if the northwest side of Caves Road were rezoned R.C. 5, there would be no change in land use. It is already developed in an R.C. 5 manner, that is our point. Consider the development on Caveswood Road. It is already at the maximum permissible density for R.C. 5. None of the residences on Caves Road are on 50 acre lots as required under R.C. 2 zoning.

Protestants were able to point to only one property on Caves Road which was not already developed. All of the remainder of Caves Road is developed in an R.C. 5 manner. Petitioners seek only the right to do what every other property owner on Caves Road, except one, has already done, to develop their property in an R.C. 5 manner. To prohibit Petitioners from residential development of their property on Caves Road where the rest of the Caves Road owners are able to enjoy their residential development is unreasonably discriminatory.

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THE CAVES ROAD PORTION OF THE PETITION PROPERTY IS UNSUITABLE FOR AGRICULTURE

Protestants suggest that Petitioners have been "somewhat unclear" regarding the unsuitability of the Caves Road portion of the petition property for agriculture because no separate section of our memorandum was limited to that portion of the petition property. (PM p.2) In order to clarify this point, Petitioners will review the unsuitability of the Caves portion of the petition property for agriculture.

Protestants argue that this portion of the property is suitable for agriculture because, relying on their attachments 1, 2 and 3, they claim that more than half of that portion is located in the valley floor, the slopes are gentle, and nearly all of the soils are suitable for agriculture. (PM p.2)

The problem with Protestants' argument is that the facts on which they rely are simply not true. Notable in its absence from Protestants' argument is any reference to the record of this proceeding to support the facts on which they rely. Perhaps if Protestants had reviewed the record of these proceedings in order to seek such support, they would have realized there is none.

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Protestants' reliance on the attachments to their memorandum for the proposition that over half of this portion of the property is located on the valley floor is misplaced. The attachments are far too imprecise. The scale of the attachments is far too large. The topographic and slope maps of the property, Petitioners' Exhibits 2, 3 and 7 plainly show that this portion of the property lies above the valley floor, not in it.

The slopes on this portion of the property are anything but gentle. Even People's Counsel introduced evidence that 70% of this portion of the property has slopes in excess of 8%. (People's Counsel Exhibit 5) The slope map of the property (Petitioners' Exhibit 3) shows that this portion of the property is steeply sloped. The significance of this sloped condition for agricultural suitability is addressed in our previous memorandum at pages 24 to 27. It significantly increases erosion hazard and makes agricultural activities unproductive. Significantly, all of the soil in this portion of the property is rated by the soil Conservation Service as subject to severe erosion. (People's Counsel Exhibit 5).

The Soil Conservation Service rates 70% of the soil of this portion of the property as capability unit 3 or worse,

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having severe limitations on agricultural production. (People's Counsel Exhibit 5). The remainder of the property is capability unit 2, having moderate limitations on agricultural production. The significance of these soil ratings is discussed in our previous memorandum at pages 13 to 24. Significantly, the 30% of this portion of the property which has unit 2 soil is found in two noncontiguous patches at opposite ends of the property. (Petitioners' Exhibit 9)

Plainly, the facts on which Protestants rely to assert that the Caves Road portion of the petition property is suitable for agriculture are not supported by the record of this proceeding. The facts in the record establish that this portion of the property is not suitable for agriculture.

CONCLUSION

None of the arguments made by People's Counsel or Protestants in their memoranda undermine the conclusions drawn in our previous memorandum. Zoning the petition property R.C. 2 for agricultural use was a mistake. The petition property should be rezoned R.C.5.

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The 303.39 acres under consideration in this petition are unsuitable for agricultural use. The U.S.D.A. Soil Conservation Service rates 60% of the property above the transmission line and 70% of the property on Caves Road as having severe limitations for agricultural production. The remainder of the property, which has moderate limitations for agricultural production, consists of scattered noncontiguous parcels separated from one another by steep slopes in excess of 20% and stream bed, making agricultural production impractical. The slopes on the property create severe erosion hazards, necessitating expensive conservation management measures which make agricultural production on the property economically unproductive.

Placing the land in agricultural production, for either crops or pasture, would necessitate clearing the land of its existing tree cover which would greatly increase erosion and be environmentally unsound. Placing the land in pasture would result in annual losses of scores of thousands of dollars.

The forestry management plan proposed by People's Counsel calls for an initial "thinning" cut removing in excess of 58% of the trees on the property in preparation for a "final harvest" which would leave significant portions

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of the property clear cut. It includes removal of some of the trees on the steep slopes and in the stream bed, which is environmentally unsound. The plan is wholly inappropriate for the property in light of its size and proximity to residential development. Moreover, the plan is also economically unproductive, failing to produce enough revenue even to pay interest on the value of the land.

The petition property has the same characteristics in soils, slope, topography and ground cover as surrounding land zoned R.C. 5. It shares none of these characteristics with surrounding land zoned R.C. 2. The R.C. 2 zoning of the petition property is unfairly discriminatory.

The petition property is now zoned R.C. 2, agricultural, based on the County Council's assumption that the petition property is productive agricultural land. That zoning and the Council's assumption are mistaken because the property is not suitable for agriculture. In addition, R.C. 2 zoning is a mistake because it unfairly discriminates against the property, which is identical to surrounding R.C. 5 zoned land and unlike nearby R.C. 2 zoned land.

This Board should correct the mistake in zoning the petition property and end the unfairly discriminatory

treatment of the property by reclassifying the property R.C.5.

Michael Gisriel
Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel

Gisriel & Gisriel
210 E. Lexington Street
Suite 400
Baltimore, Maryland 21202
(301) 539-0513

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 1987, a copy of the foregoing Petitioners' Reply Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204, and George Doub, Esquire, Venable, Baetjer & Howard, Suite 1800, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Thomas J. Gisriel
Thomas J. Gisriel

County Board Of Appeals Of Baltimore County

IN THE MATTER OF * CASE NO. R-86-110
CONSERVATION ASSOCIATES, * ITEM 4, CYCLE 1
ET. AL. *
* * * * *

PETITIONERS' POST-HEARING MEMORANDUM

Petitioners Conservation Associates, Caveman Properties and Kingdon Gould, Jr., Trustee, respectfully submit this Post-Hearing Memorandum, as requested by the Board on January 23, 1987, at the conclusion of hearings on this matter.

DESCRIPTION OF THE PROPERTY

Petitioners in this case are Conservation Associates, a Maryland Limited Partnership; Caveman Properties, a Maryland Limited Partnership; and Kingdon Gould, Jr., Trustee. On August 25, 1977, Petitioners acquired three contiguous tracts of unimproved land, totaling 682 acres of

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land, more or less (See Joint Exhibits 1, 2 and 3). The respective holdings of each Petitioner are as follows:

Conservation Associates	299.3 acres
Caveman Properties	322.7 acres
Kingdon Gould, Jr., Trustee	60 acres

Because the entities owning the properties are owned and controlled by the Gould family, Petitioners will be collectively referred to as the Goulds.

The Gould property is located in and above an area of Baltimore County known as the Caves Valley. Numerous exhibits entered into evidence in this proceeding locate the property precisely (See e.g. Petitioners' Exhibits 17 and 18, aerial photographs). Generally the property lies southwest of Green Spring Avenue and northwest of Caves Road, and is bisected by Park Heights Avenue. All 682 acres of the Gould property are presently zoned R.C. 2.

The property has two distinctly different, physical characteristics. (12/2/86. pp 23-25, 27-30, 34-35, (See Explanation Of Transcript References at the end of the memorandum) Petitioners' Exhibits 3, 4 and 7) Over half of the property is flat and low-lying. It has been cleared, and it is cultivated. This portion of the property lies on

the valley floor. Elsewhere in the area, land with these conditions is zoned R.C. 2. Petitioners do not seek to disturb the R.C. 2 agricultural zoning for it.

The Goulds do seek to have 303.39 acres of their property rezoned R.C. 5. The petition property is very different in physical characteristics from the valley floor. It is higher in topography and more steeply sloped and rolling. It has forest cover and has not been cultivated. This portion of the property is located on the valley walls and ridge. Land of this character is zoned R.C. 5 elsewhere in the area. The Goulds seek to have their property rezoned in a like manner. The precise definitions of the petition areas are found in Petitioners' Exhibit 12, but general boundaries are found on numerous exhibits (e.g. Petitioners' Exhibits 3, 4, 7, 9, 17 and 18; People's Counsel Exhibit 3).

The petition property consists of two separate parcels. The first, and larger, is that portion which lies north of the power transmission line which runs through the property. The transmission line is used as the demarcation line of the petition property for several reasons. It is, of course, easy to locate in the field. The county has recognized the appropriateness of using the transmission as the zoning

demarcation line by using it southwest of Park Heights Avenue until it reaches the Gould property. (See Petitioners' Exhibit 8, County Zoning Map). Most importantly, the transmission line marks the boundary of environmental conditions, between valley floor and valley walls, while the existing zoning boundary for the property completely disregards the topographic and environmental conditions of the area. (12/2/86 pp 25-33).

The second parcel of the petition property consists of approximately 25 acres binding on Caves Road southwest of Park Heights Avenue. It is the only property binding on the west side of Caves Road which is not developed in an RC-5 manner, even though all of these properties are zoned RC-2. (See People's Counsel Exhibit 3, Tax Map, Petitioners' Exhibits 17 and 18, Aerial Photographs, and 1/23/87 pp 87-88).

The Legal Standard

It is, of course, fundamental that there is a strong presumption that original zoning and comprehensive rezoning are correct. Trainer v. Lipchin, 269 Md. 667, 673 (1973); Boyce v. Sembly 25 Md. App. 43, 49 (1975). Generally, in

order to overcome this presumption, Petitioners must produce strong evidence of mistake. Trainer v. Lipchin, supra; Boyce v. Sembly, supra. In the present case, however, the Goulds seek reclassification from one resource conservation subcategory (R.C. 2) to another resource conservation subcategory (R.C. 5). Reclassification from one subcategory to another is subject to a more liberal and relaxed standard in determining whether the presumption of correctness has been overcome. Chapman v. Montgomery County Council, 259 Md. 641, 648 (1970); Missouri Realty, Inc. v. Ramer, 216 Md. 442 (1958); Tennison v. Shomette, 38 Md. App. 1, 5 (1975), cert. den. 282 Md. 739 (1978).

Where property is zoned for a use for which it is not suitable, that zoning is a mistake which should be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966); Dill v. The Johar Corporation, 242 Md. 16 (1965); Kracke v. Weinberg, 197 Md. 339 (1950); Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular...application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

Petitioners have presented strong evidence that the petition property is not suitable for agriculture, the use for which it is zoned. This evidence is described in great detail in the remainder of this memorandum. The evidence shows that over 60% of the soil of the petition property has severe limitations for agricultural production. The remaining soil, with moderate limitations for agricultural production, is scattered about the property in noncontiguous parcels separated by steep slopes and streams, making it impractical to farm. The slopes and erosion hazard on the property make it unsuitable for farming. Every agricultural use proposed by People's Counsel for this property is unsuitable for the physical conditions of the land, environmentally unsound or economically unproductive.

The evidence presented in this case is certainly strong enough to render the issue of mistake fairly debatable. Therefore, the Board may properly reclassify the petition property. Tennison v. Shomette, supra, 38 Md. App. at 5.

In the present case, the Goulds seek to have a portion of their property rezoned from one resource conservation subcategory (R.C. 2) to another resource conservation subcategory (R.C. 5). Where the reclassification sought is from one subcategory to another, a more liberal and relaxed standard is applied to determine whether the presumption of correctness has been overcome than would be applied in an attempt to reclassify property from one use category to another. Chapman v. Montgomery County Council, 259 Md. 641, 648 (1970); Missouri Realty, Inc. v. Ramer, 216 Md. 442 (1958); Tennison v. Shomette, 38 Md. App. 1, 5 (1975), cert. den., 282 Md. 739 (1978).

Once evidence is produced which is strong enough to render the issue of mistake fairly debatable, the Board may properly reclassify a property, and the change in zoning will be upheld by the Courts. Tennison v. Shomette, supra, 38 Md. App. at 5. If the evidence before the Board is substantial enough to permit reasoning minds reasonably to conclude that the presumption of correctness of the zoning has been overcome, then the Board acts correctly in rezoning the property. Dill v. The Jobar Corporation, 242 Md. 16, 23 (1955).

Where property is zoned for a use for which it is not suitable, that zoning is a mistake which may properly be corrected. Bonnie View Club v. Glass, 242 Md. 467 (1966);

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Dill v. The Jobar Corporation, supra; Kracks v. Weinberg, 197 Md. 339 (1950); Northwest Merchants Terminal, Inc. v. O'Rourke, 191 Md. 171 (1947); Tennison v. Shomette, supra; Quinn v. County Commissioners of Kent County, 20 Md. App. 413 (1974).

A particular... application of a zoning ordinance may be held invalid where it restricts property to uses for which it is not adapted.

City of Baltimore v. Cohn, 204 Md. 253, 530 (1953). Specifically, property may not be zoned for an unsuitable use in order to act as a buffer for other property. Kracks v. Weinberg, supra; Northwest Merchants Terminal, Inc. v. O'Rourke, supra.

Accordingly, evidence, that a property is not suitable for its zoning classification is strong evidence of mistake. Tennison v. Shomette, supra; 38 Md. App. at 7-8.

In addition, zoning cannot be unfairly discriminatory. Land of like conditions must be zoned in like manner.

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.

Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

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Thus, zoning is improper if a property is devoted to a use which is inconsistent with the uses to which similarly situated property in the district is devoted. Hewitt v. Baltimore County, 220 Md. 48, 58 (1958); Cassel v. City of Baltimore, supra.

Therefore, evidence that neighboring properties of like character are zoned in a different manner is strong evidence of mistake absent a compelling public purpose which justifies the discrimination.

Application Of The Legal Standard

The 303.39 acres which are the subject of this petition are now zoned R.C. 2. The Baltimore County Zoning Regulations expressly entitle R.C. 2 zoning "Agricultural" and state that the purpose of R.C. 2 zoning is to protect the "...continued agricultural use of the productive agricultural areas of Baltimore County..." Accordingly, agricultural operations are the preferred use and are accorded preferred treatment over and above all other uses of R.C. 2 zoned land.

As is recognized in zoning classifications elsewhere in the Caves Valley area, valley walls and ridges are not

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productive agricultural areas. This type of land is not suitable for agricultural use.

The 303.39 acres which are the subject of this petition are all located on the valley walls and ridge. This land has never been used for agricultural purposes, and is not now used for agricultural purposes. Indeed, the land is forested, which plainly indicates that it has not been used for agricultural purposes for generations, if ever. Because the land has never been used for agricultural purposes, the purpose of R.C. 2 zoning, to foster the continued agricultural use of agriculturally productive land, cannot possibly be fulfilled.

The land under consideration is not suitable for agricultural use. Evidence of the unsuitability of the land for agricultural use is sufficient to establish that zoning the land R.C. 2 was a mistake which should be corrected by this Board.

Moreover, there is no difference in characteristics and environmental conditions between the 303.39 acres under consideration and surrounding property zoned R.C. 5. Both are valley walls and ridges. Neither is suitable for agriculture. Evidence that neighboring properties with the same environmental conditions as the 303.39 acres under consideration are zoned R.C. 5 is strong evidence that

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zoning the 303.39 acres R.C. 2 was a mistake which should be corrected by this Board.

CONCLUSION

The 303.39 acres under consideration are unsuitable for agricultural use. The R.C. 2 zoning imposed on the property restricts the property to agricultural use. Because present zoning restricts use of the property to a purpose for which it is not suited, it has been imposed in error.

In addition, the 303.39 acres under consideration have the same characteristics and environmental conditions as neighboring properties zoned R.C. 5. Thus, imposing R.C. 2 zoning on the property is unfairly discriminatory. Because the R.C. 2 zoning for the 303.39 acres is unfairly discriminatory, it has been imposed in error.

The mistake made in zoning the 303.39 acres under consideration R.C. 2 should be corrected by this Board. Accordingly, Petitioners request that the property under consideration be reclassified R.C. 5.

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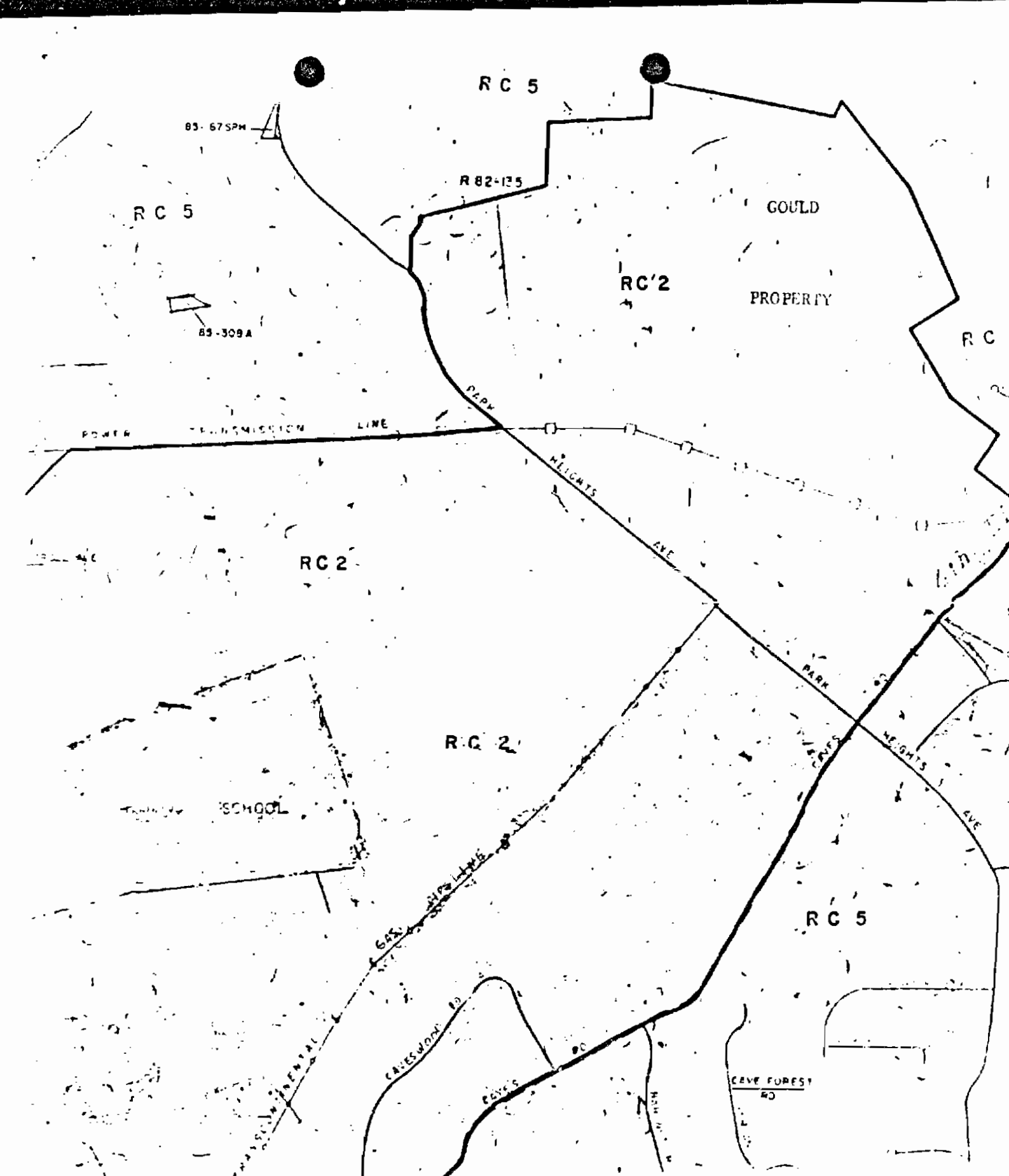
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 1986, a copy of the foregoing Petitioners' Hearing Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204

Thomas J. Gisriel
Thomas J. Gisriel



CONSERVATION ASSOCIATES
NE/s Park Heights Avenue
467' and 1507' NW Caves Road
RC2 to RC-5

#B-86-110
Item #4, Cycle 1, 1985
4th District
306 acres

March 1, 1985	Petition filed for reclassification from RC2 to RC 5 by Michael Gisriel, Esquire on behalf of Conservation Associates
Sept. 24, 1985	Hearing held before Board; continued.
Oct 23	" " " " " "
Dec 19	Hearing held before Board -first day of testimony.
Dec 2, 1986	Hearing held before Board; continued
Dec 3	" " " " " "
Dec 19	" " " " " "
Jan 23, 1987	" " " " " " ; completed.
May 1	Board DENIED R.C. 5 zoning. (Franz, Phipps, Spurrier)
May 21	Joint Motion of Petitioners and Protestants for a 60-day Extension of Time to File an Appeal and for this Board to Exercise its Revisory Power over its Opinion and Order filed by Michael Gisriel, Esquire, and Thomas J. Gisriel, Esquire.
May 28	Board DENIED Petition for Extension of Time and Request for Reconsideration. (Spurrier, Phipps)
May 28	Order for Appeal filed in Circuit Court by Michael Gisriel Esquire and Thomas J. Gisriel, Esquire, on behalf of Petitioner.
June 4	Certificate of Notice sent to all interested parties; Circuit Court.
June 29	Transcript of Testimony filed.
June 29	Record of Proceedings filed in Circuit Court.
July 24	Order of Court that Valleys Planning Council, Inc. may participate in this appeal. (JWH)
September 15	Order of Court that State of Md and the Md Dept of State Planning may participate in this appeal. (JWH)
October 6	Hearing had in CCT; ruling held sub-curia; opinion to be filed.
October 28	Order of CCT that decision of CBoFA is AFFIRMED. (Hennegan)
November 25	Order for Appeal to Court of Special Appeals by Michael Gisriel, Esq. on behalf of Petitioner.

continued on page 2

The evidence before the Board is easily substantial enough to permit reasoning minds reasonably to conclude that the presumption of correctness of the zoning has been overcome. Therefore, the Board would act correctly in rezoning the property. Dill v. The Jobar Corporation, supra, 242 Md. at 23. The evidentiary standard required for reclassification of the property has been amply satisfied by Petitioners.

There has been some discussion during the proceeding of the possibility of leaving the petition property in agricultural zoning, despite its unsuitability for agriculture, to act as a buffer between the agricultural land below it and the residential development on the other side of the property line. Such zoning is clearly improper. Property may not be zoned for an unsuitable use in order to act as a buffer for other property. Kracke v. Weinberg, supra; Northwest Merchants Terminal, Inc. v. O'Rourke, supra. The property is unsuitable for agriculture. Therefore, it may not be zoned agricultural. It may not be zoned for an unsuitable use in order to act as a buffer.

Finally, zoning may not be unfairly discriminatory. Land of like conditions must be zoned in like manner.

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Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.
Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

Zoning is improper if a property is devoted to a use which is inconsistent with the uses to which similarly situated property in the district is devoted. Hewitt v. Baltimore County, 220 Md. 48, 58 (1958); Cassel v. City of Baltimore, supra.

The evidence presented in this case shows that the R.C. 2 zoning on the petition property is unfairly discriminatory. Elsewhere in the area, property which shares the same soils, topography, slopes and ground cover as the petition property is zoned R.C. 5. All of the properties on Caves road have been developed into residential lots except the petition property. The land in the area which is zoned R.C. 2 shares none of the characteristics of the petition property. The R.C. 2 zoning of the property is a mistake because it is unfairly discriminatory. This mistaken zoning should be corrected by this Board.

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The petition property is zoned for a use for which it is not suitable. Moreover, the zoning of the petition property is unfairly discriminatory. The R.C. 2 zoning of the petition property is a mistake which must be corrected by this Board. This Board should rezone the property R.C. 5.

R.C. 2 ZONING

The Baltimore County Zoning Regulations expressly designate R.C. 2 zones as agricultural. The stated purpose of the R.C. 2 zoning classification is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." This purpose is premised on a legislative finding "... that Baltimore county is ... endowed with a variety of very productive agricultural soil types..." The Zoning Regulations state that agricultural operations "...shall be afforded preferential treatment over and above all other permitted uses in R.C. 2 zones."

It is obvious that R.C. 2 zoning is intended to foster continued agricultural use of very productive agricultural areas. There is no intention to expand agricultural use

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regulations are based on findings of the existence of very productive agricultural soil types. Therefore, it is clear that R.C. 2 zoning is not intended to be imposed on areas which are not very productive for agriculture.

The evidence in this case plainly shows that the petition property has not been used for agricultural production at any time in the twentieth century. The evidence also shows that the petition property has severe limitations for agricultural production. It is not the very productive agricultural land for which R.C. 2 zoning is intended. The R.C. 2 zoning of the property is a mistake which must be corrected.

THE PETITION PROPERTY IS NOT APPROPRIATE FOR AGRICULTURE

The petition property is not suitable for agriculture, and this fact has been recognized by owners of the property for over a century.

There is, and can be, no dispute that the petition property is completely covered by trees (see Petitioners Exhibit 4, Land Use Map, and Exhibits 17 and 18, Aerial Photographs). The forest cover on the land is significant.

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It is a physical fact which speaks plainly of the property's use by previous owners and their judgment regarding the appropriateness of the land for agricultural use.

Mr. Schulte testified that the fact that the land is covered with woods suggests that the land is not suitable for agricultural cultivation. (12/2/86 pp. 35-36) Mr. Stevens testified that the forest cover indicated that a past owner of the property determined that the land was not suitable for farming and just let the trees grow. (12/2/86 pp. 92-93)

The historian called by People's Counsel, John W. McGrain, Jr., testified that in 1899 a substantial portion of this property was in forest cover based on the 1899 plat and newspaper advertisements. (People's Counsel Exhibit 13). The 1899 advertisements for farms 6 and 7, which then occupied the land now under consideration, stated that only 83 acres of the 380.8 acres were considered arable. (Farm 6, 14 of 121.8 acres arable; Farm 7, 75 of 189 acres arable). (12/19/86 M pp. 29-30). The forester called by People's Counsel, Mr. Koehn, testified that many of the trees on the petition property were in excess of 90 years

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old, with one black oak being 99 years old. (12/3/86 p. 190).

Obviously, this land has not been farmed in the twentieth century. The forest cover shown on the 1899 plat of this land indicates that it wasn't farmed in the latter part of the nineteenth century either.

It must be borne in mind that the purpose of R.C. 2 zoning is "... to foster ... continued agricultural use of productive agricultural areas..." Zoning which is intended to continue agricultural use is inappropriate and mistaken for land which is not in agricultural use and has not been in agricultural use for generations.

In judging the appropriateness of this land for agriculture, the fact that it hasn't been used for agriculture for generations is very significant. There was no productive use for this land during this period other than agriculture. Mr. McGrain clearly testifies that the valley floor was farmed. The same owners who cleared and farmed the valley floor recognized that the property under consideration was not appropriate for agriculture. This land was not kept out of agriculture in 1899 so it could be

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developed for houses. There was no ulterior motive. Failure to farm the land made the land economically unproductive. Yet it was not farmed.

Consider the position of the Carroll family when they place the advertisement for Farms 6 and 7 in 1899, what is now the petition property. Surely they had every incentive to describe those farms in as attractive a manner as possible. They had every reason to describe the farms as productive and therefore more valuable. Nonetheless they describe only 89 of 310.8 acres as arable, less than 30%. It is plainly the judgment of generations that this land is not suitable for agriculture.

THE SOIL OF THE PETITION PROPERTY PLACES SEVERE LIMITATIONS ON AGRICULTURAL PRODUCTION

Contemporary conditions and evidence support the historic conclusion that the petition property is not suitable for agriculture. The soil capability ratings of the United States Department of Agriculture Soil Conservation Service ("SCS") rate 60% of the petition property above the transmission line and 70% of the petition property on Caves Road as placing severe to very severe limitations on agricultural production. The SCS rates soils

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for agricultural use from capability unit 1 to capability 8. (12/2/86 p. 37) Unit 1 soils are defined by the SCS as having little or no constraints on agricultural use. (12/2/86 p. 38) There are no capability unit 1 soils on the petition property. (12/2/86 p. 38, People's Counsel Exhibit 5)

Capability unit 2 soils are defined by the SCS as having moderate limitations on agricultural use (12/2/86 p. 58). Capability unit 2 soils do exist on the petition property. Their location on the property is graphically depicted on Petitioners' Exhibit 9, the soils map. Mr. Criss, testifying on behalf of People's Counsel, has calculated that 40% of the petition property above the transmission line, and 30% of the petition property on Caves Road are capability unit 2. (People's Counsel Exhibit 5)

Mr. Schulte has testified that in planning land usage, land planners generally seek unit 1 and sometimes unit 2 soil for agricultural areas. (12/2/86 p. 40) Dr. Stevens agrees, saying that he would look primarily for class 1 and 2 soils for agricultural pursuits. (12/2/86 p. 92)

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The unit 2 soils on the petition property, however, are not contiguous (See Petitioners' Exhibit 9). The areas of unit 2 soils which do exist on the petition property are so scattered, irregular and small that they are not adequate for agricultural use. (12/2/86 p. 39) Dr. Stevens characterizes the type of farming that necessarily would take place if those areas were farmed as "patch farming". It would give rise to significant problems moving machinery from patch to patch and would not be economically feasible. (12/2/86 p. 98)

Capability unit 3 soils are defined by the U.S.D.A. Soil Conservation Service as soils with severe limitations on agricultural use (12/2/86 p 37, 12/3/86 p 77). A sense of where capability unit 3 soils are located on the property can be gained by comparing Petitioners' Exhibit 9 and the overlay to People's Counsel Exhibit 4. While unit 3 soils do not absolutely preclude agriculture in the sense that nothing would grow on the property, in order to farm such soils, unusual procedures are essential to overcome the severe constraints of the soil. These procedures generally cause agricultural pursuits on such soils to be unproductive. (12/2/86 pp. 58-59) Even Dr. Curran, the agricultural witness for People's Counsel acknowledges that

to till unit 3 land there must be a conservation plan implemented. (12/3/86 p. 47)

Farming unit 3 soil is hard and expensive. You don't make money farming this type of soil. It is unproductive. (12/2/86 p. 92) The agricultural products derived from farming such soil are less valuable than the effort required to create them. (12/2/86 p 59). Surely capability unit 3 soils are not the "very productive agricultural soil types" for which R.C. 2 zoning is intended under the Baltimore County Zoning Regulations.

According to the calculations done by Mr. Criss for People's Counsel, 35% of the petition property above the transmission line and 50% of the petition property on Caves Road are capability unit 3 soils. These same calculations indicate that 60% of the petition property above the transmission line and 70% of the petition property on Caves Road are capability unit 3 soils or worse. That is, the U.S.D.A. Soil Conservation Service consider 60% and 70% of these petition areas to have severe limitations on agricultural production, or worse.

Despite the fact that the Soil Conservation Service considers unit 3 soils to have severe limitations on agricultural production, People's Counsel has taken the position that unit 3 soils are, in fact, the "very productive soil types" appropriate for RC-2 agricultural zoning. This position appears to be based largely on the testimony of Mr. Criss and the regulations of the Maryland Agricultural Land Preservation Program. COMAR 15.15.01.03C(1)(b) states that a majority of any agricultural preservation district must consist of U.S.D.A. Soil Capability Classes 1, 2 and 3 or U.S.D.A. Woodland Groups 1 and 2. (People's Counsel Exhibit 6, p. 576)

Mr. Criss's testimony, of course, must be considered within the limits of his expertise. He has no graduate degrees in agriculture and no work experience in agriculture. (12/2/86 pp. 133-134) Mr. Criss admits that he is not qualified to testify whether the petition property is suitable for agricultural pursuits, only whether it would qualify for the preservation program. (12/3/86 p. 96)

The mere fact that capability 3 soil is eligible for the preservation program does not indicate that capability 3 soil is one of the "very productive soil types" which should

be subject to R.C. 2 zoning. This is especially true in light of the the Soil Conservation Service characterizing unit 3 soil as having severe limitations. The preservation program is voluntary (12/2/86 p 137, People's Counsel Exhibit 6). Zoning is mandatory. No owner is forced by the preservation program to place unit 3 soil into agricultural production despite its severe limitations. However, where Baltimore County zones unit 3 soil R.C.2, it is requiring that soil with severe agricultural limitations be used for agriculture.

The regulations are purposefully drafted broadly and permissively. Mr. Criss states: "... the program's intention is to preserve as much farm land throughout the state as possible on a voluntary basis." (12/3/86 p. 66) Indeed, Mr. Criss states that they are not even discouraging soil classes greater than 3. (12/3/86 p. 66) The purpose and policy of the regulations and the administration of the program is to expand eligibility for the program to as much land as possible.

The policy of expanding eligibility for the program is also evident in Mr. Criss's application of the other "productive capability criteria" of the preservation

program, COMAR 15.15.01.03C(1)(a) (People's Counsel Exhibit 6, p. 576) to the petition property. That regulation requires that to be eligible for the program, the land be "... used primarily for the production of food or fiber..." and that "... continued agricultural production is feasible." "Profitable farming feasibility" is defined in COMAR 15.15.01.01C (People's Counsel Exhibit 6, p. 572) (see 12/3/86 pp. 77 and 80) as "[the] potential for yielding an excess of returns over expenditures through agricultural production..."

Mr. Criss admitted that the petition property is not used for the production of food. (12/3/86 pp. 77 and 89) He considered the land presently to be active in production of fiber, however, (12/3/86 p. 77) despite the fact that Mr. Criss has no basis to believe that fiber is being harvested by the owners (12/3/86 p. 90), the forest arose naturally, it was not planted (12/3/86 p. 91), and the land is not under any forestry management program (12/3/86 pp. 77 and 89). Moreover, Mr. Criss admitted that he had done no analysis of the feasibility of profitable agricultural production on the subject property (12/3/86 p 94).

Nonetheless, Mr. Criss stated that not only would the petition property be eligible for the preservation program, it would be a "high priority" for the program. (12/3/86 p. 71) If the petition property would be a high priority for the preservation program despite the fact that it produces no food, is yielding no harvest of fiber to the owner, is under no forestry management plan, and has not been analyzed for feasibility of profitable agricultural production, obviously agricultural productivity is not a significant factor for inclusion in the program. The fact that capability unit 3 soils are eligible for inclusion in the program does not suggest that these soils are the "very productive agricultural soil types" intended for R.C.2 zoning.

Capability unit 4 soils are defined by the Soil Conservation Service as having very severe limitations on agricultural use. (12/3/86 p. 77) There seems to be little disagreement that soils of unit 4 and worse are not productive land for tilling. (see testimony of Dr. Curran 12/3/86 pp. 48-49) According to calculations submitted by People's Counsel, 25% of the petition property above the transmission line and 20% of the petition property below

Park Heights Avenue is unit 4 or worse. (12/3/86 pp. 49-50, People's Counsel Exhibit 5)

The location of unit 4 and worse soil is shown on the overlay to People's Counsel Exhibit 4. Significantly, even if one were to accept People's Counsel's proposition that unit 3 soil is productive for agricultural use, you are still left with noncontiguous patches. This would result in "patch farming" in Dr. Stevens' terminology. (12/2/86 p. 98) The patches are separated by streams and steep slopes in excess of 20%. (see Petitioners' Exhibit 3) Dr. Stevens has stated that the patches' separation by this terrain would cause significant problems in moving machinery from patch to patch, and farming the patches would not be economically feasible. (12/2/86 p. 98)

Dr. Curran who unlike Dr. Stevens (12/2/86 p. 100) has never visited the property, (12/2/86 p. 43) is of two minds on this issue. On one hand he agrees that he wouldn't use the stream bed or the slopes for tilling. (12/3/86 p. 45) When confronted with the scattered noncontiguous nature of the land he is recommending for tilling, however, he recommends that a farmer "plant through that". It won't

produce much, he says, but a farmer would do it for ease of farming. (12/3/86 p. 46)

In making this recommendation, Dr. Curran ignores the obvious fact that planting on slopes above 20% and in the stream bed would cause substantial erosion, environmental damage, and destroy the stream. Mr. Duket of the Maryland Department of State Planning, who was called People's Counsel as a witness, absolutely opposed removal of the trees from these steep slopes and the stream bed, much less planting on them, because of the environmental effect. (12/19/86 M p. 79, 12/19/86 A pp. 18, 23-24)

Dr. Curran's opinion that the petition property is suitable for agriculture is undermined by a close look at his testimony. Unlike every other witness in this case, who offered opinions on soils based on their capability unit number, Dr. Curran based his opinion that the petition property is suitable for agriculture on the fact that it is located in the Piedmont region (12/3/86 pp. 5-6) and it contains Manor and Glen Elg soils. (12/3/86 pp. 8 and 35) Only when asked a direct question on cross-examination regarding capability unit numbers does he discuss them at all. A review of People's Counsel Exhibit 5, however, plainly shows that even if we confine ourselves just to the

petition property, Manor and Glen Elg soils range from capability unit 2 all the way up to capability unit 6. Moreover, The Piedmont runs from Harford Road all the way to the mountains in the west. (12/3/86 p. 13) Surely R.C. 2 zoning is not appropriate for this entire region.

Dr. Curran expressly bases his opinion regarding suitability of the petition property for agriculture not only on the presence of Glen Elg and Manor soils, but also on the "slope not being over 15%". (12/3/86 p. 38) But this property has a substantial amount of land with slopes over 15%. (see Petitioner's Exhibit 3) His opinion is also based on the supposed similarity between the petition property and the Vernon Foster farm which he claims is productive. (12/3/86 pp. 9-10) In making this comparison, Dr. Curran totally ignores the fact that the slopes on the Vernon Foster farm peak at 12 to 13%. (12/3/86 p. 10) Dr. Curran betrays his unfamiliarity with the property he never visited. The petition property has slopes in excess of 20%.

According to the U.S.D.A. Soil Conservation Service, 60% of the petition property above the transmission line and 70% of the petition property on Caves Road have severe limitations or very severe limitations on agricultural production. The remaining soil has moderate limitations,

but is scattered about the property in noncontiguous parcels separated from one another by steep slopes exceeding 20% and by stream bed. The attempts by People's Counsel to portray this severely constrained soil as prime or highly productive are not credible. The soil on the petition property is not the very productive agricultural soil for which R.C.2. Zoning is intended. Zoning this property R.C. 2 is a mistake.

THE SLOPES AND EROSION DANGER
ON THE PROPERTY MAKE IT
UNSUITABLE FOR AGRICULTURE

The slopes of the petition property and its erosion danger are very significant factors which make the property unsuitable for agriculture. Mr. Schulte describes the erosion hazard on this property as critical. If this property were placed in agricultural production, erosion would not only damage the streams which receive the soil, but would destroy the agricultural land in the process. (12/2/86 p. 49)

Dr. Stevens testified that the petition property has a great problem with erosion because of the slope conditions. He would never advise a farmer to farm slope conditions such

as are on the petition property. This is not productive farmland. (12/2/86 p. 90)

Dr. Stevens testified that once you get slope over 5% you have to begin engaging in conservation management measures such as terracing, strip cropping and drainage. This increases your cost of production making farming the land economically unproductive. (12/2/86 p. 91)

Dr. Curran largely agrees that there would be serious erosion problems in farming land with slopes in excess of 5% without conservation management techniques (12/3/86 p. 37). Dr. Curran believes, however, that conservation techniques can control the erosion problem. (12/3/86 p. 37) He believes that these management techniques can yield crops up to 12-15% slope, although he admits that slopes over 10% require more intensive management. (12/3/86 p. 14) Dr. Curran has made no attempt to estimate the cost of using these advanced management techniques on this property. (12/3/86 p. 16) He also has made no estimate of how long it would take for farming this land to become profitable in light of the costs of placing it in service and the conservation management techniques necessary to combat erosion. (12/3/86 p. 17)

The Soil Conservation Service, as part of its soil ratings, determines which soils are subject to severe erosion. Those subject to severe erosion are noted with a small "e" in their ratings. (12/2/86 p. 41) As can be seen on People's Counsel Exhibit 5, all soils in the petition property are subject to severe erosion except those with a small "w". The small "w" indicates that the soil has severe limitations because of excess water. (12/2/86 p. 42) These soils are the stream beds. Mr. Schulte has testified that land use planners typically would not place soil subject to severe erosion into agricultural use. (12/2/86 p. 41)

In summary, the petition property is not now in agricultural production and has not been in agricultural production at any time in the twentieth century or even well before. Generations of farmers have considered this land unsuitable for agriculture. The U.S.D.A. classifies 60% of the soils of the petition property above the transmission line and 70% of the soils of the property on Caves Road as having severe limitations on agricultural production. The soils which have only moderate limitations on agricultural production are scattered on noncontiguous sites separated by steep slopes and stream bed. They are therefore

economically impractical to farm. The slopes on the property would require advanced conservation techniques in order to farm them, which would make farming economically impractical. The Soil Conservation Service classifies the entire petition property other than the stream beds as subject to severe erosion.

The physical characteristics of the petition property plainly indicate that the property is not suitable for agriculture. As Mr. Schulte has testified, zoning this land for agricultural use is a mistake. (12/3/86 p. 50)

PRESERVATION OF FOREST COVER

One of the points which has been made by several witnesses during the hearing is the desirability of maintaining as much forest cover on the property as possible. Mr. Cox, an area resident, testified that the community would like to maintain as much forest cover as possible, (12/19/86 A p. 13) and would object to clear cutting or forestry practices removing as much as 50 to 90% of the forest cover. (12/19/86 A p. 10)

Mr. Duket of the Maryland Department of State Planning described the beneficial environmental effects of forest cover. (12/19/86 M p. 71) He stated that he is absolutely opposed to removal of trees on slopes 20% or higher or along the stream valley, and that he would recommend preservation of trees on 15-20% slopes because of their benefits in controlling sedimentation and storm water run-off. (12/19/86 M p. 79, 12/19/86 A pp. 18, 23-24)

A review of the testimony indicates that it is the proposals for land use made by the People's Counsel that would result in substantial removal of trees, far more than the low density residential development proposed by Petitioners.

Both Dr. Curran and Dr. Stevens acknowledge that to place the petition property in agricultural production, either for crops or pasture, the first step is to clear the land. (Dr. Stevens 12/2/86 pp. 93-94, Dr. Curran 12/3/86 pp. 14, 20-21, 25-27, 43-54). As Dr. Curran pointed out, this clearing involves more than then just clear cutting the trees; stumps must be removed. (12/3/86 pp. 26-27) Indeed, Dr. Curran advocated planting through the slopes and stream

for ease of farming. (12/2/86 pp. 45-46) Of course, in order to plant this land it must be cleared.

The forestry management plan proposed by Mr. Koehn calls for an initial "thinning" or "improvement" cut of 58.25% of the tree material on the petition property (calculation made from table on p. xv of People's Counsel Exhibit 9). After the initial "thinning" cut, Mr. Koehn generally recommends waiting 15 years and then conducting a "final harvest". For stand 1, Mr. Koehn recommends that a "final harvest" and that all trees down to 2 inches "...must either be killed or removed".

A comparison of Petitioner's Exhibit 3 and People's Counsel Exhibit 10A plainly shows that stand 1 occupies the stream bed and steep slopes. Indeed, People's Counsel Exhibit 10B, the "cutting unit schedule" shows that the bulk of the stream bed will be the twelfth cutting unit, to be cut in 1996. According to the figures for stand 1 in the table on page xv of People's Counsel Exhibit 9, the "thinning" or "improvement" cut in stand 1 will remove 53.37% of the trees. Elsewhere in the report, Mr. Koehn does recommend establishment of a 50 foot buffer along all streams, but then recommends harvesting within the buffer by

"selective cutting". (People's Counsel Exhibit 9 p.10) Mr. Koehn does not indicate what "selective cutting" means.

Mr. Duket has stated that he wasn't sure what Mr. Koehn had proposed, but that he would be opposed to removing trees along the stream valley. (12/19/86 A p. 26) He states that trees on the steep slopes and in the stream valley should not be removed for farming or forestry. (12/19/86 p. 18).

Mr. Gould, the owner, expressed great reluctance to remove trees from this property because it would diminish substantially the aesthetic value of the land. (12/2/86 p. 173) Even a selected cut, Mr. Gould said, leaves a terrible mess in the woods. Unless an owner was trying to get a quick buck and throw the property away, he said, it would do great damage. (12/2/86 p. 174)

Several witnesses, in addition to Mr. Gould commented on the damaging effect that forestry operations would have, not only on the property itself, but also on surrounding properties. Mr. Schulte described the appearance of land after forestry management practices as "extremely unattractive". (12/23/87 pp.80-82) Mr. Brown's review of the forestry management plan leads him to conclude that there

would be more road construction on the site for forestry operations than there would be for residential development. (1/23/87 pp.128-129) Ms. Lott said that the debris typically left in the woods after timbering is "very detrimental" and would affect not only the property itself, but neighboring properties as well. (1/23/87 p.33)

The low density residential development proposed by Petitioners will preserve more forest cover than any land use proposal made by People's Counsel. We do not assert that residential development will result in no tree removal; however, it will not be necessary for substantial areas to be cleared of trees as it would be for crops or pasture. Moreover, there will be no initial "thinning" of 58% of the trees leading up to a "final harvest" which removes all trees over 2 inches in girth as proposed by Mr. Koehn.

Petitioner would have no incentive to remove more trees than are absolutely essential for development. To do so not only would incur costs, it would reduce the value of the property. Ms. Lott, the realtor called by Protestants, acknowledged that a wooded lot is much more valuable than a cleared lot. (1/23/87 p. 32) Mr. Brown also testified that

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trees add value to property, and generally the more trees the more value (1/23/87 pp. 122-125).

A review of the aerial photographs (Petitioners Exhibits 17 and 18) plainly shows that in this area it is the residential areas which retain forest cover. The residential areas are where the trees are. In the agricultural areas, the trees are cleared. Residential development in this area is very compatible with maintaining forest cover, and does in fact maintain tree cover. It is agricultural development which removes tree cover. (1/23/87 pp. 76-77). Indeed, Mr. Duket noted from the aerial photographs that the residential areas have "a tremendous amount of forest cover". (12/19/86 M p. 81)

Significantly, Petitioners have recognized that the steep slopes and stream bed are unsuitable for development. (See Petitioners' Exhibit 6, Buildable Area Map, Schulte testimony 12/19/85 pp. 63-64) Mr. Duket has agreed that the petition property could accommodate residential development in the flatter areas, as proposed by Petitioner, in an environmentally sound manner (12/19/86 A p. 20)

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The residential development sought by Petitioners in this reclassification petition is the most environmentally sound proposal for use of this land. It would result in the preservation of the largest number of trees of the various land use proposals made during the hearing. Petitioners should not be forced to remove the forest cover on the property, over their objection, in order to gain any economic utility from the property.

SPECIFIC LAND USES PROPOSED BY PEOPLE'S COUNSEL

In its case, People's Counsel made several specific proposals for use of the petition property which would not necessitate rezoning the property. Proposals were made that the land be used for pasture, that the trees be harvested according to a forestry management plan, and that extremely large lot residential development take place. These proposed uses are either economically unproductive, inappropriate at this location or contrary to the intentions of the Baltimore County Zoning Regulations.

Pasture

In his testimony, Dr. Curran has suggested the possibility that the petition property be used for pasture.

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(12/3/86 pp. 18, 20-27, 31, 33-35) He recommends against swine because of the proximity of residences, but suggests sheep or beef. (12/3/86 pp.21-22, 24).

To put this land in pasture, Dr. Curran acknowledges it would be necessary to remove the trees, including the stumps, grade the soil, take conservation measures such as terraces and swales, establish a pasture and provide buildings to shelter the animals. (12/3/86 pp 20-21, 25-26, 36-37) He has estimated that it would take 6-8 months before the cover crop would be well enough established to put animals on it, and that it would take two to two and a half years before income was coming in for beef, eighteen months to two years for income from sheep. (12/3/86 pp. 25-26)

The most immediate problem with this proposal is the clearing of the land which is necessary. Dr. Curran says a substantial majority of the land must be cleared. "[A] few trees could remain. But I wouldn't suggest too many." (12/3/86 pp 20-21) Mr. Koehn says that to clear the land for pasture, "...you really have to abuse the land by regrading it and ripping up the stumps and removing the forest cover and all residual in the soil..." (12/3/86

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p.181) As addressed above, this land clearing is undesirable environmentally.

Even Dr. Curran views acquisition of this land for pasture as an undesirable alternative. He hasn't seen many farms remove woodlands for use as pasture. (12/3/86 p.27) He states that he would recommend someone acquiring the petition property for pasture only if there is no other pasture available. If someone needed pasture right away, it would be out of the question (12/3/86 p.33-35). Dr. Curran offered no estimate of the costs of establishing or running a pasture operation.

Dr. Stevens has calculated cost and revenue estimates for both sheep and beef operations on this property (Petitioners' Exhibits 20 and 21). The annual loss from operating a beef herd on the property would be \$41,145.00. The annual loss from operating a sheep herd on the property would be \$34,445.00.

An operation which loses \$34,000 to \$41,000 a year can by no means be characterized as productive. Therefore, placing the petition property in pasture cannot be considered an appropriate use of the land.

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HARVESTING THE TREES

Mr. Koehn has developed an extensive "Forest Resource Management Plan" (People's Counsel Exhibit 9) which calls for an initial "thinning" or "improvement" cut which will remove 58.25% of the trees on the property and a subsequent "final harvest" 15-20 years later which removes, kills or poisons all trees greater than 2 inches in girth in substantial areas. As an alternative to the "final harvest," Mr. Koehn, in his testimony, proposed a rotating series of "thinning" or "improvement" cuts which, he claims, would yield an annual sustainable income of \$30,000.00 a year from the 326 acres covered by his plan. The difference between the 303 acres of the petition property and the 326 acres involved in his plan appears to arise from Mr. Koehn's inclusion of trees below the transmission line in his plan. (see People's Counsel Exhibit 10A)

Mr. Gould testified that a forester he contacted two years ago offered \$40,000.00 to cut the mature timber from the property. (12/2/86 p. 173) As was addressed above, however, Petitioners are unwilling to remove the trees from the property as called for by Mr. Koehn's plan because of

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the substantial damage it would do to the aesthetics and value of the property and the surrounding neighborhood. Moreover, Mr. Koehn's plan calls for harvesting trees on steep slopes and in the stream bed, which is environmentally unsound, and directly contradicts the recommendations of another People's Counsel's witness, Larry Duket.

Joseph Brown, an expert in environmental planning (1/23/87 p. 120) who has had experience with the U.S. Forestry Service (1/23/87 p. 119) considers Mr. Koehn's forestry management plan to be inappropriate for this property in view of its size and location relative to a major urban center. (1/23/87 p. 127) The noise of the timbering operation would be "unbelievable". (1/23/87 p. 129) Implementation of this plan would not just diminish the value of the land, he says, it would remove it from any kind of valuation process. (1/23/87 p. 127)

Ms. Lott's assessment of the impact of timbering operations in the neighborhood caution against implementation of Mr. Koehn's plan. Ms. Lott commented that, "...most people that go in and timber leave so much junk behind you can't even go in and show a lot. The tops, the limbs are all lying around. That's going to be

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detrimental..." (1/23/87 p. 33). Ms. Lott said such timber operation affect not only the property itself but neighboring properties as well. (1/23/86 p. 33)

Mr. Schulte described the appearance of land after forestry management practices as "extremely unattractive". The remaining trees tend to be immature and damaged with broken branches and tops from trees falling around them. The ground is littered with debris from tops, branches and limbs of trees. The soil itself is badly chewed up by the movement of heavy equipment. Flowering trees such as dogwoods and myrtles are gone. (1/23/87 pp. 80-82)

Like Mr. Duket, Mr. Brown questions whether the plan is environmentally sound. He objects to cutting trees along the stream, as called for in the plan, something he states the Forest Service would never allow. (1/23/87 p. 128) He also objects to Mr. Koehn's plan to inject poison into the ecology. (1/23/87 p 126)

Mr. Brown characterizes the plan as an aggressive plan on a marginal site. (1/23/87 p 127) The plan is typical of major timbering plans for vast land holdings of several million acres isolated from urban areas, major

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transportation infrastructures and roads. (1/23/87 p 125) Obviously these conditions are not the conditions on the petition property.

Even Dr. Curran, People's Counsel's agricultural expert, stated that the wouldn't encourage someone to establish a lumbering operation on the petition property because of the proximity of neighboring residences. (12/3/86 pp. 40-41) Dr. Curran stated that there are only several farms in Baltimore County which produce lumber and even for them it is a small amount of lumber. They don't really consider themselves lumber operators, it is usually just a small amount of the farm used for that purpose. To the extent there are lumbering operations in Maryland, they are in other counties. (12/3/86 pp 39-40)

Relying on Mr. Koehn's estimates for revenue and costs, Dr. Stevens has estimated the annual net income for timber production on the petition property. (Petitioner's Exhibit 22) In calculating capital invested in the property, Dr. Stevens used a conservative figure of only \$2,500 per acre. Mr. Criss testified that the fair market value of property in this area with R.C. 2 zoning is \$4,500 to \$6,500 per acre, and the agricultural value of property

in the area is \$2,500 to \$3,500 per acre. (12/3/86 p.102) Even with his conservative estimate of capital invested in the property, Dr. Stevens estimates a net loss of \$20,342 per year from timber production on the property. (Petitioners' Exhibit 22).

Not only is the forestry management plan environmentally unsound and inappropriate to the site, it is economically unproductive. Timber production is not appropriate for this property.

EXTREMELY LARGE LOT RESIDENTIAL DEVELOPMENT

People's Counsel and Protestants offered testimony by Ms. Lott and Mr. Solomon regarding the possibility of developing extremely large lot residences on the petition property, averaging 20 acres per lot. (1/23/87 p.19) The offering of this testimony is very much a capitulation by People's Counsel and Protestants. This is not an agricultural use of the property. As Ms. Lott put it, "Some of the people might still have an animal, a horse, a pony. I mean, they're not going to be raising corn..." (1/23/87 p. 26)

The purpose of R.C. 2 zoning is to preserve productive agricultural land for agricultural use, not to reserve land in Baltimore County for extremely large residential estates. Mr. Lott described the market that would be interested in the extremely large residential lots she describes as people who want to be assured that "...that the next door neighbor is also going to have a million dollar property." (1/23/87 p. 24) It is not the purpose of R.C. 2 zoning to create neighborhoods of million dollar properties. Certainly nothing in the regulations themselves suggest such a purpose.

If the petition property is not suitable for agriculture, it would be indefensible to leave it in R.C. 2 zoning for the development of extremely large estates averaging 20 acres and valued at a million dollars. Land which is unsuitable for agriculture should not be zoned agricultural. The petition property is unsuitable for agriculture. It should be reclassified R.C. 5, rural residential.

R.C.2 ZONING FOR THE PETITION PROPERTY IS UNFAIRLY DISCRIMINATORY

The law requires that zoning not be unfairly discriminatory. Land of like conditions must be zoned in like manner.

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.

Cassel v. City of Baltimore, 195 Md. 348, 354 (1949).

The evidence presented in this case clearly demonstrates that the petition property is very much like surrounding property zoned R.C. 5, and very much unlike property in the area zoned R.C. 2. Using the aerial photographs (Petitioners Exhibits 17 and 18) with their topographic overlay, Mr. Schulte clearly demonstrated that everywhere in this area where there is the kind of rolling topography found on the petition property there is residential R.C. 5 development, except on the petition property. (1/23/87 pp. 75-76)

Mr. Schulte described two other zoning requests for properties which, like the petition property, lie above the transmission line. They were the S & R Investors property southwest of Park Heights Avenue, and a trapezoidal site contiguous to the Gould property, petition 82135. Both were reclassified from R.C. 2 to R.C. 5. (1/23/87 p. 94) Mr. Schulte described these two properties as similar to the petition property in every respect. (1/23/87 p. 99)

Mr. Solomon concedes that, other than the size of the property, there are no significant differences between the S & R Investors property that was rezoned R.C. 5 and the property under consideration in this matter. They have the same soils, the same topography, the same forest cover. (12/19/86 A pp. 69-70, 91-92) As Mr. Solomon concluded, "If you want to make a big case about that, you should." (12/19/86 A p.115) Mr. Solomon seeks to minimize the impact of the rezoning of this identical property by stating his opposition to it. Nonetheless, that land has no meaningful differences with the land now before this Board, except one. It is zoned R.C. 5 while the Gould land is zoned R.C. 2.

Mr. Solomon also concedes that the topographic characteristics of the petition property are very similar to

the bordering land zoned R.C. 5, and to the R.C. 5 land on the other side of Caves Road, while acknowledging that the topographic conditions of the petition property are different from the bordering R.C. 2 land. (12/19/86 pp. 101-102) These topographic characteristics are apparent from Petitioners' Exhibits 7, 17 and 18.

Caves Road is only a theoretical boundary between R.C. 2 and R.C. 5 zoning. The Caveswood Road properties are zoned R.C. 2, but are developed R.C. 5. (1/22/87 p. 88) The pattern of development on both sides of Caves Road is the same despite different zoning. As Mr. Schulte said, "R.C. 5 on this side, R.C. 2 on this side, but driving down the road the difference in the zoning would not be apparent." (1/23/87 p. 87)

Examine the aerial photographs (Petitioners' Exhibits 17 and 18) and the tax map. (People's Counsel Exhibit 3) All of the properties on Caves Road except the Gould properties are developed in a manner totally inconsistent with R.C. 2 zoning. The zoning has no effect on any property owner on Caves Road other than the Goulds. This is discrimination, pure and simple.

There is no justification for treating the petition property any different from surrounding property of the same characteristics. The Gould property is zoned the same as property on the valley floor which is different in soils, slope topography and ground cover. Every other property in the area which shares the same soils, slope, topography and ground cover as the petition property has rural residential development. The Goulds seek only to be treated the same as their neighbors. Proper zoning demands that this discrimination be corrected. This Board must correct the discriminatory zoning of the petition property by rezoning it R.C. 2.

CONCLUSION

The 303.39 acres under consideration in this petition are unsuitable for agricultural use. The U.S.D.A. Soil Conservation Service rates 60% of the property above the transmission line and 70% of the property on Caves Road as having severe limitations for agricultural production. The remainder of the property, which has moderate limitations for agricultural production, consists of scattered noncontiguous parcels separated from one another by steep slopes in excess of 20% and stream bed, making agricultural

production impractical. The slopes on the property create severe erosion hazards, necessitating expensive conservation management measures which make agricultural production on the property economically unproductive.

Placing the land in agricultural production, for either crops or pasture, would necessitate clearing the land of its existing tree cover which would greatly increase erosion and be environmentally unsound. Placing the land in pasture would result in annual losses of scores of thousands of dollars.

The forestry management plan proposed by People's Counsel calls for an initial "thinning" out which would remove in excess of 58% of the trees on the property in preparation for a "final harvest" which would leave significant portions of the property clear cut. The plan is wholly inappropriate for the property in light of its size and proximity to neighbors. Moreover, the plan is also economically unproductive.

The petition property has the same characteristics in soils, slope, topography and ground cover as surrounding land zoned R.C. 5. It shares none of these characteristics

with surrounding land zoned R.C. 2. The R.C. 2 zoning of the petition property is unfairly discriminatory.

The petition property is now zoned R.C. 2, agricultural. That zoning is a mistake because the property is not suitable for agriculture. In addition, R.C. 2 zoning is a mistake because it unfairly discriminates against the property, which is identical to surrounding R.C. 5 zoned land.

This Board should correct the mistake in zoning the petition property and end the unfair discrimination against the property by reclassifying the property R.C. 5.

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Attorneys for Petitioners

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EXPLANATION OF TRANSCRIPT REFERENCES

Hearings in the case took place on five different days. Transcript says for each day are separately numbered, and in the case of December 19, 1986 the pages for the morning and afternoon are separately numbered. For clarity all transcript references are given by date and page. In the case of December 19, 1986, the date is followed either by an M, indicating morning, or an A, indicating afternoon.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 1987, a copy of the foregoing Petitioners' Hearing Memorandum was mailed first class, postage prepaid, to Peter Max Zimmerman, Esquire, and Phyllis C. Friedman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland, 21204, and George Doub, Venable, Baetjer & Howard, Suite 1800, 2 Hopkins Plaza, Baltimore, Maryland 21201.

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Thomas J. Gisriel
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IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE COUNTY
* CASE NO. 87CG2107
* 40/177

* * * * *

PETITION

Conservation Associates, Cavemen Properties and Kingdon Gould, Jr., Trustee, appellants, pursuant to Rule B2 of the Maryland Rules of Procedure, petition this Court regarding the May 1, 1987 order of the County Board of Appeals of Baltimore County and say:

1. On May 1, 1987 the County Board of Appeals of Baltimore County (hereinafter referred to as "Board of Appeals" or the "Board") denied appellants' petition for reclassification of two parcels of land with a total size of approximately 303 acres from R.C. 2 "Agricultural" zoning to R.C. 5 "Rural Residential" zoning.

2. The Baltimore County Zoning Regulations expressly designate R.C. 2 zones as "Agricultural." The stated purpose of the R.C. 2 zoning classification is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County..." This purpose is premised on a legislative finding "... that

Baltimore County is ... endowed with a variety of very productive agricultural soil types..." The Zoning Regulations state that agricultural operations "...shall be afforded preferential treatment over and above all other permitted uses in R.C. 2 zones."

3. The Baltimore County Zoning Regulations designate R.C. 5 zones as "Rural Residential." The stated purpose of the R.C. 5 zoning classification is to "...provide for rural-residential development in suitable areas in which basic services are not anticipated..." and to "...assure that encroachments onto productive or critical natural resources will be minimized."

4. Appellants had petitioned for reclassification of the property, alleging that agricultural zoning of the property is a mistake because the property is not suitable for agriculture, and that the agricultural zoning of the property is unfairly discriminatory because other property in the area which is not suitable for agriculture is not zoned for agricultural use.

5. The Board of Appeals retained R.C. 2 "Agricultural" zoning for the petition property despite factual findings that:

[T]hose parcels contained in the petition are not tillable in their present condition, do not possess essential qualities that would make the land profitable agriculturally, are not being used presently for any agricultural pursuit of a commercial

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nature and from all indications have not been used for such pursuits over the course of the last century, if ever. (pages 2-3)

* * *

[A]fter consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. (page 4)

6. The Board concluded that R.C. 2 "Agricultural" zoning is correct for the petition property, notwithstanding its unsuitability for agricultural use, in order to avoid fostering conditions unfavorable to continued agricultural use of agricultural land adjacent to the petition property.

7. The Board failed to address appellants' arguments regarding discrimination in any manner in its May 1, 1987 Opinion and Order.

8. The Board of Appeals' May 1, 1987 Opinion and Order are erroneous in that:

A. The Board's decision improperly classifies the petition property for a use for which it is not suitable in order to act as a buffer for other property.

B. The Board's decision is in conflict with the Baltimore County Code, the Baltimore County Zoning

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Regulations, as well as with the decisional law of the courts of Maryland relating to zoning.

C. The Board's decision is unsupported by competent, material and substantial evidence;

D. The Board failed to address appellants' arguments regarding discrimination in any manner, thereby allowing illegally discriminatory zoning to persist.

WHEREFORE, appellants petition this Court to reverse the Order of the Board of Appeals in this matter dated May 1, 1987 and reclassify all or a portion of the property which is the subject of this petition from RC-2 "Agricultural" zoning to R.C. 5 "Rural Residential" zonings.

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(301) 539-0513

Attorneys for Appellants

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1987, a copy of the foregoing Petition was mailed first class, postage prepaid to:

Phyllis C. Friedman, Esquire
Peter Max Zimmerman, Esquire
People's Counsel
Room 223, Court House
Towson, Md. 21204

George C. Doub, Jr., Esquire
Venable, Baetjer and Howard
1800 Mercantile Bank and Trust Building
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Baltimore, Maryland 21201

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Thomas J. Gisriel
Thomas J. Gisriel

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IN THE MATTER OF THE PETITION
FOR RECLASSIFICATION FROM
R. C. 2 TO R. C. 5 ZONE
NE/S PARK HTS. AVE., 467'
6 1507' NW OF CAVES RD.,
4th DISTRICT
CONSERVATION ASSOCIATES,
Petitioner

BEFORE THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Zoning Case No. R-86-110

PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM

Taking a cue from William Safire*, imagine that we are approaching the end of Act Two of a three-act play called, "The Caves Controversy." Act One ran before the County Council in 1984, where the developer clashed with natives, amid the fateful warnings of planners over the future of the Piedmont. Act Three is expected to run in the state and federal courts, its future scenario just beginning to take shape.

Act Two has been the longest and most complex, with armies of lawyers and witnesses making point and counterpoint at the County Board of Appeals. It brings to mind the series of engagements around the Shenandoah River, which historians call, "The Valleys Campaign," for like the mists which hover over those valleys and influence the course of struggle, there are myths which tend to diffuse into this controversy. The prompt understanding and exposure of these myths is crucial to a correct observation and understanding of the present events.

* See New York Times Magazine, March 22, 1987, "Ten Myths About the Reagan Debacle."

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COUNTY BOARD OF APPEALS
JUN 25 1987

The Four Myths.

I. A Farm Tract Is Lesser Than
The Sum of Its Parts

The surest way to devastate agriculture in Baltimore County is to employ the age-old tactic of "divide and conquer." By a concentration of forces at the location believed to be most vulnerable, the challenger can isolate and pick off the intended target.

Here, the claim is that the valley walls are unfit for crops; therefore, they should be turned to concentrated development. Never mind that like many working farms in the Piedmont, this land offers timber and pasture which complements the cropland below. Never mind that farming typically involves a mixture and variety of soils and topography ideally found on large tracts.

This is a matter of facts produced by witnesses - Paul Solomon, Richard Curran, and Jeremy Criss. It also is a matter of law. Resource Conservation zoning is to be reasonably construed if it is to serve its purpose of protecting endangered resources. BC7R 1A01.1, attached as Exhibit A. See Furey v. City of Sacramento, 592 F. Supp. 463 (E.D.Cal. 1984); Wilson v. County of McHenry, 416 N.E.2d 426 (Ill. App. 1981).

Moreover, it is an essential tenet of modern land use law that the focus must be on the entire property, and not its parts. Penn Central Transportation Co. v. New York City, 430 U.S. 104, 98 S. Ct. 2646, 2665 (1978); Bureau of Mines v. George's Creek, 272 Md. 143, 321 A.2d 748 (1974); Potomac Sand and Gravel Company v. Governor, 266 Md. 358, 293 A.2d 241 (1972).

The current doctrine is traceable to this statement by Mr. Justice Brandeis in dissent in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 159, 161 (1922):

"It is said that one fact for consideration in determining whether the limits of the police power have been exceeded is the extent of the resulting diminution in value, and that here the restriction destroys existing rights of property and contract. But values are relative. If we are to consider the value of the coal kept in place by the restriction, we should compare it with the value of all other parts of the land. That is, with the value not of the coal alone, but with the value of the whole property. The rights of an owner as against the public are not increased by dividing the interests in his property into surface and subsoil. The sum of the rights in the parts can not be greater than the rights in the whole. The estate of an owner in land is grandiloquently described as extending ab eo usque ad coelum. But I suppose no one would contend that by selling his interest above 100 feet from the surface he could prevent the state from limiting, by the police power, the height of structures in a city. And why should a sale of underground rights bar the state's power? For aught that appears the value of the coal kept in place by the restriction may be negligible as compared with the value of the whole property, or even as compared with that part of it which is represented by the coal remaining in place and which may be extracted despite the statute."

Here, we have a 682 acre tract which, in its entirety, so far as the record shows, may be of outstanding value; and we have a portion under consideration which is of value and useful in context. Indeed, even if it were considered separately, it is productive. But that brings us to our next myth.

II. If You Can't Grow Corn, Then
It's Not Agriculture.

This is more than a quarrel over linguistics. It goes to the heart of the matter. The developer began the case with the idea that agriculture

involves no more than crops. By the end of the case, it became apparent that woodland and pasture activities are legitimate farm uses, separately or together with cropland. With this matter clarified, yet another arose.

III. If a Potential Use Appears to Displease
the Developer and the Natives, Then It's
Not Reasonable.

It has been suggested that neither the developer nor the natives wish to see the forests cut, the trees trimmed, or the resulting meadows put to pasture. Has it been overlooked that zoning is not by plebiscite? Northwest Merchants Terminal v. O'Rourke, 191 Md. 171, 60 A.2d 743 (1948). Nor can it be by agreement. Montgomery County v. Nat'l Capital Realty Corp., 267 Md. 364, 297 A.2d 675 (1972).

Comprehensive zoning is just that, comprehensive. Resource conservation zoning governs a massive area of the county's rolling hills and valleys. It is not to be chopped apart, even if we assume it to be in accordance with the desires of current owners and occupants of the neighborhood. The danger in the removal of each bit of farmland is the pattern which emerges only after it is too late.

IV. They Have Rezoned the Ridges and a Part
of the West Wall; Therefore, the East
Wall Cannot Stand.

To be sure, the planners have recommended, and the Council has approved, rural-residential zoning on the ridges; so, in the practical implementation of the zoning by property boundary, it may occur that the R. C. 5 includes some part of the wall, and the R. C. 2 the ridge. Is this the zoning equivalent of "a ridge too far?" Does it follow that the greater part of the valley walls must crumble under the heavy machinery of development?

Have we forgotten that zoning is an art, and that "zoning inevitably involves the drawing of lines"? Montgomery County v. Pleasants, 266 Md. 462, 467, 295 A.2d 216, 219 (1972). Otherwise stated, "... the fact that the legislative body has rezoned an adjoining property does not require it to rezone the property under consideration." 259 Md. 693, 703, 271 A.2d 166, 171 (1970).

If it is suggested that property lines are not pertinent to comprehensive zoning, then there will be chaos. Indeed, the usual contention is that it is error to split a tract.

As to the property across Park Heights Avenue, even if we assume it to have been mistakenly zoned in 1980, there is no reason to compound a wrong. In any event, there has been no unreasonable discrimination. The part rezoned, 65 acres of a 240 acre tract, is not of the same size or magnitude as the property under consideration, and it is closer to the previously developed suburbs lying in a westerly direction.

In County Commissioners of Queen Anne's County v. Miles, 246 Md. 55, 228 A.2d 450 (1967), the Court of Appeals denied a comparable objection to historic estate zoning. There, the property owners argued that land with similar soils and topography was zoned residential, proving discrimination. In finding that these properties were distinguishable, Judge Reuben Oppenheimer said:

"A person who contends that there has been a denial of the equal protection of the laws has the burden of showing that his situation is the same as another situation, and that the State or its instrumentalities, has treated the two situations differently in an unreasonable or arbitrary manner. . . . As Judge Hammond (now Chief Judge) said for the Court . . . :

"We reiterated . . . , as we have held in many cases before and since, that the court, in reviewing the action of zoning authorities, will not substitute its judgment for that of the authority unless the latter's action was arbitrary, capricious or illegal and that if the facts were sufficient to support the decision the question decided was fairly debatable and the decision must be upheld." . . .

"In the words of Chief Judge Brune, for the Court, . . . :

"Zoning and rezoning do require the drawing of lines, and the legislative body may draw them subject to the same limitations as are applicable to other phases of the zoning process." . . .

" . . . A zone boundary which was a property line has been upheld. . . ." (Citations omitted.) 228 A.2d. at 462-63.

In the present case, the property to the west is not only much smaller, but also situated in an area closer to existing centers of population. It is analogous to the properties zoned residential in Miles.

Judge Oppenheimer's concluding remarks there are likewise apt here:

"The Commission and the Commissioners, with sound reasons, may well have classified some of the A-1 properties as R-1, or some of the R-1 properties as A-1 or in a residential district with a smaller requirement for dwelling lots. That these possibilities were carefully considered is evident. That the conclusions of the deliberations were always wise may be doubtful. That the decisions as to the classifications were fairly debatable, however, in our judgment, is apparent." 228 A.2d, at 463.

V. The Minor Myths

In concentrating on the four major myths, we shall not overlook others which merit inclusion in this review. The developer has suggested that the early history of the site, recording a wooded aspect, negates its agricultural

character; that the more recent Plan for the Valleys recommends intense development; that the voluntary nature of the Agricultural Preservation Program makes this site's qualifications and suitability irrelevant; and that electric transmission lines establish and define the suitable zoning boundary in the area. These myths are so apparent that they need no further discussion.

In all of this, we have not yet said that the developer's lead planning witness conceded he had no expertise in agriculture, while the well-qualified county planners were backed not only by Mr. Curran of the Farm Bureau, but also by Mr. Duket of State Planning. Nor have we mentioned the thorough discussion of woodland resources by the District Forester, Mr. Koehn.

CONCLUSION

There is but one myth yet to be stated, the myth that the County Council acted unreasonably or erred when, in Act One, it made the judgment that this vital section of the Caves Valley remain agricultural. If, at the conclusion of Act Two, the County Board of Appeals believes this myth, it will precipitate the Caves Tragedy. As the curtain comes down on Act Two, the Board of Appeals should deny this reclassification.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2189

I HEREBY CERTIFY that on this 25th day of March, 1987, a copy of the foregoing People's Counsel's Post-Hearing Memorandum was mailed to Michael U. Gisriel, Esquire, and W. Thomas Gisriel, Esquire, 210 E. Lexington St., Suite 400, Baltimore, MD 21202; Mitchell Kolkin, Esquire, and George C. Doub, Jr., Esquire, Suite 1800, 2 Hopkins Plaza, Baltimore, MD 21201.

Peter Max Zimmerman
Peter Max Zimmerman

EXHIBIT A

Section 1A01 - R. C. 2 (AGRICULTURAL) ZONES [Bill No. 98-75]
1A01.1 - General provisions. [Bill No. 98-75]

A. Legislative Statement of Findings.

1. Declaration of findings. It is found:

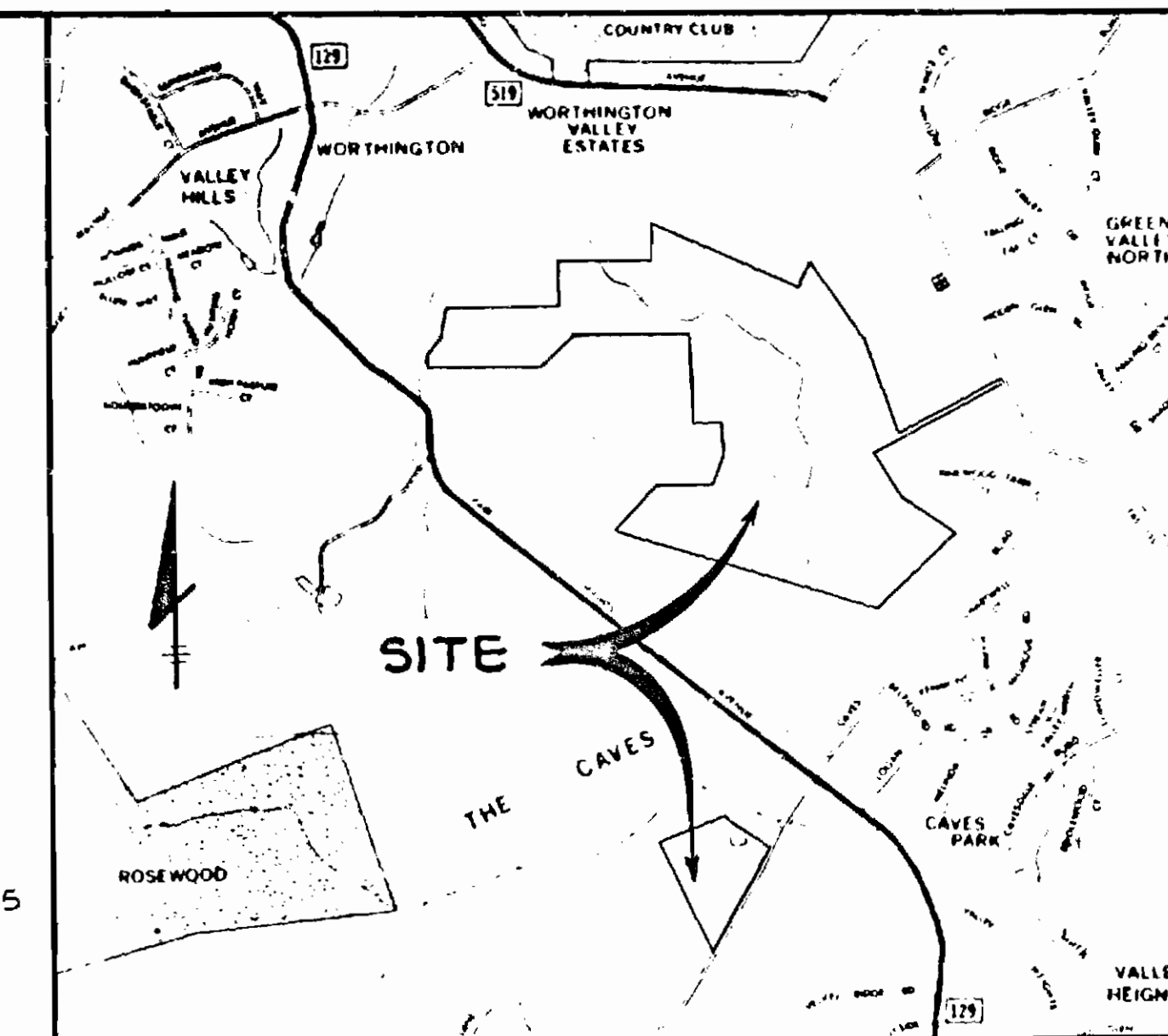
- that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development; [Bill No. 98-75]
- that the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry; [Bill No. 98-75]
- that scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land; [Bill No. 98-75]
- that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area; [Bill No. 98-75]
- that heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County; [Bill No. 98-75]
- that Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the Bay's biotic life; [Bill No. 98-75]
- that Baltimore County possesses numerous areas which are highly suitable for urban development including residential subdivisions which are not located in areas of productive agricultural land. [Bill No. 98-75]

B. Purposes: The R. C. 2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses. [Bill No. 98-75]

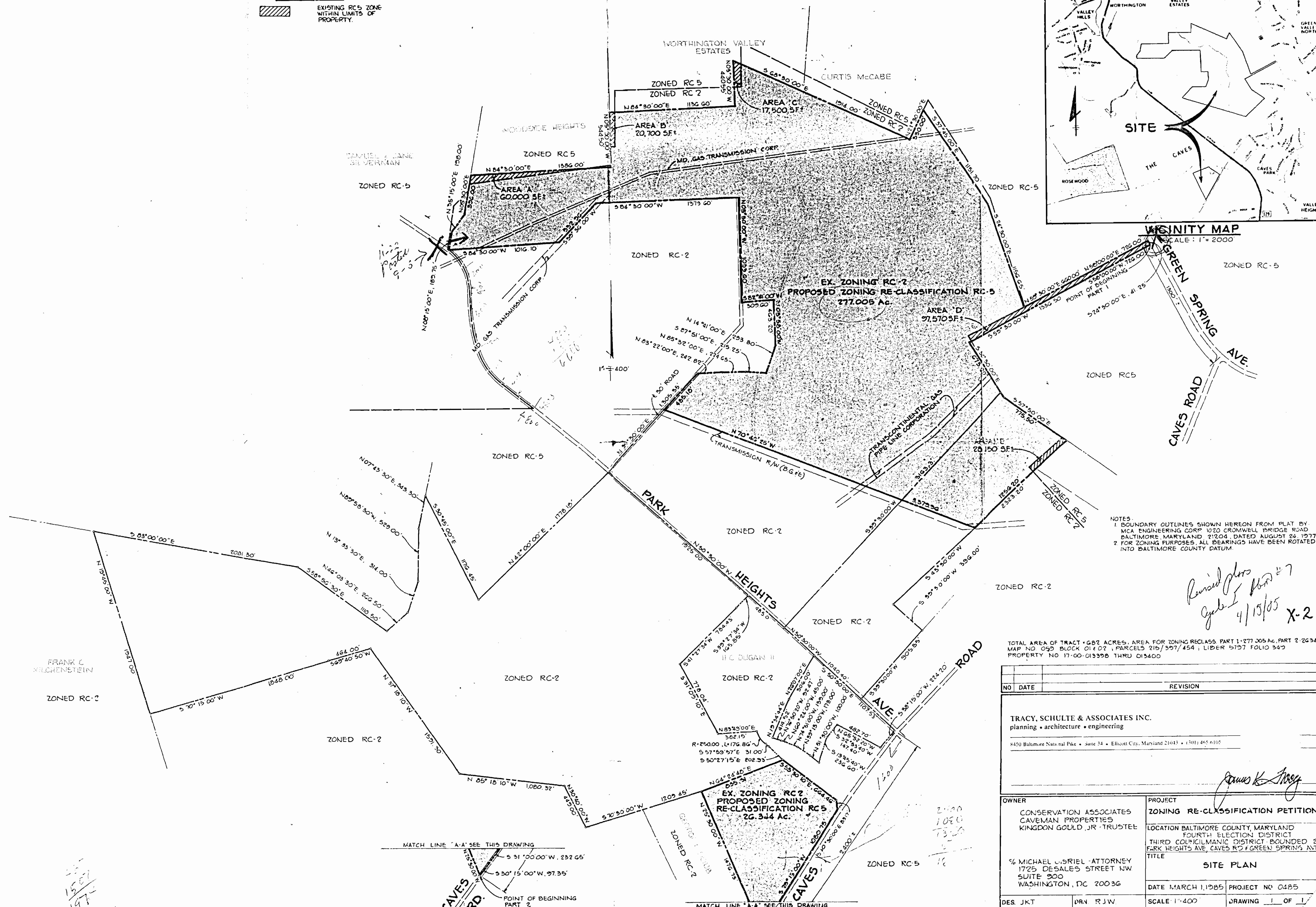
LEGEND



EXISTING RC-5 ZONE
WITHIN LIMITS OF
PROPERTY.



NEIGHBORHOOD MAP
SCALE: 1" = 2000'



NOTES:
1. BOUNDARY OUTLINES SHOWN HEREON FROM PLAT BY:
MCA ENGINEERING CORP. 1020 CROMWELL BRIDGE ROAD
BALTIMORE, MARYLAND 21204, DATED AUGUST 24, 1977
2. FOR ZONING PURPOSES, ALL BEARINGS HAVE BEEN ROTATED
INTO BALTIMORE COUNTY DATUM.

Revised Plans
Cycles 1-5
4/15/05
X-2

TOTAL AREA OF TRACT 682 ACRES, AREA FOR ZONING RECLASS. PART 1-277,005 AC, PART 2-26,344 AC
MAP NO. 050 BLOCK 01402, PARCELS 215/357/454, LINDER 5757 FOLIO 345
PROPERTY NO 17-00-013398 THRU 013400

NO	DATE	REVISION

TRACY, SCHULTE & ASSOCIATES INC.
planning • architecture • engineering

8450 Baltimore National Pike • Suite 34 • Ellicott City, Maryland 21043 • (301) 465-6105

OWNER
CONSERVATION ASSOCIATES
CAVELMAN PROPERTIES
KINGDON GOULD JR. TRUSTEE

PROJECT
ZONING RE-CLASSIFICATION PETITION

LOCATION BALTIMORE COUNTY, MARYLAND
FOURTH ELECTION DISTRICT
THIRD COUNCILMANIC DISTRICT BOUNDED BY
PARK HEIGHTS AVE, CAVES RD & GREEN SPRING AVE

TITLE
SITE PLAN

DATE MARCH 1, 1985 PROJECT NO 0485

DES. JKT DRN RJW SCALE 1"=400' DRAWING 1 OF 1

APRIL 1985

that would foster unfavorable conditions to the continued agricultural use of the productive Caves Valley floor, and that Baltimore County possesses numerous areas which are highly suitable for moderate intensity residential development which are not located in areas of such productive agricultural land.

AGRICULTURAL USE OF THE PARCELS

The Board heard extensive testimony from a number of highly credible sources as to the agricultural potential of this property. On balance we found the opinion of George A. Stevens, the Petitioner's agricultural economics expert, to be most persuasive. We will let the record speak for itself regarding the basis of these conclusions. We do however agree with his opinion that after consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. The facts of this case are simply too clear that the tree cover would have to be removed and the soils made productive for any of these pursuits. To accomplish this task would be much too costly relative to the potential monetary benefit not to mention that the result would be far less desirable than the aesthetic qualities of the property as it presently exists.

WOULD DEVELOPMENT OF THE PARCELS BE CONSISTENT WITH R.C. 5 ZONING
FOSTER CONDITIONS UNFAVORABLE TO A CONTINUED AGRICULTURAL USE
OF PRODUCTIVE AGRICULTURAL AREAS

Whether or not the development of the petitioned parcels into one and one-half-acre homesites fosters conditions that are unfavorable to a continued

agricultural use of the Caves Valley floor is the central issue in this case. It is recognized by this Board that factors such as elimination of tree cover or natural cover in order to construct a home; creation of significant amounts of impermeable surface required for homes themselves and ancillary roads, driveways and other structures; establishment of wells; establishment of septic systems and the effectiveness of these systems, as well as other factors have a negative impact on a continued agricultural use of productive land. The Board is not stating that any residential development near productive agricultural land is inherently evil or likely to cause a significant amount of harm to the farm areas. The R.C. 2 use regulations permit single-family detached dwellings at a density of one lot for each fifty acres. This level of development may appear unreasonably restrictive. However, when comparing such a right against the right to develop one house per every acre and one-half, the distinction requires close attention to the relative effects that such developments will have on the farmland. At a certain level the combination of unnatural factors does create an unfavorable environment for agriculturally used land.

The Board is convinced that the testimony of Larry F. Duket, Chief of the Current Planning Unit of the Maryland Department of State Planning, and the testimony of Paul J. Solomon, Environmental Planner for Baltimore County, was most credible and persuasive on this issue. In particular, Mr. Duket expressed the effectiveness of R.C. 2 zoning as a tool in preserving agriculture by channeling development away from agricultural areas and toward appropriate areas of moderate density residential or commercial development. He concluded that development at a density of one dwelling per one and one-half acres would compromise the aquifer that supports the farmland, reduce nutrients in the soil

which are considered prime and productive and that the services which of necessity must be provided to the homeowners would cause an impact well beyond the specific property over which their homes were located. There exists an aquifer of great size beneath this general geographic region including parts of the subject property. The integrity of this aquifer is of great concern in general and in particular to the retention of productive agricultural land. As stated by Mr. Duket, the capacity to obtain water from this aquifer is fine at present but development of the nature possible by rezoning these parcels could have a significant impact on maintaining this critical water supply. When trees are removed and foreign impervious surfaces are placed on the land, the soils lose valuable nutrients. The soils in the present instance generally have a hydrologic value "B". This is a rather porous quality. The result of placing septic systems each acre and one-half over properties with the above characteristics would create an environment where effluence would sift down rather quickly and creates a clear potential for damage to the aquifer. Mr. Solomon took the analysis one step further. It was his opinion that even if homes were not directly over the aquifer but were uphill of the aquifer, the sewage from such homes could infiltrate into this water supply. This he characterized as the potential for a serious problem with the aquifer. Obviously, once this aquifer begins to become compromised, the impact would be a detriment to the farmland of the Caves Valley. Furthermore, other services necessary to satisfy the needs of moderate residential development in this area would continue to compromise the region. Additionally, this land is part of the Piedmont, well recognized for its prime and productive agricultural qualities. It is an important natural resource. It is of a finite quantity. It is being lost to development continuously. Careful consideration on the impact that development will have across

the Piedmont is a factor that this Board recognizes.

Mr. Solomon testified further on the appropriateness of zoning land around a farm use as "agricultural" in order to support the strong farm use. In explaining the basis of using the Petitioners' property lines as the basis for distinguishing between R.C. 2 and R.C. 5 he satisfied the Board of the appropriateness of the County's policy of using such a standard consistently as the line which divides such uses. Clearly a "resource line" must be determined and then a "legal line" must be established in pursuit of protecting the resources worthy of protection. We do not believe that establishing the zoning demarcation around this property was arbitrary, capricious or illegal. There is a valuable resource--the Caves Valley--which was not previously compromised by development, maintains active and good soils and is of a large size. Zoning is an appropriate and effective tool in maintaining such a resource. Mr. Solomon explained that it is a rare exception to divide a farm between zones. The nature of agriculture is such that virtually every farm has a portion of woodland or other land not suitable for active agricultural pursuits. If this Board divided the property at the transmission line as suggested by Petitioners we may well open the floodgates to other farmers who want to carve out sections of their farms for development. Though such issues are not before this Board, are not relevant to our decision and have not been considered in reaching our decision, we would be foolish if we did not recognize the profound impact on the future development of other valley walls throughout Baltimore County that approval of this petition would encourage.

THE PRESENT ZONING AFFECTS THE PROPERTY OWNERS
A REASONABLE USE OF THEIR PROPERTY

After five days of testimony, Paul Dillman was recalled as People's Counsel's final rebuttal witness. During his testimony on the conclusions of

a number of the experts called previously in the case, he articulated a land plan that could be easily accomplished as a matter of right within the R.C. 2 zone. Such a plan affords a reasonable and appropriate use of the entire tract owned by Petitioners, conserves the Caves Valley resource, would preserve the agricultural nature of this resource for many years and at the same time provides the lot owners with what would, by any measure, amount to a substantial profit on their investment in having purchased this property less than ten years ago. Taking advantage of the sales potential of fifteen lots each of approximately twenty acres and which could be clustered as permitted in an R.C. 2 zone and placing the remaining 750 acres into the Maryland Agricultural Land Preservation Program while continuing to farm that portion of the property which is capable of productive agricultural pursuits the result is a reasonable and effective land plan that accomplishes the conservation of a valuable natural resource for which the R.C. 2 zone was specifically created to protect and creates a reasonable and profitable residential use consistent with the R.C. 2 regulations that is a compatible form of development. The sum result of such use would foster conditions favorable to the continued use of the agriculturally productive Caves Valley. To retreat from this objective by granting the herein petition would not be appropriate. We are therefore denying this reclassification petition.

ADDITIONAL CONSIDERATIONS

The Board wishes to emphasize once again our agreement with Petitioner that the property that is the subject of this petition is not appropriately considered agricultural. Though the testimony on all sides dwelled extensively on the agricultural capacity of the petitioned acreage, we simply do not believe

that is the sole criteria for placement of land within the R.C. 2 zoning classification. We further contend that, after having heard the extensive testimony in this case, a somewhat higher use of a residential nature over that area contained in the petition above that which is permitted as a matter of right in an R.C. 2 zone may not be wholly incompatible with preservation of the viable agricultural land in the Caves Valley. It may be that more testimony on this point accompanied by a documented site plan in the future may satisfy this Board or the County Council in that regard. Testimony from Petitioner was that no more than 100 lots could be developed over this property. This Board however is compelled to assume that this property would be used to the fullest capacity permitted by the reclassification. We have no authority to restrict use following a reclassification and we are therefore required to apply the standards testified to in this case assuming that 202 homes would be sited over this property. Notwithstanding Petitioners' protestations to the contrary, this Board has been witness on more than one occasion to the completion of more implausible engineering feats than placing more than 100 homes over this property. As it was, no such documented site plan was provided in this case and ultimately may not have made any difference in our decision. Such facts were not before us and we will speculate no further on them.

In applying the legal standards that we must in this request we are convinced that the proposed rezoning would in time compromise the agricultural land that is adjacent to these parcels. We are required to presume the correctness of the original zoning and comprehensive rezoning. Under the circumstances, we see no reason to believe that such a determination was in error and will so order.

The Board recognizes that the R.C. 2 classification is entitled Agricultural Zones. Generally it exists where there are active farming activities. We do not believe that such activities or even the potential for them are prerequisites for the placement of land within the zone in light of the clear purposes stated in Section 1A(1)(B). In this case we are specifically finding that notwithstanding the absence of farming on the subject petitioned property and the inability for such a potential, such a zoning classification is correct. If this basic presumption is nevertheless perceived as our indicating "error" for the subject site, we further hold that the petitioned reclassification for the property of R.C. 5 is not warranted by such perceived error, as would be required by §2-58.1(j)(2) of the Baltimore County Code.

ORDER

It is therefore this 1st day of May, 1987, by the County Board of Appeals of Baltimore County ORDERED that the petitioned reclassification from R.C. 2 to R.C. 5 is hereby DENIED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

Patricia Phipps

LeRoy B. Spurrier

LAW OFFICES

GISRIEL & GISRIEL
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

TELEPHONE
(410) 539-9993

May 21, 1987

Mr. Keith S. Franz,
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: IN THE MATTER OF THE PETITION OF CONSERVATION ASSOCIATES FOR ZONING
RECLASSIFICATION FROM R.C. 2 TO R.C. 5 FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS AVENUE, 457' AND 1507' NORTHWEST OF
CAVES ROAD 4TH ELECTION DISTRICT

Dears Messrs. Franz and Spurrier and Ms. Phipps:

Attached please find the Joint Motion of the Petitioners and Protestants in the above captioned matter for a 60 day extension of time to file an appeal and for this Board to exercise its revisory power over its Opinion and Order which was dated May 1, 1987.

Also attached is the proposed order accompanying said Motion.

I understand that the People's Counsel, Phyllis C. Friedman, has been made aware of the attached Motion and that she will not object to it.

Please call us if you have any questions regarding this matter. We ask that the Board consider this matter as soon as possible so as to allow us enough time to file our Appeal in the event that the attached Motion and Order is rejected.

Continued best regards. I remain

Very truly yours,

Michael Gisriel

Thomas J. Gisriel

MG/bls

Enclosures

cc: Keith S. Franz, Esquire
George Doub, Esquire
Phyllis C. Friedman, Esquire
Kingdon Gould, Jr.

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
MAY 21 1987

VENABLE, BAETJER AND HOWARD

WASHINGTON, D.C. OFFICE
SUITE 200
1800 MERCANTILE BANK & TRUST BUILDING
WASHINGTON, D.C. 20004
(202) 662-4300

BALTIMORE OFFICE
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514
(301) 244-7400

TOWSON OFFICE
SUITE 200
2000 CORPORATE RIDGE
TOWSON, MARYLAND 21204
(410) 749-3500

WRITER'S DIRECT NUMBER IS
244-7540

March 23, 1987

The Honorable Keith S. Franz
Ms. Patricia Phipps
Mr. Leroy B. Spurrier
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Members of the Board:

I have noticed two errors in the Memorandum of Protestants in Opposition to the Petition.

- (1) The reference on page 11 to "Attachment 3" should refer to Petitioner's Exhibit 3.
- (2) On Attachment 5, Mr. Hoswell's name is misspelled.

Very truly yours,

George C. Doub, Jr.
George C. Doub, Jr.

GCD:bb
8658Y/10

cc: Phyllis C. Friedman, Esquire
Michael Gisriel, Esquire

LAW OFFICES
GISRIEL & GISRIEL

SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

W. THOMAS GISRIEL
MICHAEL GISRIEL

PHILLIP O. TILGHMAN
VIRGIL H. ZIMMERMAN
THOMAS J. GISRIEL

TELEPHONE
(301) 539-0913

February 27, 1987

The Honorable Keith S. Franz
County Board of Appeals
of Baltimore County
Room 200 Court House
Towson, MD 21204

RE: Caves Valley

Dear Mr. Franz:

Enclosed is a personal copy of the post-hearing memorandum which we have filed with the Board of Appeals today in the Caves Valley case.

While the memorandum is somewhat lengthy, we believe that the magnitude of the case justifies its length.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

TJG/bls

Enclosures

LAW OFFICES
GISRIEL & GISRIEL

SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

W. THOMAS GISRIEL
MICHAEL GISRIEL

PHILLIP O. TILGHMAN
VIRGIL H. ZIMMERMAN
THOMAS J. GISRIEL

TELEPHONE
(301) 539-0913

April 13, 1987

Ms. Patricia Phipps
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, et al
Case No. R-86-110

Dear Ms. Phipps:

Enclosed is a personal copy of Petitioners' Reply Memorandum, the original of which has been filed today with the Board of Appeals.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

MG/TJG:phk
Enclosure
RECEIVED
APR 13 1987



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180

September 30, 1988

Howard E. Friedman, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-1698

RE: Case No. 87-CG-2107
Conservation Associates

Dear Mr. Friedman:

We would appreciate your noting our request for a copy of the Opinion in the subject case when it is filed by the Court of Special Appeals.

Thank you.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

LAW OFFICES
GISRIEL & GISRIEL

SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

W. THOMAS GISRIEL
MICHAEL GISRIEL

PHILLIP O. TILGHMAN
VIRGIL H. ZIMMERMAN
THOMAS J. GISRIEL

TELEPHONE
(301) 539-0913

March 2, 1987

The Honorable Keith S. Franz
County Board of Appeals
of Baltimore County
Room 200, Court House
Towson, MD 21204

Re: Conservation Associates
Reclassification Petition
Case No. R-86-110

Dear Mr. Franz:

Our review of the Post-Hearing Memorandum which we filed on Friday revealed several typographical errors, some of which obscured the meaning of several sentences of the memorandum. For example, the first line of page 10 was omitted and on page 45 "R.C.2" appears where "R.C.5" was intended.

Rather than leaving the errors uncorrected or sending replacement pages to be interspersed in the memorandum filed on Friday, we are taking the liberty of sending an entire corrected copy. Other than the correction of the typographical errors, the corrected copy is identical to the memorandum filed on Friday.

Copies of the corrected memo, and a copy of this letter are being sent to the Clerk of the Board, Mr. Spurrier, Ms. Phipps, People's Counsel and Mr. Doub.

Very truly yours,

Michael Gisriel
Michael Gisriel
Thomas J. Gisriel
Thomas J. Gisriel

TJG/bls

RECEIVED
APR 13 1987

Michael Gisriel, Esquire
204 North Liberty Street
Suite 400
Baltimore, Maryland 21201

August 23, 1985

NOTICE OF HEARING

RE: PETITION FOR RECLASSIFICATION
NE/S Park Heights Ave., 467' &
1507' N.W. Caves Road - 2 Parts
4th Election District
Conservation Associates, Petitioner
Case No. R-86-110 Cycle I Item #4

TIME: 10:00 a.m.

DATE: Tuesday, September 24, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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.

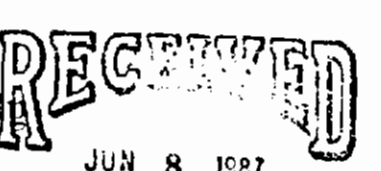
Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Weldon Hale
Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

Judith A. Arnold, Esquire
Michael McMahon, Esquire
Doris C. Woodward
Avis Reed
Frances P. Matthal
Phyllis A. Zheutlin
Lisa Keir, V.P.C.
Betty Beck
George Doub
Arnold Jablon
James E. Dyer
Margaret E. du Bois



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 4, 1987

George C. Doub, Jr., Esquire
2 Hopkins Plaza
1800 Mercantile Bank & Trust Building
Baltimore, MD 21201

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Doub:

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,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
Weldon Hale
Richard B. Buck
Kathleen Pontone
Lisa Keir (Home address)
Wilfred G. Keir
Jim Cox
Gretchen Feldman
Jean M. H. Jung
Norman E. Gerber
James G. Hoswell

IN THE MATTER OF
THE APPLICATION OF
CONSERVATION ASSOCIATES
FOR ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
NE/S PARK HEIGHTS AVENUE
467' AND 1507' NW CAVES ROAD
FROM R.C. 2 TO R.C. 5
4TH ELECTION DISTRICT

Conservation Associates
Petitioners/Plaintiffs
Zoning File No. R-86-110

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 40

Folio No. 177

File No. 87-CG-2107

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Patricia Phipps and Leroy B. Spurrier, 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, Thomas J. Gisriel, Esquire, and Michael Gisriel, Esquire, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire, and Mitchell Kolkin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavenen Properties, Kingston Gould, Jr., Trustee, c/o KFI, 1775 DeSales Street, N.W., Suite 500, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201; Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney, Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue,

CONSERVATION ASSOCIATES
NE's Park Heights Avenue
467' and 1507' NW Caves Road
RC 2 to RC 5
306 acres

#R-66-110
Item #4, Cycle 1, 1985

4th Election District

June 14, 1988 E Hearing had at Court of Special Appeals.

November 28 Vc Order of the Court of Special Appeals, on its own motion, that the appeal "be, and it is hereby, dismissed as moot." (Gilbert, Moylan, Wilner, JJ.)



Court of Special Appeals

Courts of Appeal Building
Annapolis, Md. 21401-1699

(301) 974-3646
WASHINGTON AREA (301) 261-2920

November 29, 1988

Michael Gisriel, Esquire
Thomas J. Gisriel, Esquire
210 East Lexington Street
Baltimore, Maryland 21202

Re: Conservation Associates et al. vs. People's Counsel
for Baltimore County et al.
No. 1724, September Term, 1987 CASE NO. R-86-110

Dear Counsel:

Enclosed find a copy of an Order of this Court dated November 28, 1988 dismissing the captioned appeal for the reason stated therein. The mandate of this Court will issue pursuant to Maryland Rule 8-606 (b).

Very truly yours,

Leslie D. Grader
Leslie D. Grader
Clerk

LDG:ls

Enclosure

cc: All counsel of record

TTY FOR DEAF:
BALTO-ANNAPOLIS AREA (301) 974-3646
WASHINGTON AREA (301) 566-0450

Conservation Associates
et al.

Appellants

vs.

People's Counsel for
Baltimore County et al.

Appellees

In the

COURT OF SPECIAL APPEALS

No. 1724

September Term, 1987

ORDER

It is this 21st day of November, 1988, by the Court of Special Appeals, on its own motion,

ORDERED that the captioned appeal be, and it is hereby, dismissed as moot. Maryland Rule 8-602 (a) (10).

Chief Judge Gilbert
CHIEF JUDGE GILBERT

Chief Judge Moylan
JUDGE MOYLAN

Chief Judge Wilner
JUDGE WILNER

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL			
DOCKET	PAGE	CASE NO.	CATEGORY
40	177	87CG2107	APPEALS
ATTORNEYS			
IN THE MATTER OF THE PETITION OF CONSERVATION ASSOCIATES, ET AL. FOR ZONING RECLASSIFICATION FROM R.C. 2 TO R.C. 5 FOR PROPERTY LOCATED ON THE NORTHEAST SIDE OF PARK HEIGHTS AVENUE, 467' and 1507' NORTHWEST OF CAVES ROAD 4th ELECTION DISTRICT		Michael Gisriel Thomas J. Gisriel 210 E. Lexington St. (410) 539-0513 J. Joseph Curran, Jr., Attorney at Law 301 W. Preston St., Balto., MD 21201 225-4500, 450-7777 Phyllis Cole Friedman, Esq. Peter Max Zimmerman Room 223 Court House (410) 494-2188 George C. Doub, Jr. Verable, Baetjer & Howard 1800 Merranville Park & Trust Bldg 2 Hopkins Plaza Balto. (410) 244-7400 SERIES, BOOKS & SERVICES Kathleen Pontone Donald R. Delorenz 250 W. Pratt St. Balto. (410) 576-4845	
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Protestant/Appellee		THE VALLEYS PLANNING COUNCIL, INC. Deft.-Intervenor THE MARYLAND DEPARTMENT OF STATE PLANNING	
True Copy Test KATHLEEN PONTONE KATHLEEN PONTONE			
COSTS CV GEN 872107 CLK 10.00 LERY 5.00 POST 2.00 CASH TL 77.00 #13524 C001 R02 T1240 05/28/88			
(1) May 28, 1987 - Conservation Associates, Cavenen Properties and Kingdom Gould, Jr., Trustee Order for Appeal from the Order of County Board of Appeals of Baltimore County fd.			
(2) June 4, 1987 - Certificate of Notice fd.			
(3) June 5, 1987 - Petition fd.			
(4) June 9, 1987 - Correspondence fd.			
(5) June 10, 1987 - Pltff's Additional Certificate of Service fd.			
(6) June 23, 1987 - App. of Peter Max Zimmerman for People's Counsel for Balto. Co. and Same Day Answer fd.			
(7) June 29, 1987 - App. of (George C. Doub, Jr.) for Protestant/Appellee & Same Day Answer to Petition, fd.			
(8) June 29, 1987 - Transcript of Record fd.			
(9) June 29, 1987 - Notice of Filing of record fd.			
(10) July 2, 1987 - App. of (Kathleen Pontone & Donald R. Delorenz) for Deft., Intervenor (The Valleys Planning Council, Inc.) & Same Day Answer, fd.			
(11) July 2, 1987 - Deft./Intervenor (The Valleys Planning Council, Inc.) Motion to Participate or Intervene, Memorandum & Exhibits, fd.			
(12) July 6, 1987 - App. of (J. Joseph Curran, Jr. & Judith A. Arnold) for (Maryland Dept., of State Planning) & Same Day Answer, fd.			
(13) July 24, 1987 - Order of Court that the Valleys Planning Council, Inc. may participate in this appeal. (J. 10)			

DOCKET 40 PAGE 177 CASE NO. 87CG2107

appropriate to remain in an 'agricultural' zone in order to foster conditions favorable to a continued agricultural use of productive agricultural areas by preventing incompatible forms and degrees of urban uses.

Under present zoning, Appellants could develop the subject property into one homesite for every fifty (50) acres of land. If reclassification of the parcels to R.C. 5 zoning were approved, Appellants could construct one homesite for every one and one-half (1½) acres of land. In determining whether this proposed change would foster conditions that are unfavorable to a continued agricultural use of the Caves floor, the Board heard substantial testimony. This Court notes the testimony of Larry F. Duket and Paul J. Solomon, which the Board of Appeals found most persuasive.

Mr. Duket is Chief of the Current Planning Unit of the Maryland Department of State Planning. He concluded that necessary services which would be provided to the proposed homeowners would cause an impact well beyond the specific property over which their homes were located. Additionally, it was Mr. Duket's opinion that homesites at the proposed density would compromise the aquifer that supports the farmland and reduce nutrients in the soil.

Mr. Solomon is Environmental Planner for Baltimore County. It was his opinion that homesites of the density allowable under the proposed zoning would create the potential for a serious problem with the aquifer.

In regard to the present appeal, this Court has had numerous memoranda placed before it and additionally has heard lengthy argument.

If this Court had de novo review over the present appeal, it could draw its own conclusions from the evidence placed before it; but since this Court has a standard of review to apply, any conclusions of its own are irrelevant.

CASE NO. 87 CG 2107

(14) July 27, 1987 - Order to Show the App. of Judith A. Arnold & Enter the App. of Andrew H. Balda for the DEPT. OF STATE PLANNING (MD) fd.

(15) Aug. 3, 1987 - Appellant's Memorandum fd.

(16) Aug. 24, 1987 - App. of J. Joseph Curran, Jr. & Andrew H. Balda for THE STATE OF MARYLAND AND THE MARYLAND DEPARTMENT OF STATE PLANNING Motion to Participate or Intervene, Memorandum & Exhibits fd.

(17) Aug. 24, 1987 - Protestants Memorandum of Appelles fd.

(18) Aug. 31, 1987 - People's Counsel's Memorandum fd.

(19) Sept. 4, 1987 - Deft. (The Valleys Planning Council, Inc.) Memorandum fd.

(20) Sept. 15, 1987 - Order of Court that the State of Maryland and the Maryland Department of State Planning May Participate in this Appeal fd. (JWH) Copies Sent.

(21) Sept. 22, 1987 - Appellants' Reply Memorandum fd.

Oct. 6, 1987 Hon. A. Owen Hennegan, Hearing had, ruling held sub-curia. Opinion to be filed.

(22) Oct. 28, 1987 - Memorandum Opinion & Order of Court that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED FD. (AOH)

RECEIVED
COUNTY BOARD OF APPEALS
131 OCT 30 A 10 09

True Copy Test
KATHLEEN PONTONE
KATHLEEN PONTONE

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' and 1507'
NORTHWEST OF CAVES ROAD
4th ELECTION DISTRICT

CASE NO. 87-CG-2107

MEMORANDUM OPINION AND ORDER

This case comes before the Court on appeal from the Board of Appeals, denying a petition for reclassification of two parcels of land with a total size of approximately three hundred three (303) acres, confined within a contiguous parcel of approximately six hundred eighty-two (682) acres. Appellants appeal from a finding that although the subject parcels are not suitable for profitable agricultural use, they nevertheless should remain zoned R.C. 2 to protect the agricultural land on the floor of the Caves Valley. The Court, having reviewed the entire record below, together with memoranda and argument of counsel, renders the following opinion.

The property at issue is located in the Caves Valley area of northern Baltimore County. The present zoning for the property is Resource Conservation 2 (R.C. 2).

Appellants' bought the subject property in 1977. In 1980, during the Comprehensive Rezoning Process, attempt was made to have the whole property rezoned from R.C. 2 to R.C. 5. Both the Planning Board and the County Council refused to make this change, leaving the land zoned R.C. 2.

During the 1984 Comprehensive Rezoning Process, Appellants brought a petition to have 303 acres of the subject property rezoned to R.C. 5. This

FILED

OCT 28 1987

FILED OCT 28 1987

William Wilner
WILLIAM WILNER

request dealt with the same land at issue in the present appeal. Again, both the Planning Board and the County Council concluded that R.C. 2 was the appropriate classification.

Appellants took appeal of the decision to the Board of Appeals, which heard five days of testimony on the matter. On May 1, 1987, the Board of Appeals issued an opinion denying Appellants request for reclassification. Unsatisfied with the Board of Appeals' decision, Conservation Associates brought appeal before this Court.

In reviewing the decision of the Board of Appeals, this Court can not substitute its judgment in a zoning case as to the wisdom or soundness of the action of the Board of Appeals if its decision is supported by substantial evidence and the issue is fairly debatable. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 706, 376 A.2d 483 (1977), cert. den. 434, U.S. 1067, 98 S. Ct. 1245, S.S. L. Ed. 2d 769.

The Board of Appeals said in its May 1, 1987 opinion that "the testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen." There were a total of thirteen (13) expert witnesses who participated in five days of testimony.

Based on its narrow scope of review, this Court can not say that the decision of the Board of Appeals in this case was not fairly debatable or that the decision was not supported by substantial evidence.

The Board stated in its opinion that:

The fundamental issue before this Board therefore is not necessarily whether or not those parcels contained in the herein petition are appropriately considered agricultural; but rather are they

Conservation Associates
Case No. R-86-110

Owings Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117; Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Burk, 11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthal, 12321 Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills, MD 21117; Lisa Keir, 11806 Greenspring Avenue, Owings Mills, MD 21117; Wilfred G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C., P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills, MD 21117; Jim Cox, 36 Caveswood Lane, Owings Mills, MD 21117; George Doub, 2700 Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane, Owings Mills, MD 21117, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County
Room 200, Courthouse, Towson, MD 21204
494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas J. Gisriel, Esquire, and Michael Gisriel, Suite 400, 210 E. Lexington Street, Baltimore, MD 21202, Counsel for Petitioners/Plaintiffs; George C. Doub, Jr., Esquire and Mitchell Kolklin, Esquire, 2 Hopkins Plaza, 1800 Mercantile Bank & Trust Building, Baltimore, MD 21201, Counsel for Protestants; Conservation Associates, Cavemen Properties, Kingdom Gould, Jr., Trustee, c/o PMI, 1725 DeSales Street, N.W., Suite 900, Washington, D.C. 20036, Petitioners; Phyllis Cole Friedman, Esquire, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County; Judith A. Arnold, Esquire, Assistant Attorney General, Room 1101, 301 W. Preston Street, Baltimore, MD 21201;

Conservation Associates
Case No. R-86-110

Michael McMahon, Esquire, Courthouse, Towson, MD 21204, Assistant County Attorney; Baltimore County; James Earl Kraft, 940 York Road, Towson, MD 21204, Baltimore County Board of Education; Doris C. Woodward, 11935 Park Heights Avenue, Owings Mills, MD 21117; Weldon Hale, 11940 Park Heights Avenue, Owings Mills, MD 21117; Avis Reed, 11934 Park Heights Avenue, Owings Mills, MD 21117; Richard B. Burk, 11219 Greenspring Avenue, Lutherville, MD 21093; Frances P. Matthal, 12321 Garrison Forest Road, Owings Mills, MD 21117; Phyllis A. Zheutlin, 32 Caveswood Lane, Owings Mills, MD 21117; Kathleen Pontone, 3522 Caves Road, Owings Mills, MD 21117; Lisa Keir, 11806 Greenspring Avenue, Owings Mills, MD 21117; Wilfred G. Keir, 11812 Greenspring Avenue, Owings Mills, MD 21117; Lisa Keir, V.P.C., P.O. Box 5402, Towson, MD 21204; Betty Beck, 2721 Baublitz Road, Owings Mills, MD 21117; Jim Cox, 36 Caveswood Lane, Owings Mills, MD 21117; George Doub, 2700 Caves Road, Owings Mills, MD 21117; and Gretchen Feldman, 27 Caveswood Lane, Owings Mills, MD 21117, on this 4th day of June, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County



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

RECEIVED
JUN 2 1987
ZONING OFFICE

May 28, 1987

Michael Gisriel, Esq.
210 E. Lexington St., St. 400
Baltimore, MD. 21202

Dear Mr. Gisriel:

Re: Case No. R-86-110
Conservation Associates

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

Very truly yours,
June Holman
June Holman, Secretary

Encl.
cc: Thomas J. Gisriel, Esq.
W. Thomas Gisriel, Esq.
George C. Doub, Jr., Esq.
Conservation Associates
c/o PMI
Doris C. Woodward
Weldon Hale
Avis Reed
Judith Arnold
Richard B. Burk
Frances P. Matthal
Phyllis A. Zheutlin
Kathleen Pontone
Lisa Keir (home)
Lisa Keir, V.P.C.
Wilfred G. Keir
Betty Beck
Jim Cox
Gretchen Feldman
Mitchell Kolklin, Esq.
Phyllis C. Friedman
Michael McMahon, Esq.
James E. Kraft

Arnold Jablon
Jean Jung
James Dyer
Margaret du Bois
Norman Gerber
James Roswell

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 17, 1985

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

cc: Nicholas B. Commodore
Chairman

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

Michael Gisriel, Esquire
204 North Liberty Street, Suite 400
Baltimore, Maryland 21201

RE: Item No. 4 - Cycle No. I
Petitioner - Conservation Associates
Reclassification Petition

Dear Mr. Gisriel:

This reclassification petition has been filed with the Board of Appeals for a public hearing within the April-October reclassification cycle (Cycle I). It has been reviewed by the Zoning Plans Advisory Committee and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, description, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office before Tuesday, April 30, 1985. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

The subjects of this petition consist of two parcels of land. The larger parcel, comprising 277,005 acres is situated within an area bounded by Park Heights Avenue to the south, Caves Road to the east and Greenspring Avenue to the north, while the smaller parcel, comprising 26.344 acres, is located on the northwest side of Caves Road southeast of the centerline of Park Heights Avenue. In view of your clients' proposal to reclassify these parcels to R.C. 5 zoning in their entirety, this hearing is required.

After a number of discussions with your engineer, Mr. Jim Tracey, the submitted site plans and descriptions were revised, as were the 1" = 200' and 1" = 1000' zoning map with the subject properties outlined thereon, to reflect the existing zoning and distance of the properties from the centerline of the nearest intersecting street. Even though portions of the property lines, particularly the northern portion of the larger tract of land, do not follow the location of the existing zoning lines, Mr. Tracey felt that his submittal accurately reflected the location of the subject property in relation to the

Item No. 4 - Cycle No. I
Petitioner - Conservation Associates
Reclassification Petition
April 17, 1985

current zoning maps. In addition, the location of the subject property on the 1" = 1000' zoning maps does not agree with the location of the subject property on the 1" = 200' zoning map, but here again, Mr. Tracey felt his submittal was correct. In conversation with the area planner, it was indicated that the intent was to have the property line and zoning line coincide, in this area. Because of the discrepancy, I spoke to the Zoning Commissioner and Zoning Supervisor and was instructed to process the petition as submitted.

In view of the fact that the submitted site plan does not indicate a proposed development, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, more detailed comments from County agencies and the Committee (if a hearing is required) will be written when a proposed development is indicated.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which will be between September 1 and December 31, 1985, will be forwarded to you in the future.

Very truly yours,

Nicholas B. Commodore
Chairman
Zoning Plans Advisory Committee

ENCLOSURE

cc: Tracy, Schulte & Associates, Inc.
8450 Baltimore National Pike
Suite 34
Elliott City, Maryland 21043



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

March 15, 1985

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General Comments:

All improvements, intersections, entrances, drainage requirements and construction affecting a State Road right-of-way are subject to the standards, specifications and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

Caves Road, an existing road, shall ultimately be improved as a 60-foot right-of-way.

As no public facilities are involved, this office has no comment.

Development of this property will require a meeting with the County Review Group.

Very truly yours,
James A. Markle, P.E., Chief
Bureau of Public Services

JAM:EAM:ROP:SS

cc: File



Maryland Department of Transportation
State Highway Administration

William K. Hofmann
Secretary
Hal Kassoff
Administrator

March 15, 1985

Mr. William Hackett, Chairman
Board of Appeals
County Office Building
Towson, Md. 21204

Attn: Mr. N. Commodore

Re: Reclassification Petition
Cycle I - 1985
Meeting of March 6, 1985
ITEM: #6
Property Owner: Conservation Associates
Location: NE/4 Park Heights Avenue, Route 129, 467' and 1507' N/W Caves Road
Existing Zoning: R.C. 2
Proposed Zoning: R.C. 5
Acres: 306
District: 4th

Dear Mr. Hackett:

On review of the submittal of 8-24-77, for the above sites, the State Highway Administration offers the following comments.

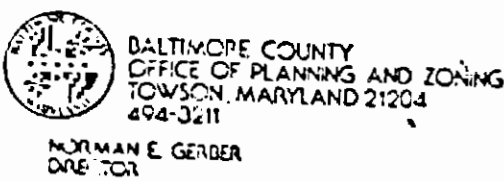
The site plan presented for review and comment is very unclear and offers no detail for access to the site.

Any access to the site by way of Park Heights Avenue will require highway improvements to meet S.H.A. Standards.

Very truly yours,
Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

My telephone number is (301) 659-1350
Teletypewriter for impaired hearing or speech
383-7555 Baltimore Metro - 525-0451 D.C. Metro - 1-800-492-5662 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

3/25/85
Re: Zoning Advisory Meeting of 3/6/85
Item # 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Ave.,
NW Caves Road

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject
petition and offers the following comments. The items checked below are
applicable.

- (X) There are no site planning factors requiring comment at this time.
() A County Review Group meeting is required.
() This site is part of a larger tract, therefore it is defined as a
subdivision. The plan must show the entire tract.
() A record plat will be required and must be recorded prior
to issuance of a building permit.
() The access is not satisfactory.
() The circulation on this site is not satisfactory.
() The parking arrangement is not satisfactory.
() The parking calculations must be shown on the plan.
() This property contains soils which are defined as wetlands, and
development on these soils is prohibited.
() Construction in or alteration of the floodplain is prohibited
under the provisions of Section 22-98 of the Development
Regulations.
() Development of this site may constitute a potential conflict with
the Baltimore County Master Plan.
() The amended Development Plan was approved by the Planning Board
on 1/25/85.
() Landscaping: Must comply with Baltimore County Landscape Manual.
() The property is located in a deficient service area as defined by
Bill 178-79. No building permit may be issued until a Reserve
Capacity Use Certificate has been issued. The deficient service
is:
() The property is located in a traffic area controlled by a "D" level
traffic intersection as defined by Bill 178-79, and as conditions change
are re-evaluated annually by the County Council.
(X) Additional comments:
Any future development on this site
must comply with the requirements of Bill 178-79.
The Development Regulations.

cc: James Howell

Eugene A. Rober
Chief, Current Planning and Development



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

March 7, 1985

Mr. William Hackett
Chairman, Board of Appeals
Office of Law, Courthouse
Towson, Maryland 21204

Cycle I - Meeting of March 6, 1985
Item No. - 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507'
NW Caves Road
Existing Zoning: R.C.2
Proposed Zoning: R.C.5

Acres: 306
District: 4th

Dear Mr. Hackett:

As presently zoned this site can be expected to
generate approximately 75 trips per day. The proposed zoning can
be expected to generate approximately 2,530 trips per day.

MSF/ccm

Michael S. Flanagan
Traffic Engineering Assoc. II



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2566
494-4500

PAUL H. RENCKE
CHIEF

March 11, 1985

William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Conservation Associates

Location: NE/S Park Heights Ave. 467' and 1507' N/W Caves Road

Item No.: 4

Zoning Agenda: Meeting of 3/6/85
Cycle 1

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

REVIEWED BY: [Signature] Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Nicholas Commodari, Zoning Department Date: April 11, 1985

FROM: C. E. R. Burnham, Chief, Building Plans Review

SUBJECT: Cycle #1, Item #4

Conversion of property from one use to another use requires the structures
involved to comply with the Building Code in force at the time a permit is
applied for and before the structure can be used. Existing structures will
require a Change of Use/occupancy permit as well as alteration permits to
upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the
correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings
and the site.

Set backs from interior lot lines, other buildings on the same lot, and
street lot lines for fire separations shall also comply to the Building Code
in force at the time an application is made for the permit. This currently
involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A.
Code known as the Baltimore County Building Code as adopted by Bill 1-82.
The 1981 Edition of B.O.C.A. has been approved by the County Council and will
become effective on permits filed 15 days after its enactment.

No further comments at this time.

CEB/vw

C. E. R.

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 19, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item No: 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507' N/W Caves Road
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

School Situation September 1984			
School	Enrollment	Capacity	Over/Under
Franklin Elementary	538	500	+ 38
Owings Mills Jr.-Sr.	991	1210	-219

Student Yield With:			
Existing Zoning	And	Proposed Zoning	
Elementary	9	50	
Junior	6	31	
High	4	22	

Very truly yours,
John Aaron, Field Representative
Department of Planning

JD/ih

COPY: Bettye du Bois

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 40 PAGE 177 CASE NO. 87CG2107 CATEGORY APPEALS

ZONING OFFICE CASE NO. R-86-110

ATTORNEYS

Michael Gisriel
Thomas J. Gisriel
Gisriel & Gisriel
210 E. Lexington St.
Baltimore, MD 21202

IN THE LATTER OF
THE PETITION OF CONSERVATION ASSOCIATES, ET AL.
FOR ZONING RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK HEIGHTS AVENUE,
467' AND 1507' NORTHEAST OF CAVES ROAD
4th ELECTION DISTRICT

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Protestant/Appellee

THE VALLEYS PLANNING COUNCIL, INC.
Defendant-Intervenor

THE MARYLAND DEPARTMENT OF STATE PLANNING

True Copy Test
DIANNE MENSIL, Clerk

George C. Doub, Jr.
Verneable, Bartley & Howard
1800 Metropolitan Bank & Trust Bldg
2 Hopkins Place
Baltimore, MD 21202
244-7400
244-7401
Kathleen Pontone
Donald R. DeLoe
250 W. Pratt St.
Baltimore, MD 21201
576-4845

COPIES

(1) July 28, 1987 - Conservation Associates, Cawman Properties and
Kingdon Gould, Jr., Trustee Order for Appeal from the Order of
of County Board of Appeals of Baltimore County, Md.

(2) June 4, 1987 - Certificate of Notice fd.

(3) June 5, 1987 - Petition fd.

(4) June 9, 1987 - Correspondence fd.

(5) June 10, 1987 - Petitioner's Additional Certificate of Service, fd.

(6) June 25, 1987 - App. of Peter Max Zimmerman for People's Counsel for
Baltimore Co. and Same Day Answer fd.

(7) June 29, 1987 - App. of (George C. Doub, Jr.) for Protestant/Appellee
for Defendant Answer to Petition, fd.

(8) June 29, 1987 - Transcript of Record fd.

(9) June 29, 1987 - Notice of Filing of Record fd.

(10) July 2, 1987 - App. of (Kathleen Pontone & Donald R. DeLoe) for
Def. Intervenor (The Valleys Planning Council, Inc.) & Same
Day Answer, fd.

(11) July 2, 1987 - Deft/Intervenor (The Valleys Planning Council, Inc.)
Motion to Participate or Intervene, Memorandum & Exhibits, fd.

(12) July 6, 1987 - App. of (J. Joseph Curran, Jr. & Judith A. Arnold)
for (Maryland Dept., of State Planning) & Same Day Answer, fd.

(13) July 24, 1987 - Order of Court that the Valleys Planning Council, Inc.
may participate in this appeal. (13-1)

40 177 87CG2107

CASE NO. 87 CG 2107

(14) July 27, 1987 - Order to Settle the App. of Jud. Ch. H.
Arnold & Doub the App. of Andrew H. Baids for the Def. (The
VALLEYS PLANNING COUNCIL, INC.)

(15) Aug. 3, 1987 - Appellant's Memorandum fd.

(16) Aug. 24, 1987 - App. of J. Joseph Curran, Jr. & Andrew H. Baids for the STATE OF MARYLAND
AND THE MARYLAND DEPARTMENT OF STATE PLANNING to Participate or Intervene, Memorandum
& Exhibits fd.

(17) Aug. 24, 1987 - Protestants Memorandum of Appellates fd.

(18) Aug. 31, 1987 - People's Counsel's Memorandum fd.

(19) Sept 4, 1987 - Deft. (The Valleys Planning Council), Inc. Memorandum fd.

(20) Sept 15, 1987 - Order of Court that the State of Maryland and the Maryland
Department of State Planning May Participate in this Appeal fd. (JWH) Copies Sent.

(21) Sept 22, 1987 - Appellants' Reply Memorandum fd.

Oct. 6, 1987 Hon. A. Owen Hennegan. Hearing had. ruling held sub-curia. Opinion to be filed.

22 Oct. 20, 1987 - Memorandum Opinion & Order of Court that the decision of the Baltimore
County Board of Appeals be and is hereby AFFIRMED FD. (ADM)

COMMUNITY RECORDS
FILED 30 APR 85

True Copy Test
DIANNE MENSIL, Clerk

For: [Signature]
Assistant Clerk

COPY: Bettye du Bois

IN THE MATTER OF
THE PETITION OF
CONSERVATION ASSOCIATES,
ET AL. FOR ZONING
RECLASSIFICATION FROM R.C. 2
TO R.C. 5 FOR PROPERTY LOCATED
ON THE NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND 1507'
NORTHEAST OF CAVES ROAD
4th ELECTION DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

ZONING CASE NO. R-86-110
CASE NO. 87-CG-2107

MEMORANDUM OPINION AND ORDER

This case comes before the Court on appeal from the Board of Appeals,
denying a petition for reclassification of two parcels of land with a total
size of approximately three hundred three (303) acres, confined within a
contiguous parcel of approximately six hundred eighty-two (682) acres.
Appellants appeal from a finding that although the subject parcels are not
suitable for profitable agricultural use, they nevertheless should remain
zoned R.C. 2 to protect the agricultural land on the floor of the Caves Valley.
The Court, having reviewed the entire record below, together with memoranda
and argument of counsel, renders the following opinion.

The property at issue is located in the Caves Valley area of northern
Baltimore County. The present zoning for the property is Resource Conservation
2 (R.C. 2).

Appellants' bought the subject property in 1977. In 1980, during the
Comprehensive Rezoning Process, attempt was made to have the whole property
rezoned from R.C. 2 to R.C. 5. Both the Planning Board and the County Council
refused to make this change, leaving the land zoned R.C. 2.

During the 1984 Comprehensive Rezoning Process, Appellants brought a
petition to have 303 acres of the subject property rezoned to R.C. 5. This

FILED OCT 28 1987

DIANNE MENSIL, Clerk

request dealt with the same land at issue in the present appeal. Again, both the Planning Board and the County Council concluded that R.C. 2 was the appropriate classification.

Appellants took appeal of the decision to the Board of Appeals, which heard five days of testimony on the matter. On May 1, 1987, the Board of Appeals issued an opinion denying Appellants' request for reclassification. Unsatisfied with the Board of Appeals' decision, Conservation Associates brought appeal before this Court.

In reviewing the decision of the Board of Appeals, this Court can not substitute its judgment in a zoning case as to the wisdom or soundness of the action of the Board of Appeals if its decision is supported by substantial evidence and the issue is fairly debatable. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 586, 376 A.2d 683 (1977), cert. den. 434, U.S. 1067, 98 S. Ct. 1245, S.S. L. Ed. 2d 769.

The Board of Appeals said in its May 1, 1987 opinion that "the testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen." There were a total of thirteen (13) expert witnesses who participated in five days of testimony.

Based on its narrow scope of review, this Court can not say that the decision of the Board of Appeals in this case was not fairly debatable or that the decision was not supported by substantial evidence.

The Board stated in its opinion that:

The fundamental issue before this Board therefore is not necessarily whether or not those parcels contained in the herein petition are appropriately considered agricultural, but rather are they

appropriate to remain in an 'agricultural' zone in order to foster conditions favorable to a continued agricultural use of productive agricultural areas by preventing incompatible forms and degrees of urban uses.

Under present zoning, Appellants could develop the subject property into one homestead for every fifty (50) acres of land. If reclassification of the parcels to R.C. 5 zoning were approved, Appellants could construct one homestead for every one and one-half (1 1/2) acres of land. In determining whether this proposed change would foster conditions that are unfavorable to a continued agricultural use of the Caves floor, the Board heard substantial testimony. This Court notes the testimony of Larry F. Diket and Paul J. Solomon, which the Board of Appeals found most persuasive.

Mr. Diket is Chief of the Current Planning Unit of the Maryland Department of State Planning. He concluded that necessary services which would be provided to the proposed homeowners would cause an impact well beyond the specific property over which their homes were located. Additionally, it was Mr. Diket's opinion that homesteads at the proposed density would compromise the aquifer that supports the farmland and reduce nutrients in the soil.

Mr. Solomon is Environmental Planner for Baltimore County. It was his opinion that homesteads of the density allowable under the proposed zoning would create the potential for a serious problem with the aquifer.

In regard to the present appeal, this Court has had numerous memoranda placed before it and additionally has heard lengthy argument.

If this Court had de novo review over the present appeal, it could draw its own conclusions from the evidence placed before it; but since this Court has a standard of review to apply, any conclusions of its own are irrelevant.

Under the applicable standard, this Court is restricted to a determination of whether the Board's decision to deny reclassification of the subject parcels was based on substantial evidence and was fairly debatable. Using this standard, the Court finds that the Board's action was based on substantial evidence and was fairly debatable.

In light of the above, it is this 28th day of October, 1987, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED.

A. Glen Hansen
A. GLEN HANSEN, JUDGE

COPIES SENT:
Michael Gisriel, Esquire &
Thomas J. Gisriel, Esquire
Peter Max Zimmerman, Esquire &
Phyllis C. Friedman, Esquire
George C. Doub, Jr., Esquire
Andrew H. Balda, Esquire
Kathleen Pontone, Esquire &
David R. Delorenz, Esquire

-4-

RECEIVED
COUNTY BOARD OF APPEALS
DEC 30 A.M. '87

PETITION FOR RECLASSIFICATION

LOCATION: Northeast side of Park Heights Avenue, 467 feet and 1507 feet North and West of Caves Road - Two Parts

PUBLIC HEARING: Tuesday, September 24, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

All that parcel of land in the 4th District of Baltimore County

See attached Legal Description to be used in advertisements.

Being the property of Conservation Associates as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Edith Eisenhart
Board of Appeals
TO: Nicholas Comodari
Zoning Office
FROM: Item No. 4 - Cycle No. 1
SUBJECT: Petitioners - Conservation Associates

Date: April 18, 1985

Attached is a revised site plan and description for the above matter.

cc: File

TRACY, SCHULTE & ASSOCIATES INC. planning • architecture • engineering

8450 Baltimore National Pike • Suite 34 • Ellicott City, Maryland 21043 • (301) 465-6105

April 11, 1985

Baltimore County Office Building
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

Attention: Mr. Nicholas P. Comodari
Chairman, Zoning Plans Advisory Committee

Re: Caves Property Zoning Reclassification Petition

Dear Mr. Comodari:

Pursuant to our meetings of March 26 and April 2, 1985 at your office, we have made revisions to the zoning reclassification documents as discussed. Transmitted herewith are the specified number of copies of said revised documents delineating the area to be considered for zoning reclassification:

- 12 copies of the site plan
- 7 copies of the metes and bounds property
- 2 copies of the Baltimore County 200-scale zoning map
- 2 copies of the Baltimore County 1000-scale zoning map

If you have any question or require additional information, please notify us.

Very truly yours,

James K. Tracy
James K. Tracy, P.
JKT/jlm
Enclosures
cc: Gisriel & Gisriel, Mr. Michael Gisriel



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 22, 1986

(CONTINUED HEARING)

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.

(CONTINUED HEARING -- FROM 12/19/86)

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE 467' AND 1507' NW CAVES ROAD
4th DISTRICT

TO BE CONTINUED ON:

Friday, January 23, 1987 at 9:00 a.m.

cc: Michael Gisriel, Esquire	Counsel for Petitioner
Conservation Associates	Petitioner
Cavemen Properties	"
Kingdon Gould, Jr.	"
Doris C. Woodward	"
Weldon Hale	"
Avis Reed	Protestant
Richard B. Buck	"
Frances P. Matthai	"
Phyllis A. Zheutlin	"
Kathleen Pontone	"
Lisa Keir	"
Judy Baer	"
Wilfred Keir	"
Betty Beck	"
Jim Cox	"
George Doub	"
Gretchen Feldman	"
Phyllis Cole Friedman, Esquire	People's Counsel
Michael McMahon, Esquire	Office of Law
James Earl Kraft	"
Arnold Jablon	"
Jean M. H. Jung	"
James E. Dyer	"
Margaret E. du Bois	"
Norman E. Gerber	"
James G. Hoswell	"

Kathi C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 4, 1986

(CONTINUED HEARING)

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.

(CONTINUED HEARING FROM 12/03/86)

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE. 467' and 1507'
NW CAVES ROAD
4th DISTRICT

TO BE CONTINUED ON:

Friday, December 19, 1986 at 9:00 a.m.

cc: Michael Gisriel, Esquire	Counsel for Petitioner
Conservation Associates	Petitioner
Cavemen Properties	Petitioner
Kingdon Gould, Jr.	"
Doris C. Woodward	"
Weldon Hale	"
Avis Reed	Protestant
Richard B. Buck	"
Frances P. Matthai	"
Phyllis A. Zheutlin	"
Kathleen Pontone	"
Lisa Keir	"
Judy Baer	"
Wilfred Keir	"
Betty Beck	"
Jim Cox	"
George Doub	"
Gretchen Feldman	"
Phyllis Cole Friedman, Esq.	People's Counsel
Michael McMahon, Esq.	"
James Earl Kraft	"
Arnold Jablon	"
Jean M. H. Jung	"
James E. Dyer	"
Norman E. Gerber	"
James G. Hoswell	"
Margaret E. du Bois	"

Kathi C. Weidenhammer
Administrative Secretary

September 23, 1985

NOTICE OF HEARING

TIME: 10:00 a.m.

DATE: Wednesday, October 23, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel



Room 200 Court House

Tolson, Maryland 21204

(301) 494-3180

May 1 1987

RE: Case No. R-26-110
Conservation Associates

Dear Mr. Gisriel:

Enclosed is a copy of the signed Opinion and Order passed today by the County Board of Appeals in the subject matter.

Sincerely,

Kathi C. Weidenhammer
Administrative Secretary

End

cc: Thomas J. Gisriel, Esquire
W. Thomas Gisriel, Esquire
George C. Doub, Jr., Esquire
Conservation Associates
C. HW
Doris C. Woodward
Weldon Hale
Avis Reed
Judith A. Arnold, Esquire
Richard B. Buck
Frances P. Matthai
Phyllis A. Zheutlin
Kathleen Pontone
Lisa Keir (home)
Lisa Keir, V.P.C.
Wilfred G. Keir
Betsy Beck
Jim Cox
Gretchen Feldman

Mitchell Kolkin, Esquire
Phyllis Cole Friedman, Esquire
Michael McMahon, Esquire
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Norman E. Gerber
James G. Hovvell

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MAY 4 1987

ZONING OFFICE

IN THE MATTER OF : BEFORE
THE PETITION OF :
CONSERVATION ASSOCIATES : COUNTY BOARD OF APPEALS
FOR ZONING RECLASSIFICATION :
FROM R.C. 2 TO R.C. 5 : OF
FOR PROPERTY LOCATED ON THE :
NORTHEAST SIDE OF PARK HEIGHTS : BALTIMORE COUNTY
AVENUE, 467' AND 1507' NORTH- :
WEST OF GOMES ROAD : CASE NO. R-95-110
4th ELECTION DISTRICT :

OPINION

This matter comes before the Board on a petition for reclassification of two parcels with a total size of approximately 303 acres confined within a contiguous parcel of approximately 682 acres. The parcel owned by Petitioners is located north of Caves Road on both sides of Park Heights Avenue, extending to the southwest almost as far as Garrison Forest Road and extending to the northeast almost as far as Greenspring Avenue. This property comprises in substantial measure that portion of Maryland historically known as the Caves Valley. The existing zoning for the tract is R.C. 2. Petitioners have requested that approximately 277 acres of the northern portion of the tract be reclassified as R.C. 5 zoning and approximately 26 acres of the southern portion of the parcel, fronting on Caves Road, be reclassified as E.C. 5 zoning.

The issues presented to this Board were as broad in their impact of land use in Baltimore County as any in the history of the Board of Appeals. As would have been expected given the scope of this project, the testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen. In particular the testimony from the expert witnesses, a total of thirteen of whom testified during the five days during which this matter was heard, demonstrated authority of the highest order. The Board was extremely impressed by the quality of content presented by all sides in this matter.

Case No. R-86-110
Conservation Associates

that would foster unfavorable conditions to the continued agricultural use of the productive Caves Valley floor, and that Baltimore County possesses numerous areas which are highly suitable for moderate intensity residential development which are not located in areas of such productive agricultural land.

AGRICULTURAL USE OF THE PARCELS

The Board heard extensive testimony from a number of highly credible sources as to the agricultural potential of this property. On balance we found the opinion of George A. Stevens, the Petitioner's agricultural economics expert, to be most persuasive. We will let the record speak for itself regarding the basis of these conclusions. We do however agree with his opinion that after consideration of the slope, erosion, soils, cover, general topography and other constraints the petitioned property is not viable or suitable as agricultural land. We believe it is not suitable for crop production, beef, sheep or other herd animal production, timber production, tree farming, or any other agricultural pursuit where the motive is to realize a profit. The facts of this case are simply too clear that the tree cover would have to be removed and the soils made productive for any of these pursuits. To accomplish this task would be much too costly relative to the potential monetary benefit not to mention that the result would be far less desirable than the aesthetic qualities of the property as it presently exists.

WOULD DEVELOPMENT OF THE PARCELS CONSISTENT WITH R.C. 5 ZONING
FOSTER CONDITIONS UNFAVORABLE TO A CONTINUED AGRICULTURAL USE
OF PRODUCTIVE AGRICULTURAL AREAS

Whether or not the development of the petitioned parcels into one and one-half-acre homesteads fosters conditions that are unfavorable to a continued

Case No. R-86-110
Conservation Associates

agricultural use of the Caves Valley floor is the central issue in this case. It is recognized by this Board that factors such as elimination of tree cover or natural cover in order to construct a home; creation of significant amounts of impermeable surface required for homes themselves and ancillary roads, driveways and other structures; establishment of wells; establishment of septic systems and the effectiveness of these systems, as well as other factors have a negative impact on a continued agricultural use of productive land. The Board is not ruling that any residential development near productive agricultural land is inherently evil or likely to cause a significant amount of harm to the farm areas. The R.C. 2 use regulations permit single-family detached dwellings at a density of one lot for each fifty acres. This level of development may appear unreasonably restrictive. However, when comparing such a right against the right to develop one house per every acre and one-half, the distinction requires close attention to the relative effects that such developments will have on the farmland. At a certain level the combination of unnatural factors does create an unfavorable environment for agriculturally used land.

The Board is convinced that the testimony of Larry F. Duket, Chief of the Current Planning Unit of the Maryland Department of State Planning, and the testimony of Paul J. Solomon, Environmental Planner for Baltimore County, was most credible and persuasive on this issue. In particular, Mr. Duket expressed the effectiveness of R.C. 2 zoning as a tool in preserving agriculture by channeling development away from agricultural areas and toward appropriate areas of moderate density residential or commercial development. He concluded that development at a density of one dwelling per one and one-half acres would contribute the amount that supports the farmland, reduce nutrients in the soil

Case No. R-86-110
Conservation Associates

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The decision in this case was a most difficult one for the Board. In the thirteen years since resource conservation zones were established in Baltimore County, no parcel close to this size has been reclassified. The historical perspective of this case shows that prior to the 1974 Comprehensive Zoning Map the property was zoned R.C. 2. During the comprehensive review in 1974, the Petitioner identified this property as a specific issue. At that time the Planning staff and Planning Board recommended retention of R.C. 2 zoning and the Baltimore County Council reaffirmed R.C. 2 zoning for the parcel. In considering the herein petition, the Planning Board paid significant deference to the suitability of this property for active agricultural pursuits and the potential harm to the water supply source under this property. It was the Planning Board's belief that the existing zoning is consistent with the Baltimore County Master Plan and that the agricultural qualities of the property argued strongly for retention of the R.C. 2 zoning.

Petitioners have acknowledged the obvious agricultural profile of a substantial portion of their full tract and are not requesting rezoning of the entire parcel. They have carefully extracted those portions that comprise the Caves Valley floor and are requesting reclassification solely of the valley walls and ridge.

The conditions on the petitioned acreage are significantly different than conditions on the valley floor. The valley floor is cleared while the walls and ridge are heavily wooded. The floor is flat while the walls and ridge are steeply sloped. The soil types on the floor are significantly different than the soils on the walls and ridge. Clearly the use of the valley floor is for active agricultural pursuits. Clearly clear is not the same as the cleared in

Case No. R-36-110
Conservation Associates

which are considered prime and productive and that the services which of necessity must be provided to the homeowners would cause an impact well beyond the specific property over which their homes were located. There exists an aquifer of great size beneath this general geographic region including parts of the subject property. The integrity of this aquifer is of great concern in general and in particular to the retention of productive agricultural land. As stated by Mr. Dukst, the capacity to obtain water from this aquifer is fine at present but development of the nature possible by rezoning these parcels could have a significant impact on maintaining this critical water supply. When trees are removed and foreign impervious surfaces are placed on the land, the soils lose valuable nutrients. The soils in the present instance generally have a hydrologic value "B". This is a rather porous quality. The result of placing septic systems each acre and one-half over properties with the above characteristics would create an environment where effluents would sift down rather quickly and creates a clear potential for damage to the aquifer. Mr. Salomon took the analysis one step further. It was his opinion that even if homes were not directly over the aquifer but were upwind of the aquifer, the sewage from such homes could infiltrate into this water supply. This he characterized as the potential for a serious problem with the aquifer. Obviously, once this aquifer begins to become compromised, the impact would be a detriment to the farmland of the Caves Valley. Furthermore, other services necessary to satisfy the needs of moderate residential development in this area would continue to compromise the region. Additionally, this land is part of the Piedmont, well recognized for its prime and productive agricultural qualities. It is an important natural resource. It is of a finite quantity. It is being lost to development continually. Careful consideration on the impact that development will have across

IN THE MATTER OF THE
PETITION OF CONSERVATION
ASSOCIATES FOR ZONING
RECLASSIFICATION FROM
R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND
1507' NORTHWEST OF CAVES
ROAD 4th ELECTION DISTRICT

ORDER

The Motion of the Petitioners and the Protestants
having been considered by the Board, it is this day of
May, 1987,

ORDERED that the time for filing an order for appeal
herein is hereby extended to July 30, 1987.

AND FURTHER ORDERED, that the Petitioners, People's
Counsel and the Intervenor are designated pursuant to Rule B
as the only parties to whom notice of the proposed
revision need be given, and since all such parties, by their
counsel, have joined in the motion or received a copy of the
motion, no further notice is required.

AND FURTHER ORDERED, that the time within which this
Board may revise or modify its order of May 1, 1987 pursuant
Rule 10 of the Board of Appeals Rules of Procedure is also
extended until July 30, 1987 provided that such revision or
modification shall only be for the purpose of considering for

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COUNTY BOARD OF APPEALS
131 MAY 21 P 4 22

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approval or rejection a proposed resolution of this matter to
be submitted by the parties and matters incidental thereto.

Keith S. Franz
Acting Chairman

Patricia Phipps

LeRoy B. Spurrier

0682Y

-2-

IN THE MATTER OF THE
PETITION OF CONSERVATION
ASSOCIATES FOR ZONING
RECLASSIFICATION FROM
R.C. 2 TO R.C. 5 FOR
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK
HEIGHTS AVENUE, 467' AND
1507' NORTHWEST OF CAVES
ROAD 4th ELECTION DISTRICT

* BEFORE THE
* COUNTY BOARD OF
* APPEALS OF
* BALTIMORE COUNTY
* CASE NO. R-86-110

JOINT MOTION OF PETITIONERS AND
PROTESTANTS FOR A 60-DAY EXTENSION
OF TIME TO FILE AN APPEAL
AND FOR THIS BOARD TO EXERCISE ITS
REVISORY POWER OVER ITS OPINION AND ORDER

The Petitioners by their undersigned counsel, Michael
Gisriel and Thomas J. Gisriel and the Protestants by their
undersigned counsel, George C. Doub, Jr., move the County Board
of Appeals of Baltimore County pursuant to Rule B4 of the
Maryland Rules of Procedure for an Order extending for 60 days
the time within which the Petitioners may file an order of
appeal. The grounds of this motion are as follows:

1. Kingdon Gould, Jr. will be in Europe until
approximately June 1, 1987 or shortly thereafter.
2. The above parties have engaged in serious
negotiations toward a resolution of the subject matter of this
proceeding in conformity with the concepts suggested in this
Board's opinion dated May 1, 1987. Petitioners and Protestants
believe that there is a substantial possibility that a proposed

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resolution can be developed by them and submitted to the Board
within the period of the extension.

3. The Board has authority to grant this motion.
Rule B(4)(b) of the Maryland Rules of Procedure provides that
"upon application of a person authorized to appeal or a party
to a proceeding before the agency, and for sufficient cause
shown, a court in which the order for appeal may be filed . . .
or agency may extend [the time for filing an appeal] for not
more than 60 days."

4. Since notice was delivered to Phyllis C. Friedman,
Esq., no further notice is required. Subparagraph e of Rule
B(4) provides that an application to extend the time for filing
an order for appeal shall not be granted unless the agency and
all parties to the proceeding before the agency shall have been
notified in writing of such application at least 3 days prior
to the consideration thereof by the agency; provided that where
there were more than 5 parties to the proceeding before the
agency it shall be sufficient to give such notice to such
parties as shall be designated by the agency. Out of an
abundance of caution, Petitioner requests that the parties to
this Motion be designated as the only persons to whom notice
need be given.

5. The above parties further move the Board to enter
an order extending for the same period the time within which
the Board may revise or modify its order of May 1, 1987 but

-2-

0682Y

only for the purpose of considering for approval or rejection
the proposed resolution to be submitted by the parties.

Michael Gisriel

Thomas J. Gisriel
Thomas J. Gisriel
Suite 400
210 East Lexington Street
Baltimore, Maryland 21202
(301) 539-0513

George C. Doub, Jr.
Venable, Butler and Howard
1800 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 244-7540

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May, 1987, a
copy of the foregoing Joint Motion of All Parties for a 60-day
Extension in the Time to File an Appeal and Order was hand
delivered to Phyllis C. Friedman, Esquire, 409 Washington
Avenue, Suite 900, Towson, Maryland 21204.

Thomas J. Gisriel

-3-

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO William T. Hackett Date May 22, 1987
FROM Kathi Weidenhammer
SUBJECT Attached Correspondence - Conservation Associates

Mr. Hackett:

The attached material was hand-delivered to this office yesterday
afternoon from Gisriel & Gisriel concerning Conservation Associates.

In addition, Phyllis Friedman forwarded the attached response
to the above material within minutes of its receipt.

I thought you might want to be aware of this development, and
I've also sent copies to both Patti and Roy.

Kathi

Attachment

Copy to Patti and Roy



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 21, 1987

The Honorable
Keith S. Franz, Esquire
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: Conservation Associates, Petitioner - Case No. R-86-110

Dear Board Members:

I have just received a Joint Motion of the Petitioners and Protestants
in the above captioned matter for a 60 day extension of time to file an
appeal and for this Board to exercise its revisory power over its Opinion
and Order which was dated May 1, 1987.

This letter states that People's Counsel, Phyllis Cole Friedman,
has been aware of the attached Motion and that she will not object to it.
This is not accurate. I was made aware of the attached Motion by George
Doub, Attorney for the Protestants. However, I told Mr. Doub that I would
not participate in the Motion and that I would reserve the right to object
to it. I specifically told Mr. Doub that representations were not to
be made to the Board that I would not object to the Motion and want to
clear this misconception up immediately.

Very truly yours,

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

cc: George Doub, Esquire
Michael Gisriel, Esquire
Thomas J. Gisriel, Esquire
Keith S. Franz, Esquire

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
131 MAY 21 P 4 40

LAW OFFICES
GISRIEL & GISRIEL
SUITE 400
210 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202-3514

May 21, 1987

Mr. Keith S. Franz,
Ms. Patricia Phipps and
Mr. LeRoy B. Spurrier
Members of the Baltimore County Board of Appeals
Old Court House
Second Floor
Towson, MD 21204

RE: IN THE MATTER OF THE PETITION OF CONSERVATION ASSOCIATES FOR ZONING
RECLASSIFICATION FROM R.C. 2 TO R.C. 5 FOR PROPERTY LOCATED ON THE
NORTHEAST SIDE OF PARK HEIGHTS AVENUE, 467' AND 1507' NORTHWEST OF
CAVES ROAD 4th ELECTION DISTRICT

Dears Messrs. Franz and Spurrier and Ms. Phipps:

Attached please find the Joint Motion of the Petitioners and
Protestants in the above captioned matter for a 60 day extension of time to
file an appeal and for this Board to exercise its revisory power over
its Opinion and Order which was dated May 1, 1987.

Also attached is the proposed order accompanying said Motion.

I understand that the People's Counsel, Phyllis C. Friedman, has
been made aware of the attached Motion and that she will not object to it.

Please call us if you have any questions regarding this matter.
We ask that the Board consider this matter as soon as possible so as to allow
us enough time to file our Appeal in the event that the attached Motion and
Order is rejected.

Continued best regards. I remain,

Very truly yours,
Michael Gisriel
Thomas J. Gisriel

MG/bls
Enclosures
cc: Keith S. Franz, Esquire
George Doub, Esquire
Phyllis C. Friedman, Esquire
Kingdon Gould,

RECEIVED
COUNTY BOARD OF APPEALS
131 MAY 21 P 4 21

VENABLE, BAETJER AND HOWARD

WASHINGTON, D.C. OFFICE
301 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 682-4300

BALTIMORE OFFICE
1800 MERCANTILE BUILDING
Baltimore, Maryland 21204
(301) 244-7400

VIRGINIA OFFICE
PLAZA SUITE THREE
400 NORTH HENDERSON ROAD
ARLINGTON, VIRGINIA 22203
(703) 243-9000

MEMPHIS OFFICE
SUITE 300
2000 COMMERCE BLDG
MEMPHIS, VIRGINIA 22008
(703) 749-3800

WRITER'S DIRECT NUMBER IS
244-7540

March 23, 1987

The Honorable Keith S. Franz
Ms. Patricia Phipps
Mr. Leroy R. Spurrier
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Members of the Board:

I have noticed two errors in the Memorandum of Protestants in Opposition to the Petition.

- (1) The reference on page 11 to "Attachment 3" should refer to Petitioner's Exhibit 3.
- (2) On Attachment 5, Mr. Hoswell's name is misspelled.

Very truly yours,

George C. Doub, Jr.

GCD:hb
8658Y/16

cc: Phyllis C. Friedman, Esquire
Michael Gisriel, Esquire



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 19, 1987

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Courthouse
Towson, MD 21204

RE: Conservation Associates
Case No. R-86-110

Dear Mr. Zimmerman:

Your request to extend the period of time in which to supply the Board with your Reply Memorandum is denied.

If you believe that any newly decided case law may assist us in our decision, you are free to supply us with that information only after your Memorandum has been submitted.

Very truly yours,

Keith S. Franz, Acting Chairman
County Board of Appeals

KSP:kw

cc: Michael U. Gisriel, Esquire
W. Thomas Gisriel, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire
Mitchell Kolkin, Esquire



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2189

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

March 17, 1987

The Honorable
Keith S. Franz, Acting Chairman
Baltimore County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Conservation Associates, Petitioner
Zoning Case No. R-86-110

Dear Chairman Franz:

It is my understanding that the Reply Memorandum in this case is due Friday, March 20, 1987. In view of a recent Supreme Court decision in a case involving Keystone Bituminous Coal Company, which should be published this week, I would respectfully request an additional week to submit the memorandum. I trust that such a short delay will be acceptable.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

cc: Michael U. Gisriel, Esquire
W. Thomas Gisriel, Esquire
Judith A. Arnold, Esquire
George C. Doub, Jr., Esquire
Mitchell Kolkin, Esquire

PMZ:sh

10:11 V L1 1000 LEM
3702224 30 00000 110000
0342220

R-86-110 CONSERVATION ASSOC.

Exhibits in Closet:

Petitioners Exhibit #	People's Counsel's Exhibit #
4	4
5	7
6	10
7	8
8	19
9	
10	
11	
12	
13	
14	
15	
16	

Balance of exhibits in brown folder - back of 3rd drawer, 1st cabinet.

NOTICE OF HEARING

RE: PETITION FOR RECLASSIFICATION
Parcel 1: W/S Greenspring Ave., 1300'±
NW/4 Intersection/Caves Rd. & Greenspring Ave.
Parcel 2: N/S Caves Rd., 2400'± SW Intersection
C1's of Caves Rd. & Park Heights Ave.
4th Election District
Conservation Associates, Petitioner
Case No. R-86-110 Cycle I Item #4

TIME: 10:00 a.m.

DATE: Wednesday, October 23, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

12/03/86 - CONTINUED HEARING SET FOR Friday, 12/19/86, 9:00 a.m. (Danker reporter)
12/19/86 - CONTINUED HEARING SET FOR Friday, 01/23/87, 9:00 a.m.

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: People's Counsel

9/24/85 - CONTINUED IN OPEN HEARING TO WEDNESDAY, OCTOBER 23, 1985 at 10 a.m.

12/23/85 - CONTINUED IN OPEN HEARING TO THURS., DEC. 19, 1985, at 1:00 p.m. 3rd day - case opened

12/27/85 - CONTINUED HEARING TO THURS., DEC. 19, 1985, at 10 a.m. - Petitioner's case set for 10 a.m.

4/29/86 - CONTINUED HEARING SET FOR TUES., JULY 9, 1986, at 10 a.m.

6/14/86 - CONTINUED HEARING SET FOR TUES., AUG. 12, 1986, at 10 a.m.

7/19/86 - CONTINUED HEARING SET FOR TUES., DEC. 2 and WED., DEC. 3, 1986 at 10 a.m.



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 4, 1986

CONTINUED HEARING 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.

CONTINUED HEARING FROM 12/03/86

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE. 467' and 1507'
NW CAVES ROAD
4th DISTRICT

TO BE CONTINUED ON:

Friday, December 19, 1986 at 9:00 a.m.

cc: Michael Gisriel, Esquire
Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.
Doris C. Woodward
Weldon Hale
Avis Reed
Richard B. Buck
Frances P. Matthaif
Phyllis A. Zheutlin
Kathleen Popfons
Lisa Keir
Judy Bager
Willyed Keir
Early Beck
Jim Cox
George Doub
Gretchen Feldman
Phyllis Cole Friedman, Esq.
Michael Woznon, Esq.
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Ceter
James G. Hoswell
Margaret E. du Bois

Counsel for Petitioner
Petitioner
Petitioner
Petitioner
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
Protestant
People's Counsel

Kathi C. Weidenhammer
Administrative Secretary



MARYLAND DEPARTMENT OF STATE PLANNING

301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

CONSTANCE LIEDER
SECRETARY

November 17, 1986

Mr. William Hackett,
Chairman
Board of Appeals
Second Floor, County Court House
Towson, Maryland 21204

Re: Conservation Associates

Dear Mr. Hackett:

The Department of State Planning supports the retention of the existing RC2 zoning classification at property owned by Conservation Associates and located in the Caves Valley area of Baltimore County. The Department's position is based on three important characteristics of the subject property: (1) it is comprised of prime and productive agricultural soils; (2) it contains significant forest land cover on steep slopes and (3) it provides an important area suitable for groundwater recharge. Because of these characteristics, the zoning of this property has important implications for agricultural preservation and environmental protection efforts of both Baltimore County and the State of Maryland.

The subject site is comprised of prime and productive agricultural soils. Agricultural activities within the State's Piedmont Region, of which most of Baltimore County is a part, are key components of the State's agricultural economy. The Piedmont Region contributes 27 percent of the market value of agricultural products grown and sold in the State. The preservation of agricultural activity within the region requires maintaining large, critical masses of prime and productive soils, free from incompatible land uses and activities. Nearby residential development, in particular, has adverse impacts on farm land and farming (OSP Publication 63-19, September 1983, Agricultural and Forest Land Preservation in Maryland).

The subject site itself is comprised of prime and productive agricultural soils, and within a 3-mile radius of the subject property, 90 percent of the undeveloped soil is prime and productive. The requested rezoning to RC5 would clearly have a detrimental impact on agricultural preservation in the region, since it would lead directly to conversion of the subject property, and would promote the eventual conversion of surrounding properties, to non-farming uses. The RC2 zoning on the subject site implements County Planning Policies regarding agricultural preservation and growth management.

TELEPHONE 301-226-4550
TTY to Dwp 301-323-7255
OFFICE OF COMPREHENSIVE POLICY PLANNING

Mr. William Hackett
November 17, 1986

Page 2

The subject site contains significant forest land cover on steep slopes. Forest land cover, particularly when it is located on steep slopes, prevents erosion and sedimentation and assists in the uptake of nutrient pollutants (e.g., nitrogen and phosphorus) from stormwater. The water quality protection goals of the State's Chesapeake Bay initiatives call for minimizing adverse impacts resulting from sediment, nitrogen, and phosphorus loadings in stormwater runoff. Forest land cover also provides suitable habitat for the wildlife that is an integral part of the Bay's ecosystem.

A rezoning of the site to RC5 would likely result in removal of much of the existing forest land cover, thereby increasing sediment, nitrogen, and phosphorus loadings and destroying wildlife habitat.

The subject site provides an important area suitable for groundwater recharge. There is an important groundwater aquifer located beneath the Caves Valley, and the subject property is suitable for the continued recharging of that aquifer. The substantial increase in residential density that would be permitted under the RC5 zoning sought by the applicant would inevitably result in a significant increase in impervious surface, and in a substantial reduction in the ability of the site to provide groundwater recharge. Moreover, the introduction of septic systems, nutrient pollutants, and petrochemicals resulting from development under RC5 zoning may lead to contamination of the groundwater.

The preservation of the subject property's RC2 zoning for aquifer protection is consistent with planning initiated by the County in 1977. In that year, the County's Designation Report for Areas of Critical State Concern included the Caves Valley as an area deserving protection. The report recommended low-density zoning as a suitable management technique to accomplish aquifer protection.

The County and the State have been consistent in supporting the preservation of the Caves Valley. The County has maintained low density zoning in revisions and readoptions of the County Master Plan and Comprehensive Zoning Map. Also, during the County's 1980 Comprehensive Rezoning process, at a public hearing held on September 4, 1980, the Department of State Planning testified in opposition to the rezoning of the subject site to RC5.

The Department has examined recent land development in the vicinity of the subject property. Based upon discussions with the Office of Planning and Zoning, these changes are the result of implementation of the Comprehensive Zoning Map and are in accordance with stated County land use policies. As

Mr. William Hackett
November 17, 1986

Page 3

such, the changes do not warrant the piecemeal reclassification of the subject property. The existing RC2 zoning on the subject property is the result of careful and deliberate planning and zoning actions and is not a mistake.

The Department of State Planning again urges the Board of Appeals to maintain the existing RC2 zoning for the subject site. This recommendation is consistent with State and County policies, plans and programs.

Thank you for the opportunity to offer our views and recommendations in this important matter.

Very sincerely yours,

Larry F. Duket
Larry F. Duket
Chief of Current Planning

LFD:alg

cc: Mr. Norman Gerber
Mr. Jim Hoswell
Ms. Phyllis Cole Friedman

IN THE MATTER OF THE PETITION : BEFORE THE COUNTY BOARD OF APPEALS
FOR RECLASSIFICATION FROM R.C. 2 :
TO R.C. 5 ZONE : OF BALTIMORE COUNTY
NE/S PARK HEIGHTS AVE., 467' & :
1507' N. OF CAVES RD., :
4th DISTRICT :

CONSERVATION ASSOCIATES, Petitioner : Case No. R-86-110 (Item 4, Cycle I)
: : : : :

MEMORANDUM

People's Counsel for Baltimore County states:

I. INTRODUCTION

For the first time in memory, a Petitioner in a zoning reclassification has challenged the right of County and State officials to make independent visits and inspections of the property under consideration. Conservation Associates has objected to evidence, alleged constitutional wrong, and claimed trespass. This memorandum will address concisely these assertions.

II. PROCEDURAL DUE PROCESS AND ADMISSION OF EVIDENCE

Generally speaking, administrative agencies are not bound by common law rules of evidence, but they must observe the basic rules of fairness as to parties appearing before them. Schultz v. Pritts, 291 Md. 1 (1981). In this connection, it is the substance, not the form, which governs.

Del Maso v. Board of County Comm'rs, 238 Md. 333 (1965).

In Del Maso, as in Temink v. Board of Zoning Appeals, 205 Md. 489 (1954), the courts have approved the practice in zoning cases of admitting planning board and technical staff reports disclosed for the first time at or after the hearing, so long as there is an opportunity provided to examine and challenge the report, typically by cross-examination and/or rebuttal. More recently, the Court of Appeals reiterated the appropriateness of evidence including independent investigative reports subject to cross-examination in Rogers v. Radio Shack, 271 Md. 126 (1974).

- 2 -

It is necessary to add, because of the constitutional objections claimed, that the law as it might be applied in criminal cases cannot be injected into an administrative hearing. In Widonski v. Chief of Police, 41 Md. App. 361 (1979), Chief Judge Gilbert refused to apply the constitutional law of confessions under Miranda v. Arizona and Simmons v. United States to police disciplinary proceedings. In this connection, he cited Chief Judge Wright's observations in Boulware v. Battaglia, 344 F. Supp. 889, 905 (D. Del. 1972):

"The Court is of the opinion that absent some particular factor of such import as to deny to ... [appellant] an effective opportunity to participate in and defend ... [himself] in the hearings, the procedures utilized were sufficient to fulfill constitutional requirements.

...The Trial Board adhered to the ... [Statutory] Rules governing such hearings and afforded ... [appellant] an orderly opportunity to hear evidence against ... [himself] and present a defense ... The Federal Constitution does not demand specific due process procedures, nor does it impose precise trial type requirements on state administrative disciplinary proceedings." 344 F. Supp. at 905 (Emphasis supplied.) 41 Md. App., at 380.

Once again, the key point was that the parties were permitted ample cross-examination and opportunity to present both evidence and argument.

In the present case, both Petitioner and People's Counsel have produced witnesses who conducted independent investigations and visits which were not disclosed until the hearing. Both sides have had and continue to have the opportunity to cross-examine and give rebuttal evidence. This is fair and consistent with the purpose of administrative law to provide a flexible approach to the handling of controversies.

- 3 -

In this context, it is necessary to add that the rights at stake here, while important, do not involve the same kind of personal jeopardy which attaches to police disciplinary proceedings (Widonski) or unemployment hearings (Rogers). The property owner here is initiating the administrative action to overturn the legislative zoning map and has the additional opportunity to request legislative action every four years. There is no precedent to apply the Constitution in such proceedings in the same manner as if the property owner were accused of a crime.¹

III. THE FOURTH AMENDMENT

Even assuming this were a criminal proceeding, there has been no constitutional violation. In Hester v. United States, 265 U.S. 57, 44 S. Ct. 445 (1924), Mr. Justice Oliver Wendell Holmes made the classic observation that "...the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." 44 S. Ct., at 446.

There, federal officers went on Charlie Hester's property, saw him give an associate a quart bottle, gave an alarm, and then pursued them. The officers proceeded to pick up and examine the bottle and a jug without a warrant. The Supreme Court had no difficulty affirming the conviction.

Since then, the "open fields" doctrine has been applied to administrative inspections to determine compliance with standards. A representative case is Shaffer v. United States, 229 F. 2d 124 (4th Cir. 1956), in which representatives of the Department of Agriculture obtained an injunction for entry to enforce the farm acreage allotment.

¹The Court of Appeals has just held that the Fourth Amendment exclusionary rule applies only to criminal trials. Whitaker v. Prince George's County, 307 Md. 368, 514 A.2d 4 (1986).

- 4 -

In the present case, the property is not lived on, and is occupied completely by open fields. There is no constitutional question.

IV. TRESPASS

Justice Holmes also implied, without deciding, that there was no trespass in Hester, because of "the justification." This is consistent with the traditional common law doctrine that a government official is privileged to enter upon land and to do such things as are appropriate for the governmental purpose. Restatement of the Law, 2d, Torts, Sec. 211 (1965). The privilege may arise by explicit statutory authority or by implication. There is extensive discussion in the Opinion of the Attorney General entitled Counties - Municipalities - Authority of Local Governments to Enter Land to Enforce Planning and Zoning Laws Under Article 66B - Power to Enact Ordinance for this Purpose (February 25, 1977).

In the present case, the Planning Director is responsible to make a report and recommendation on each zoning case pursuant to Sec. 2-58.1(e) of the Baltimore County Code. Moreover, the District Forestry Board or its agent is authorized to "enter upon any woodland in the county or district in performance of its duty." Md. Ann. Code NR Art. Sec. 5-606(b)(1). Those duties are broadly defined in Sec. 5-606(a). Finally, the People's Counsel is responsible for the defense of the comprehensive zoning maps, may call upon county officials, and may avail itself of the services of experts. Baltimore County Charter Sec. 524.1(b).

Plainly, the activities of County and State officials in examining property in the open fields in connection with a zoning proceeding do not amount to a trespass.

- 5 -

V. IMPLIED CONSENT

It is necessary to underline that questions as to the appropriateness of entry upon land by governmental officials usually arise where the government is initiating an enforcement action. The "open fields" doctrine, in the constitutional setting, and the common law doctrine of justification have evolved most often in cases where there is at stake a potential determination of liability or violation of the law.

Accordingly, when property owners apply for permits relating to land use, it is especially to be expected that the appropriate officials will make such reasonable inspections as are necessary to carry out their jobs. Traditionally, the officials act independently and at their own pace, and this is understood. Of course, their reports are subject to question and further review. But nobody would seriously contend that a building inspector trespasses every time he goes to a building site in the course of his daily travel.

The bottom line is that property owners usually know, and in any event, should reasonably expect, that zoning petitions will be followed by pertinent government inspection.

CONCLUSION

For the foregoing reasons, the Board of Appeals should find and declare:

1. That there has been no violation of procedural due process.
2. That there has been no violation of any constitutional rights.
3. That there has been no trespass.
4. That, as a matter of law, the property owner is deemed to consent to reasonable visitation and inspection of the property by appropriate County officers and employees.

- 6 -

5. That, in any event, the exclusionary rule does not apply to these proceedings.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 19th day of December, 1986, a copy of the foregoing People's Counsel's Memorandum was hand delivered to Michael U. Gisriel, Esquire and W. Thomas Gisriel, Esquire, 210 E. Lexington Street, Suite 400, Baltimore, MD 21202; and George C. Doub, Jr., Suite 1800, 2 Hopkins Plaza, Baltimore, MD 21201.

Peter Max Zimmerman
Peter Max Zimmerman



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

June 4, 1986

Michael Gisriel
Suite 400
210 E. Lexington Street
Baltimore, MD 21202-3514

Re: Case No. R-86-110
Conservation Associates

Dear Mr. Gisriel:

The Board looks with great reluctance on further postponements of the above entitled case. The Board also recognizes the petitioner's desire to have the case heard on consecutive or near consecutive dates.

In order to afford consideration to the People's Counsel's request for a postponement and the reasons stated therein, the Board will grant the requested postponement and reset the case for hearing on:

Tuesday, August 12, 1986 at 10 a.m. and
Wednesday, August 13, 1986 at 10 a.m.

This affords all parties two and one-half months to adjust schedules to suit these dates.

Unless some extreme circumstance intervenes, these are firm dates for this hearing. If such extreme circumstances presently exist, please notify this Board within ten (10) days from the date of this letter so that these dates may be assigned to other cases.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:e

cc: Phyllis Cole Friedman
Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.
Doris C. Woodward

Michael Gisriel
Page 2

Re: Case No. R-86-110

cc: Weldon Hale
Avis Reed
Richard B. Buck
Frances P. Matthai
Phyllis A. Zheutlin
Kathleen Pontone
Lisa Keir
Judy Baer
Wilfred Keir
Betty Beck
Jim Cox
George Doub
Gretchen Feldman
Michael McMahon, Esq.
James Earl Kraft
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James G. Hoswell

PETITION FOR ZONING RE-CLASSIFICATION

SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law

of Baltimore County, from an RC-2 zone to an RC-5 Zone for
306 acres out of the total tract of 682 acres of the subject property
for the reasons given in the attached statement. (See also the attached maps.)

NOTE: The following information is relevant to the subject property:

Total Area: 682 acres
Zoning reclassification sought for: 306 acres
Location: Fourth Election District, Third Councilmanic District of Baltimore County on both sides of Park Heights Avenue along and just to the north of Caves Road
Map: 059; Block 01 + 02
Parcel 215/397/454; Liber 5797 folio 349 through 356
Property Number(s) 17-00-013398, 013399 and 013400.

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser:

N/A
(Type or Print Name)

Signature

Street or Box

City and State

Attorney for Petitioner:

Michael Gisriel, Esquire

(Type or Print Name)

Signature

204 North Liberty Street, Suite 400

Street or Box

Baltimore, MD 21201

City and State

Attorney's Telephone No. (301) 539-0513

Legal Owner(s):

CONSERVATION ASSOCIATES

(Type or Print Name)

BY:

Signature Michael Gisriel, Attorney

CAVEMEN PROPERTIES

(Type or Print Name)

BY:

Signature Michael Gisriel, Attorney

KINGDON GOULD, JR., Trustee

BY:

Signature Michael Gisriel, Attorney

Street or Box 470 PMT, 1725 DeSales St., NW

Suite 900

Washington, D. C. 20036

City and State

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

Michael Gisriel, Esquire

Name

(301) 539-0513

Telephone No.

BAM Form 1



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Cobson, Maryland 21204
(301) 494-3180
December 26, 1985

NOTICE OF ASSIGNMENT

(CONTINUED FROM DECEMBER 19, 1985)

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

CASE NO. R-86-110

Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

ASSIGNED FOR:

WEDNESDAY, APRIL 30, 1986, at 10 a.m. AND

THURSDAY, MAY 1, 1986, at 10 a.m.

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioners
"
"

Phyllis C. Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

April 29, 1986

NOTICE OF POSTPONEMENT and REASSIGNMENT

CONTINUED HEARING FROM 12/19/85

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

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 to RC-5
NE/S PARK HEIGHTS AVE. 407' and 1500'
NW CAVES ROAD
4th DISTRICT

Scheduled for hearing on Wednesday, April 30, 1986, has been POSTPONED at the request of counsel for the Petitioner (wants consecutive hearing dates) and has been

REASSIGNED FOR:

TUESDAY, JULY 9, 1986 at 10 a.m. and
THURSDAY, JULY 10, 1986 at 10 a.m.

cc: Michael Gisriel, Esquire

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioner
"
"

Doris C. Woodward

Requested Notification

Weldon Hale

" "

Avis Reed

" "

Richard B. Buck

Protestant

Frances P. Matthai

" "

Phyllis A. Zheutlin

" "

Kathleen Pontone

" "

Lisa Keir

" "

Judy Baer

" "

Wilfred Keir

" "

Betty Beck

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Jim Cox

" "

George Doub

" "

Gretchen Feldman

" "

Phyllis Cole Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James Earl Kraft

Board of Education

Arnold Jablon

Jean M. H. Jung

James E. Dyer

Norman E. Gerber

James G. Hoswell

Edith T. Eisenhart, Adm. Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Cobson, Maryland 21204
(301) 494-3180

April 21, 1986

NOTICE OF POSTPONEMENT

CASE NO. R-86-110
Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

THE ABOVE CASE, SET FOR HEARING ON THURSDAY, MAY 1, 1986, at 10 A.M.,

HAS BEEN POSTPONED BY THE BOARD AT THE REQUEST OF PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY. (THE MAY 1st DATE IS THE ONLY DATE CANCELED.)

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioner
"
"

Phyllis C. Friedman

People's Counsel

Michael McMahon, Esq.

Office of Law

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell

Jane Holmen, Secretary

12/19/85 - R-86-110 - Weldon Hale, Esq. Pres.
Community Residents agreed to this Re-classification -
Richard B. Buck 11219 Kensington Ave. P-21
Frances P. Matthai 18331 Gessia Fair Rd. Caves Mills 21117
Phyllis A. Zheutlin 22 Covered Lane - O.H. 21117
Kathleen Pontone 25229 Caves Rd. on 21117
Lisa Keir 11806 Kensington Ave 21117
Judy Baer VPC-Bashaw-Towson, Md 21214
Wilfred Keir 11812 Kensington Ave. O.M 21117
Judy Baer 2721 Dumbarton Rd 21117
Jim Cox 36 Caveswood Ln 21117
George Doub 2700 CAVES RD 21117
Gretchen Feldman 27 Caveswood Ln - CM- 21117
(above got notice sent to them)



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Cobson, Maryland 21204
(301) 494-3180
October 23, 1985

NOTICE OF ASSIGNMENT

(CONTINUED FROM OCTOBER 23, 1985)

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

CASE NO. R-86-110

Item No. 4

CONSERVATION ASSOCIATES

NE/S Park Heights NW Caves Road

4th District

RC-2 to RC-5

ASSIGNED FOR:

THURSDAY, DECEMBER 19, 1985, at 1:00 p.m.

cc: Michael Gisriel, Esq.

Counsel for Petitioner

Conservation Associates
Cavemen Properties
Kingdon Gould, Jr.

Petitioners
"
"

Phyllis C. Friedman

People's Counsel

James E. Kraft

Board of Education

Doris C. Woodward

Weldon Hale

Avis Reed

Arnold Jablon

Jean Jung

James Dyer

Norman Gerber

James Hoswell



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIAVERMAN
Deputy People's Counsel

December 17, 1985

William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Conservation Associates, Petitioner
Kingdon Gould, Jr., Trustee
Zoning Case No. R-86-110

Dear Mr. Hackett:

Please issue a subpoena for Kingdon Gould, Jr., Petitioner, in the above-captioned matter, to appear at the County Board of Appeals hearing set for Thursday, December 19, 1985, at 1:00 p.m., in Room 218, Court House, Towson, MD 21204, and serve on Michael Gisriel, Esquire, 204 North Liberty St., Suite 400, Baltimore, MD 21201, Attorney for Mr. Gould.

Thank you for your assistance in this matter.

Sincerely yours,

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

PCF:sh

Mr. Sherill:

Please issue the above summons.

John L. Damron
John L. Damron, Board of Appeals, Baltimore County

RECEIVED
COUNTY BOARD OF APPEALS
DEC 17 11 14 30

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204
October 31, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Hackett:

Enclosed are updated comments on Case Number R-86-110, Conservation Associates Property.

Two different pages of comments have been supplied because the two tracts of land in question are serviced by two different elementary schools at this time. The larger tract of land, 277.005 acres, would be serviced by the Franklin Elementary School. This information is on the first page.

The smaller parcel of land, 26.344 acres, would be serviced by the Owings Mills Elementary School, and is on the second page of comments.

Both tracts of land would be serviced by the Owings Mills Jr./Sr. High School.

All enrollment figures and pupil yields have been updated to reflect the most recent information available.

I hope this information will be useful for your hearing.

Sincerely,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JLD/1h

Enclosures - 2

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: 10/31/85

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1

RE: Item No: 4
Property Owner: Conservation Associates
Location: NE/S Park Heights Avenue 467' and 1507' N/W Caves Road (277.005 Acres)
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

School Situation September 1985

School	Enrollment	Capacity	Over/Under
Franklin Elementary	550	480	+70
Owings Mills Jr./Sr.	995	1210	-215

Student Yield With:

	Existing Zoning	And	Proposed Zoning
Elementary	8		41
Middle	5		24
High	4		21

Very truly yours,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JD/1h

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: October 31, 1985

Mr. William Hackett
Chairman, Board of Appeals
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1

RE: Item No: 4
Property Owner: Conservation Associates
Location: N/S Caves Road, SW of Park Heights Avenue (26.344 Acres)
Present Zoning: R.C. 2
Proposed Zoning: R.C. 5

School Situation September 1985

School	Enrollment	Capacity	Over/Under
Owings Mills Elementary	573	644	-71
Owings Mills Jr./Sr.	995	1210	-215

Student Yield With:

	Existing Zoning	And	Proposed Zoning
Elementary	1		4
Middle	1		2
High	1		2

Very truly yours,

John L. Damron
John L. Damron, Field Representative
Department of Planning

JD/1h

9/23/85 - Re: Case No. R-86-110 - Conservation Associates

I received a call today from Richard Shofar stating that a sign for the above case was posted on his property on Park Heights Ave. He said this is undeveloped land and that he was not aware that the sign was on his property until this past weekend. The location of the property as reflected in the file, is NE/S Park Heights Ave., 467' and 1507' NW Caves Road. He said his property is about 1 1/2 miles above Caves Road or approximately 6500'.

In addition to this Mr. Shofar wanted to know about the requested reclassification, the adjacent zoning, etc. Finally, in order to have him receive proper advice I referred him to Jim Dyer, who could also straighten out the sign situation with him.

Perhaps you will remember, last week we had a call about the sign being on a property on Green Spring Ave. instead of Caves Road.

I then talked with Jim Dyer about the confusion of these signs and the fact that the location as shown in the file does not state that part of the petition is on Caves Road. After checking the file, Jim found that there had been a mixup in their office as the petition covers two separate parcels of land. Therefore, inasmuch as the case is being continued in open hearing tomorrow, he decided to have the property readvertized with the proper description and he will personally see that the signs are posted properly.

The new ad and the new signs will show the continued hearing date of 10/23 so that the public will be informed as to the date the case will be heard in its merits.

BTE

9/16/85 - Re: Case No. R-86-110 - Conservation Associates - Hearing 9/24/86

I received a call today from a Mr. Keir of 11812 Greenspring Avenue stating that a sign for the above case had been posted on his property, that he had removed it, and if we wanted it that it would be by his garage.

I called the posting man, Mr. Arata, and informed him of the situation. According to my records the property involved is on the NE/S of Park Heights Avenue 467' and 1507' NW of Caves Road. I requested Mr. Arata to go out to the property, retrieve the sign and check his records to find the proper location.

9/17/85 - Mr. Arata called me this morning to advise that he had consulted with Mr. Dyer as to the proper location of the signs as the Zoning Office marks the plats where the signs are to be posted. This case involves two parcels of land. Mr. Arata said he had posted the sign where it was shown on the plat but the person in the Zoning Office had marked the plat wrong. The sign on Greenspring Ave. should have been on the parcel on Caves Road. So --- for the record the sign on the Park Heights Ave. parcel was posted on 9/6, which was proper timing. However, the Caves Road sign was put up on 9/16, so there might be a question about this.

This is the case that is being continued after its opening on 9/24

PETITION FOR RECLASSIFICATION

LOCATION: Parcel 1: West side of Greenspring Avenue, 1300' Northwesterly from the centerline of the intersection of Caves Road & Greenspring Avenue.

Parcel 2: North side of Caves Road, 2400' Southwesterly from the intersection of the centerlines of Caves Road and Park Heights Avenue.

PUBLIC HEARING: Wednesday, October 23, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing for the reclassification of the zoning status from an R.C.-2 Zone to an R.C.-5 Zone. Parcel 1 containing 277.005 Acres and Parcel 2 containing 26.344 Acres; and that parcel of land in the 4th Election District of Baltimore County.

Being the property of Conservation Associates, as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 22, 1986

(CONTINUED HEARING)

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 24(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.

(CONTINUED HEARING -- FROM 12/19/86)

CASE NO. R-86-110
Item #4, Cycle I
CONSERVATION ASSOCIATES
FOR RECLASSIFICATION FROM RC-2 TO RC-5
NE/S PARK HEIGHTS AVE 467' AND 1507' NW CAVED ROAD
4th DISTRICT

TO BE CONTINUED ON: Friday, January 23, 1987 at 9:00 a.m.

cc: Michael Gisriel, Esquire	Counsel for Petitioner
Conservation Associates	"
Cavemen Properties	"
Kingdon Gould, Jr.	"
Doris C. Woodward	"
Weldon Hale	"
Avis Reed	"
Richard B. Buck	Protestant
Frances P. Matthai	"
Phyllis A. Zheutlin	"
Kathleen Fontone	"
Lisa Keir	"
Judy Baer	"
Wilfred Keir	"
Petty Beck	"
Jim Cox	"
George Routh	"
Gretchen Feldman	"
Phyllis Cole Friedman, Esquire	People's Counsel
Michael McMahon, Esquire	Office of Law
James Earl Kraft	"
Arnold Jablon	"
Jean M. H. Jung	"
James E. Iyer	"
Margaret E. du Bois	"
Norman E. Gerber	"
James G. Howell	"

Kathi C. Weidenhammer
Administrative Secretary

Under the applicable standard, this Court is restricted to a determination of whether the Board's decision to deny reclassification of the subject parcels was based on substantial evidence and was fairly debatable. Using this standard, the Court finds that the Board's action was based on substantial evidence and was fairly debatable.

In light of the above, it is this 28th day of October, 1987, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED.

A. Owen Hennegan
A. OWEN HENNEGAN, JUDGE

OFFICIALS:
Michael G. Gisel, Esquire &
Thomas J. Gisel, Esquire
Peter Max Zimmerman, Esquire &
Phyllis C. Friedman, Esquire
George C. Dab, Jr., Esquire
Andrew H. Balda, Esquire
Kathleen Pontone, Esquire &
Donald R. Delorenz, Esquire

-4-

RECEIVED
COUNTY BOARD OF APPEALS
1987 OCT 30 A 10 09

BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF *
CONSERVATION ASSOCIATES, * CASE NO. R-86-110
ET AL. * ITEM 4, CYCLE 1
* * * * *

MEMORANDUM OF PROTESTANTS
IN OPPOSITION TO THE PETITION

The Protestants, Robb Tyler, Elizabeth Tyler, Mitchell Kolkin, Kathleen Pontone and George Doub, by their undersigned counsel, submit the following memorandum in opposition to the proposal to reclassify the 25-acre triangle on the northwest side of Caves Road.

INTRODUCTION

The Petitioners contend that the 25-acre triangle on the northwest side of Caves Road, the Caves Valley side, should be reclassified from agricultural (RC-2) to residential (RC-5) because all of the other property on the valley side of Caves Road has been developed into residential lots. In fact, a great deal of the property on the Caves valley side of Caves Road has not been developed into residential lots of any size. Those residential lots which exist are a great deal larger than the one acre lots or 1.5 acre average density permissible under RC-5 zoning.

Furthermore, even if all of the properties abutting the valley side of Caves Road had been developed into small residential lots, that fact would not suggest that the County

8144Y

Council made a "mistake" in zoning RC-2 all property northwest of Caves Road including the petitioners 25-acre triangle. Caves Road is the logical zoning line. It would create hopeless confusion to attempt to move that line closer to the floor of Caves Valley.

Petitioner also contends that the triangle is unsuited for agricultural purposes because it is too steep, of the wrong type of soil and wooded. However, the triangle is not too steep for agricultural purposes. More than half is located on the relatively flat valley floor. (See Attachments 1, 2, and 3.) The rest slopes gently. A nearby field with steeper slopes is in corn. Nearly all of the soils are suitable for agricultural purposes. The fact that the property has not been farmed recently and that trees have been allowed to grow on the property is not a basis for concluding that the property is unsuitable for agricultural purposes, nor that it was a mistake to classify the property RC-2.

Even if all of the Petitioners' contentions were correct, the Petition must be denied because Petitioners have misunderstood their burden of proof. (1) To prove "mistake," they must prove that the County Council failed to consider relevant facts. Petitioners did not even attempt to prove the County Council failed to consider relevant facts. (2) To prove the land is unsuitable for the zoning, Petitioners must prove that the property cannot be used for any of the special exception uses. They did not even attempt to do so.

-2-

8144Y

STATEMENT OF THE FACTS

The 25-acre triangle is situated on the northwest side of Caves Road and is a portion of a 299 acre property located primarily on the floor of Caves Valley which is presently actively farmed. At least half of the triangle is on the valley floor. The rest is on the valley walls. None is on the plateau. (Plan for the Valleys, page 33, People's Exhibit 10 and 16, a copy of which is annexed hereto marked Attachment 1 and enlarged as Attachments 2 and 3. See also Petitioners' Exhibit 7.)

Caves Road is the dividing line between RC-2 and RC-5 zoning over its entire three mile length (with the exception of several hundred yards at the northern end of Caves Road near Greenspring Avenue). Caves Road runs along the ridge line which separates the walls of Caves Valley from the plateau to the southeast. (See Attachments 1, 2, and 3.)

The Petition was rejected during the last comprehensive map revision process by the staff of the Planning Office, by the Planning Board and by the County Council.

ARGUMENT

The Petitioners' post-hearing memorandum is somewhat unclear as to the basis of the Petitioners' contention regarding the triangle. The triangle is not discussed separately in the memorandum, and many of the arguments relating to the large parcel north of the power transmission line do not appear to apply to the triangle. (For example, there are no streams on the triangle.) Petitioners' arguments

-3-

8144Y

regarding the triangle appear to be set forth at pages 4, 8, 14, 16, 20-21 and 44.

1. Development on Caves Road. The Petitioners contend first that all of the property on Caves Road with the exception of the triangle has been developed residentially and therefore that it is a mistake to zone the triangle RC-2.

The assertion that all of the property on the valley side of Caves Road has been developed inconsistently with RC-2 zoning simply is not true. For example, the properties immediately to the southwest of the triangle on the valley side of Caves Road are large, undeveloped tracks. These property owners are affected by the RC-2 zoning just as are the Petitioners. The assertion that "the zoning has no effect on any property owner on Caves Road other than the Goulds" (Petitioners' Memo p. 44) is not correct. Furthermore, there are few if any lots on the valley side of Caves Road throughout its entire length which are nearly as small as one acre lots permissible under RC-5 zoning.^{1/}

Moreover, the triangle extends approximately a quarter of a mile from Caves Road and onto the valley floor. (Attachment 1.) The requested rezoning of the triangle does

^{1/} Petitioners memorandum (p. 44) quotes Mr. Schulte as testifying: "RC-5 on this side [of Caves Road], RC-2 on this side, but driving down the road the difference in zoning would not be apparent." That the two sides of Caves Road look the same is hopelessly irrelevant. Furthermore, it is mere opinion. It has repeatedly been held that mere opinions of experts may not serve as the basis of a finding of mistake. Any such finding must be based on the facts on which the expert relies. *Coppolino v. County Board of Appeals*, 23 Md. App. 358, 371-372 (1974); *Howard County v. Dorsey*, 292 Md. 351, 359 (1982).

-4-

8144Y

not extend simply the width of one lot from Caves Road. Therefore, the presence of houses on lots abutting the valley side of Caves Road bears no relationship to the requested rezoning.

Even if all of the residential property fronting on the valley side of Caves Road were developed in one and 1.5 acre lots, that fact would not justify a claim of mistake with respect to the RC-2 zoning of the triangle. Caves Road is the dividing line between RC-2 and RC-5 throughout its entire length, approximately three miles (with the exception of several hundred yards near Greenspring Avenue). Caves Road is a clear and uniform and therefore rational dividing line between RC-2 and RC-5. Any effort to locate the RC-2 boundary closer to the floor of Caves Valley would require adopting more arbitrary and less well-defined boundary lines than Caves Road.

Furthermore, Caves Road runs essentially along the crest of the Caves Valley walls. It is a good approximation of the dividing line between the walls of Caves Valley and the plateau to the southeast. (See Attachments 1, 2, and 3.) Both Ducet and Solomon testified that ideally the dividing line between RC-2 and RC-5 should be located at the crest of the valley walls. Therefore, Caves Road is an especially sensible line of demarcation between RC-2 and RC-5 zoning.

For the County Council to have selected Caves Road as a dividing line between RC-2 and RC-5 therefore could not rationally be considered a "mistake" even if the valley side of

-5-

8144Y

Caves Road were developed along its entire length with 1.5 acre and one acre lots.

The contention that the triangle should be zoned RC-5 leads the Petitioner to other insurmountable intellectual difficulties.

If the triangle were zoned RC-5, the dividing line between RC-2 and RC-5 on the west side of the triangle would be the property line. The owner of the property to the west of the triangle (marked in blue on Attachments 1, 2, and 3) would then have an irresistible argument that his property should also be zoned RC-5. The camel's nose would be firmly under the tent. A domino effect would then sweep west from the triangle along the south wall of Caves Valley all the way to Garrison Forest Road. The same argument would justify rezoning the west wall of Caves Valley (on the east side of Garrison Forest Road) and on the north side of Caves Valley as well.

In other words, if the County Council had zoned all of the property on the valley side of Caves Road RC-2 except the triangle and had zoned the triangle RC-5, such zoning would have discriminated against the other owners of the valley walls.

In addition, most of the northern side of the triangle is not bounded by a property line or road or any other line at all. (See Attachments 1, 2 and 3.) More than half of the triangle lies on the valley floor. If the County Council had selected Caves Road to divide the RC-2 and RC-5 zoning, but had zoned the triangle RC-5, it would have discriminated against

-6-

8144Y

the owners of the valley floor. No logical basis would exist to oppose rezoning to RC-5 many if not all additional portions of the Caves Valley floor.

To rezone the triangle RC-5 would therefore create an enormous threat to the continued agricultural character of Caves Valley.

There is simply no logic to the Petitioners' contention that it was a "mistake" for the County Council to zone the triangle RC-2 because portions of the valley side of Caves Road have been developed.

2. Soils. Petitioners' memorandum argues that soils of the triangle are unsuitable for agricultural purposes. People's Council's Exhibit 5 indicates, however, that the triangle is composed virtually entirely of soils in the categories of capability units 2 and 3. Even according to the testimony of the Petitioners' own experts, those soils are suitable for agricultural purposes. (Petitioners agricultural expert, Stephens, testified that capability unit 3 soils are farmed, although they tend to be less productive than categorizes 1 and 2.)

The legislative statement of findings of the RC-2 zoning (a copy of which is annexed hereto as Attachment 4) states first that "Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development. From that testimony and that legislative

-7-



County Board of Appeals of Baltimore County

Room 200 Court House
Columbia, Maryland 21204

(301) 461-3180

December 4, 1986

CONTINUED HEARING

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.

CONTINUED HEARING FROM 12/03/86

CASE NO. R-86-110
Item #4, Cycle I

CONSERVATION ASSOCIATES

FOR RECLASSIFICATION FROM RC-2 TO RC-5

NE/S PARK HEIGHTS AVE. 467' and 1507'

NW CAVES ROAD

4th DISTRICT

Friday, December 19, 1986 at 9:00 a.m.

Counsel for Petitioner

Petitioner

Petitioner

Petitioner

Petitioner

Petitioner

Petitioner

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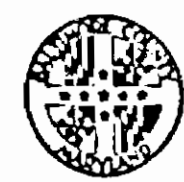
Petitioner

Petitioner

Petitioner

Petitioner

Kathi C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

Room 200 Court House

Columbia, Maryland 21204

(301) 494-3180

July 9, 1986

NOTICE OF POSTPONEMENT and REASSIGNMENT

CONTINUED HEARING FROM 12/19/85

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.

CASE NO. R-86-110

CONSERVATION ASSOCIATES

FOR RECLASSIFICATION FROM RC-2 TO RC-5

NE/S PARK HEIGHTS AVE. 467' and 1507'

NW OF CAVES ROAD

4th DISTRICT

Scheduled for hearing on Tuesday, August 12, 1986 and Wednesday, August 13, 1986 at 10 a.m. has been POSTPONED by agreement of counsel and has been

REASSIGNED FOR:

TUESDAY, DECEMBER 2, 1986 at 10 a.m. and

WEDNESDAY, DECEMBER 3, 1986 at 10 a.m.

cc: Michael Gisriel, Esquire

Counsel for Petitioners

Conservation Associates

Petitioner

Cavemen Properties

"

Kingdon Gould, Jr.

"

Phyllis Cole Friedman

People's Counsel

Michael McMahon, Esquire

Office of Law

James Earl Kraft

Board of Education

Doris C. Woodward

Requested Notification

Weldon Hale

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Avis Reed

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Protestant

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Kathleen Pontone

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Lisa Kier

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Judy Baer

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Wilfred G. Keir

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Betty Beck

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Jim Cox

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George Doub

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Gretchen Feldman

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Arnold Jablon

"

Jean M. H. Jung

"

James E. Dyer

"

Norman E. Gerber

"

James G. Hoswell

"

George Davis - Kingdon Gould's

John E. Goldberg - Gould

Edith T. Eisenhart, Adm. Secretary

PETITION FOR RECLASSIFICATION

LOCATION: Northeast side of Park Heights Avenue, 467 feet and 1507 feet North and West of Caves Road - Two Parts

PUBLIC HEARING: Tuesday, September 24, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:

Present Zoning: R.C. 2

Proposed Zoning: R.C. 5

All that parcel of land in the 4th District of Baltimore County

See attached Legal Description to be used in advertisements.

Being the property of Conservation Associates as shown on the plat plan filed with the Zoning Department.

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

TRACY, SCHULTE & ASSOCIATES INC. planning • architecture • engineering

8450 Baltimore National Pike • Suite 34 • Ellicott City, Maryland 21043 • (301) 465-6105

NOTES & BOUNDS DESCRIPTION
PROPERTY OF: CONSERVATION ASSOCIATES,
CAVEMAN PROPERTIES & KINGDON GOULD, JR., TRUSTEES
FOR ZONING RE-CLASSIFICATION PETITION

Part 1

BEGINNING for the same at a point on the westerlymost side of Greenspring Avenue, said point being 1300 feet, more or less, north-westerly from the intersection of the centerlines of Caves Road and Greenspring Avenue, thence leaving said Greenspring Avenue and running along the lines of the property of Conservation Associates, et al., as recorded among the Land Records of Baltimore County, Maryland in Liber 5797 at folio 349, the following five (5) courses and distances, viz:

- 1) South 58°00'00" West, 725.00 feet, thence
- 2) South 59°30'00" West, 1306.50 feet, thence
- 3) South 36°30'00" East, 673.20 feet, thence
- 4) South 57°50'00" East, 775.30 feet, thence
- 5) South 43°30'00" West, 1256.20 feet to a point, said point

being the intersection of the projection of the northerlymost line of the Baltimore Gas and Electric Transmission line right-of-way, then leaving the outline of the property of Conservation Associates, et al., and running along said northerlymost line of said D.G. & E. Transmission line right-of-way the following course and distance,

- 6) North 70°46'25" West, 3279.96 feet to a point in the centerline of a thirty (30) foot road leading to Park Heights Avenue, said line, continuing along the outlines of the Conservation Associates, et al., property, being common with the centerline of said thirty (30) feet

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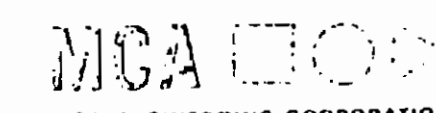
following course and distance,

- 2) North 64°24'48" East, 835.31 feet to a point on the outline of the property of Conservation Associates, et al., thence continuing along the outline of said property the following two (2) courses and distances,

- 3) South 55°30'10" East, 664.46 feet, thence
- 4) South 10°30'00" East, 83.17 feet, thence to a point in the aforesaid Caves Road, thence running along said Caves Road, being common with the outline of said property the following three (3) courses and distances,

- 5) South 28°15'00" West, 1080.75 feet, thence
- 6) South 31°00'00" West, 232.63 feet, thence
- 7) South 30°15'00" West, 97.35 feet to the point of beginning, Containing 26.344 acres of land more or less.

For zoning purposes, all bearings contained herein have been rotated into Baltimore County Datum.



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SCHEDULE "A" DESCRIPTION

60 ACRE PARCEL NORTHEAST SIDE OF
PARK HEIGHTS AVENUE, 467 FEET,
NORTHWEST OF CAVES ROAD
BALTIMORE COUNTY, MARYLAND

Beginning for the same on the center line of Park Heights Avenue at the end of the 78th or S 45° W 905.85 foot line of the land described in the deed from Janon Fisher, Jr. and others to Caves Development Corporation, dated October 1, 1964, recorded among the Land Records of Baltimore County in Liber R.R.G. 4369, page 305, running thence binding on the center line of said Park Heights Avenue (1) N 45° W 1040.40 feet, thence (2) N 45° E 3163.3 feet to a point on the 74th line of said land, thence binding on a part of said 74th line and continuing to bind on the 75th through the 77th lines of said land five courses: (3) S 31° E 78.6 feet, (4) S 52° 20' E 775.50 feet, (5) S 49° W 2323.20 feet (6) S 45° E 396.00 feet, and (7) S 45° W 905.85 feet to the place of beginning.

Containing 67.00 acres of land.

J.O. 1-64211A
August 21, 1977
W.O. 18742C
rw:deg

Rec'd for record SEP 1 1977
For Elmer H. Kahler, Jr., Clerk
Mail to THE TITLE GUARANTEE COMPANY
Receipt No. 9-12-00

A Division of Walter Kilde & Company, Inc.

finding, Petitioners' counsel argues that land having capability unit 3 soils should not be zoned RC-2, and that it is a mistake to zone properties with such soils RC-2. This contention, however, is not supported by the legislative findings or by the statement of purposes of the RC-2 zoning. When read in their entirety, the statement of findings and purposes suggest that it was the intention of the County Council in establishing RC-2 zoning to protect all land suitable for agricultural purposes even though some of such lands may not be in capability unit 1 or unit 2 categories. (See Attachment 4) Clearly, it would not be a "mistake" for the County Council to decide to protect some category 3 soils by RC-2 zoning.

The Petitioners' contention that the triangle should be zoned RC-5 because it contains some capability unit 3 soils or soils of a higher category contains a logical fallacy. If only capability unit 1 and unit 2 soils could be zoned RC-2, very little if any RC-2 zoning could be sustained in Baltimore County because there are usually some soils of ratings of 3 or higher scattered among category 1 and 2 soils. The County Council cannot be expected, much less required, to draw its RC-2 zoning boundaries along the tortuous boundary lines of capability unit 1 and unit 2 soils throughout the County. Not only would that require an absurd expenditure of effort by the County Council, but, in addition, it would create a wildly tangled and unworkable patchwork of zoning boundaries.

3. Slope. It is not entirely clear whether the Petitioner contends that the triangle is too steep to be used for agricultural purposes. In any event, the topographicals in evidence make it clear that the triangle is not too steep. Petitioners' Exhibit 3 and the Plan for the Valleys p. 33 (Attachments 1, 2, and 3) show that most of the triangle is located on the relatively flat valley floor. The balance is located on a relatively gentle slope. The field several hundred yards to the west of the triangle, marked "F" on Petitioners' Exhibits 3 and 18 is considerably steeper than the sloping portion of the triangle and that field is and for at least several years has been in corn. (Cox testimony; aerial photographs; Petitioner's exhibits 3 and 18.) This fact conclusively proves that the sloping portion of the triangle is not too steep to farm (much less to use for other agricultural purposes such as orchards).

Furthermore, the triangle is a small portion of a large working farm. It would make no sense to conclude that every steep area of a farm must be zoned RC-5. As Paul Solomon testified, every farmer has some steep land on his property, and it would be destructive of the RC-2 zoning to allow farmers to rezone to residential zoning every steep area on their farms.

4. Forest Cover. Petitioners argue that the property is forested and that residential development preserves forest cover. This argument is irrelevant. The Petitioner must show that the RC-2 zoning of the triangle was the result of a

"mistake." It cannot seriously be suggested that it would be a mistake for the County Council to preserve agricultural land that is wooded and that all woodlands must be zoned residential.

5. Lack of Existing Cultivation. The Petitioner contends that RC-2 zoning was not intended to be used to protect from residential development land which is suitable for agricultural purposes but which is not presently being actively farmed. This contention is not supported by the statement of legislative findings or purposes (Attachment 4). Certainly the County Council is not foreclosed by the statement of legislative findings and purposes from zoning RC-2 land which is suitable for agricultural use even though the owner has chosen not to farm that land. Otherwise RC-2 zoning would have no meaning at all.

Furthermore, the triangle is a small part of a larger working farm. To allow farmers to obtain residential zoning for all parts of the farm which are not in active cultivation or which the farmer elects to withdraw from active cultivation would be destructive of the RC-2 zoning and contrary to its purposes.

6. Additional Testimony. There are additional testimony and exhibits of the People's Council and Protestants which further justify the RC-2 zoning of the triangle. (Attachment 5 is a very brief summary of the testimony of all of the witnesses. It is attached simply to provide a very general overview and does not purport to be complete.) For example, Antionnette Seymour of Wallace, Roberts & Todd, the

land planning firm which developed the 1966 Plan for the Valleys, testified that RC-5 zoning of the triangle would be inconsistent with the Plan for the Valleys because the Plan for the Valleys called for no development of the valley floor, development no more dense than 3-acre lots on the valley walls and more dense development only on the plateaus. The majority of the triangle is located on the valley floor with the balance on the valley wall and virtually none on the plateau.

Curran testified that land could be used for cultivation at slopes of up to 12-15% and for pasture at steeper slopes and Solomon testified that the average farm land is on a slope of between 8-15%. Attachment 3 indicates that virtually all of the triangle is well within those grades.

Duket testified that the existing RC-2 zoning was consistent with the County plans. He pointed out that the Owings Mills corridor is planned for dense residential growth and that large sums of money have been spent to provide support for that residential growth. Accordingly, no need exists for the proposed residential development of Caves Valley and there is no need for the County and State to incur the costs to support such residential development. (With respect to costs of supporting residential development see also Attachment 4, p. 24, §A000.1(f)(1).)

Duket further testified that the proposed RC-5 zoning could easily be used to show a change in the neighborhood justifying further reclassification of RC-2 property to RC-5 in

the future, that Petitioners' properties were a "keystone" for many very large tracks to the north and that if the properties were rezoned RC-5 other properties were likely to be lost to residential development pressures.

Duket is the Chief of Current Planning of the Department of Planning of Maryland. His testimony that the State supports the retention of existing RC-2 zoning on the Petitioners' property is entitled to considerable weight, certainly more weight than the hired testimony of experts of the Petitioners.

Paul Solomon testified that in establishing boundaries of RC-2 zoning in 1978, no farms were divided and that boundary lines were followed to a substantial extent. Accordingly, to grant the Petition with respect to the triangle would be completely inconsistent with the principals and procedures which were followed in establishing the RC-2 boundary lines throughout the County.

Solomon further testified with manifest logic that every farm has some forest, some steep areas and some wet areas and that if portions of the Petitioner's property were to be rezoned because they were wooded, steep or wet, every farmer would apply to have some portion of his property rezoned with consequences that were likely to be destructive of RC-2 zoning.

Solomon further testified that since the 1978 RC-2 zoning, virtually no property zoned RC-2 has been changed to RC-5. Accordingly, granting the petition would constitute a major step toward breaking the RC-2 zoning of Baltimore County.

THE APPLICABLE LAW

1. This case is governed by the principles set forth in Shadynook Improvement Association, Inc. v. Molloy, 232 Md. 265 (1963). In that case, the Petitioner sought a rezoning of a 4.7 acre track on the west side of Maiden Choice Lane in Baltimore County from R-6 which permitted one or two family residential use to R-A which permitted apartments. All of the nearby properties fronting on the west side of Maiden Choice Lane were zoned R-6.

The Court referred to the "well established rule in this State, [that] there is a strong presumption of the correctness of original zoning and of comprehensive zoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive zoning or else of a substantial change in conditions." (pp. 270-271). The Petitioner contended that the subject track was not suitable for R-6 development because of its shape and topography and because of a railroad line along its southwest side. The Court concluded that the Petitioner had failed to show that the R-6 zoning deprived the Petitioner of any reasonable use of this land and concluded that "no mistake" in the legal sense had been proven:

None of [the Petitioner's contentions] singly, nor all of them together, show that the R-6 zoning deprives the owner of any reasonable use of his land; and there is thus no taking of the appellees' property in the constitutional sense which would

invalidate the R-6 zoning Nor is the fact that the property might be put to a more profitable use under another zoning classification sufficient to show a mistake in its existing zoning. (p. 272)

By the same reasoning, the Petitioners in the Gould case have failed to prove that the RC-2 zoning deprives them of any reasonable use in their land. The evidence shows the property can be used for agricultural purposes under its existing RC-2 zoning. Furthermore, under the RC-2 zoning, the Petitioners could sell approximately 15 lots of the least productive property, and according to the uncontraverted evidence in the case would probably obtain several million dollars from such development, far in excess of the purchase price which the Petitioners paid for the entire 600 acres.

The Court in Shadynook also pointed out that the rezoning of the subject property R-A would create "the entering wedge" of such zoning in the land between Maiden Choice Lane and the Beltway to the west, adding boundaries, as we have said, must be drawn somewhere, and that street appears to be a logical or natural place at which to draw the dividing line in this area." (p. 273.) Precisely the same reasoning applies to the triangle in the case at bar. Reclassification of the triangle RC-5 would create the entering wedge of such zoning on the valley side of Caves Road and on the valley walls and floor. The County Council's selection of Caves Road as the boundary between RC-2 and RC-5 zoning is "a logical or natural place at which to draw the dividing line."

Finally, the Court in Shadynook concluded that to reclassify the subject property R-A would amount to "improper spot zoning which would be inconsistent with the comprehensive zoning for this area" shown on the rezoning map. (p. 273.) Precisely the same is true of the proposed rezoning of the triangle.

See also Francis v. Misc Gill, 196 Md. 77, 84 (1950) pointing out that "if where they draw the division line . . . is fairly debatable, their action must be sustained."

2. The Petitioners' case actually is predicated upon a misunderstanding regarding their burden of proof. Even if all of the contentions made by the Petitioners, legal and factual, were correct and had been proven nevertheless it would be necessary to deny the Petition in this case. The reason is that in order to obtain rezoning of a property on the basis of "mistake," the Petitioner must prove by strong evidence not only that a mistake was made (and that the location of the boundary line was not fairly debatable) but also the Petitioner must prove that the relevant facts were not considered by the County Council.

Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show (1) the facts that existed at the time of the comprehensive zoning but also (2) which, if any, of those facts were not actually considered by the Council. The evidentiary burden can be accomplished by . . . addressing

testimony on the part of those preparing the plan that then existing facts were not taken into account.

The evidence addressed was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate readings of facts. Second, there is no evidence to show that at the time of comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. *Howard County v. Dorsey*, 292 Md. 351, 358, 365 (1982).

The Petitioners have not offered any evidence that the County Council failed to consider any relevant facts. Mr. Gould's attorneys had made oral and written presentations to Councilman Smith and the other members of the County Council (as well as to the Planning Board and its staff).

Coppolino v. County Board of Appeals, 23 Md. App. 358 (1974) deals with the "mistake" basis for a rezoning and also with the contention that rezoning is required because the property cannot be used for any purpose under the existing zoning and accordingly that the existing zoning constitutes an unconstitutional confiscation. In order to meet the latter standard, the Petitioner must establish not only that the property cannot be used for the uses expressly permitted under the zoning but also that it is unsuitable for development by way of any of the special exception uses.

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In addition, there was no evidence presented to show that the subject property was unsuitable for development by way of special exception uses. Thus the expert opinions that the subject property was not suitable for development in the DR5-5 zone were totally unsupported by facts.

Moreover, the Court of Appeals has repeatedly held that in order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and it cannot be used for any of the permitted uses in the existing zone. *Coppolino*, p. 371-372.

The Petitioners have not offered any evidence with respect to special exception uses.

3. Petitioner acknowledges that a strong presumption generally supports original zoning but suggests that with respect to the Petition in this case which involves reclassification from one rural conservation subcategory to another, a more liberal and relaxed standard should apply. This is not supportable. RC-2 zoning is designed to preserve productive land for future agricultural uses and to protect such land from "scattered development" and "urban intrusion" (Attachment 4, p. 26 §1A01.1(A)(1)(c) and (d)). Its purpose is entirely different from that of RC-5 zoning which permits one acre lots and 1-1/2 acre average density and does not have any relationship to the preservation of agricultural property.

The purposes of these two zoning classifications are so entirely different and the preservation of agricultural land

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is of such value to Baltimore County and to the State of Maryland, that it would be illogical to apply a more liberal standard in this case than is applied with respect to reclassifications from one use category to another.

CONCLUSION

For the foregoing reasons the Petition should be denied.

Respectfully submitted,

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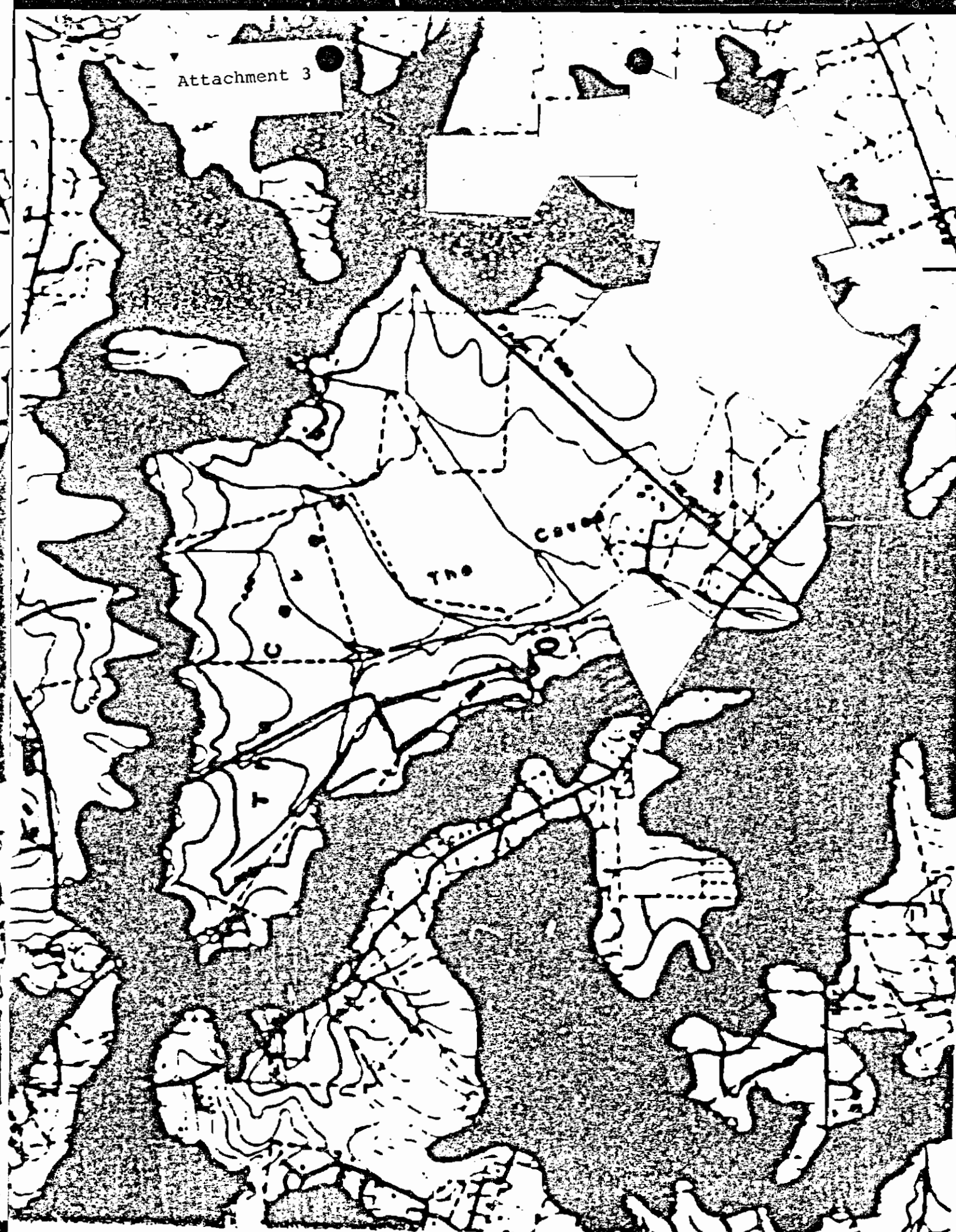
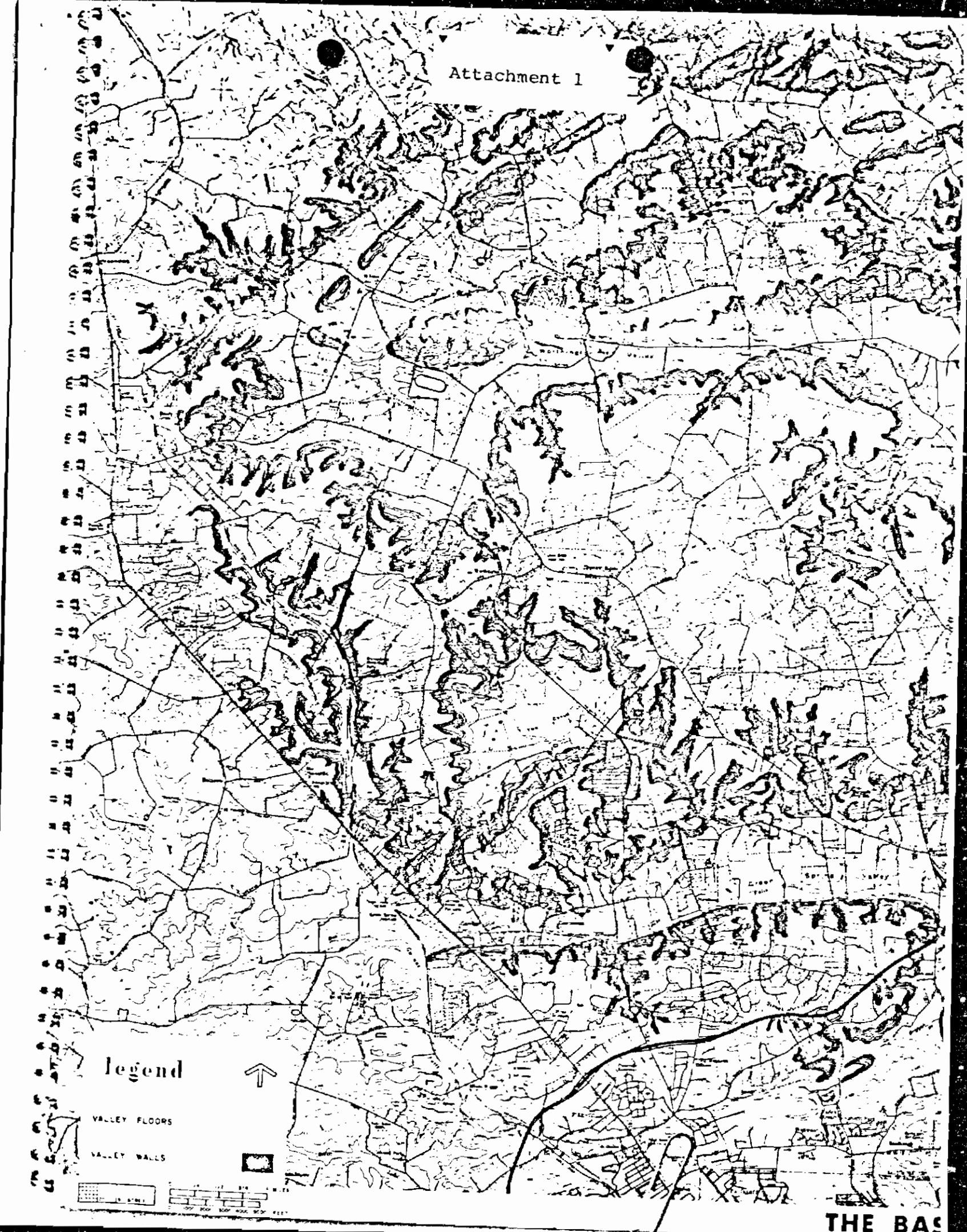
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 1987, a copy of the foregoing Memorandum of Protestants in Opposition to the Petition was mailed, first class, postage prepaid to Michael Gisriel, Esquire, Thomas J. Gisriel, Esquire, Gisriel & Gisriel, 210 East Lexington Street, Suite 400, Baltimore, Maryland 21202, and Phyllis C. Friedman, Esquire, Peter Zimmerman, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204.

George C. Doub, Jr.

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ARTICLE 1A-RESOURCE-CONSERVATION ZONES [Bill No. 98-75]

Section 1A00-GENERAL PROVISIONS: ALL R.C. CLASSIFICATIONS [Bill No. 98-75]

1A00.1-Findings. It is found:

- That development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate; [Bill No. 98-75]
- That this development has occurred without the framework of a land use plan or other planning components; [Bill No. 98-75]
- That due to this and other factors, this development has formed very undesirable land use patterns; [Bill No. 98-75]
- that in general, these patterns are, or can be described as, urban sprawl; [Bill No. 98-75]
- that a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the County as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues; [Bill No. 98-75]
- that it has been established that this development carries with it an extremely high cost to the County in a number of respects including: [Bill No. 98-75]
 - the cost of servicing this pattern of development; [Bill No. 98-75]
 - the cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas; [Bill No. 98-75]
 - the cost of future development opportunities due to the fact that viable, rational alternatives will be lost totally or comprised significantly by the present form of development; [Bill No. 98-75]
- that the aspect of the comprehensive plan that is applicable and which is being considered for rural Baltimore County embodies solutions to the various problems; and [Bill No. 98-75]
- that the effective implementation of this plan requires additional zoning classifications. [Bill No. 98-75]

- Article 1A and Sections 1A00 and 1A01 enacted by Bill No. 100, 1970 were repealed by Bill No. 98, 1975 and new sections 1A00, 1A01, 1A02, 1A03 and 1A04 under new Article 1A were enacted by Bill No. 98, 1975
- Thus in Bill 98, 1975

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The following is an extremely brief summary of the testimony to give a very general overview. It does not purport to be complete.

Petitioners' Witnesses

- (1) Shulte, a land use planner, testified that the Gould property north of the power line on the Krongard side of the valley should be rezoned RC-5 (1.5 acre lots) because the demarcation, and that the triangle should be zoned RC-5 because it has considerable road frontage and because Caves Road has a number of houses on both sides, which makes its use more compatible with residential use than with agricultural use.
- (2) Tracey, a civil engineer, testified generally to the same effect.

Respondents' Witnesses

- (1) Jeremy Chriss, of the Maryland Agricultural Land Preservation Program, testified that the soils on the Gould property were of the three highest agricultural classifications and that the property would qualify for acceptance into the program by which the State purchases development rights in order to preserve farm land.
- (2) Kingdon Gould identified the deeds and mortgage showing that he paid \$750,000 for the property.
- (3) Richard Curran, Director of the County Agricultural Extension Service, testified that the soils on the Gould property were of the best agricultural classifications, that the slopes were in general not too steep for farming and purposes.
- (4) Toni Seymour (from the Philadelphia land use planning firm of Wallace, Roberts & Todd which prepared the original plan for the Valleys in 1965) testified that the Gould proposal was not consistent with the Plan for the Valleys.
- (5) Mr. Kane, an expert in timbering and forest resource management testified that timber from the Gould property could be harvested on an annual basis producing at least \$30,000 per year.