

No. 19
September Term, 1990

ELIZABETH W. GLASCOCK

BALTIMORE COUNTY, MARYLAND

Murphy, C.J.
Eldridge
Rodowsky
McAuliffe
Chasanow,
JJ.

Opinion by Murphy, C.J.

Filed: November 7, 1990

RECEIVED
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OFFICE OF LAW

The question presented is whether Baltimore County, Maryland, a charter county under Article XI-A of the Maryland Constitution, is subject to its own zoning regulations in its use of leased land for a communication tower for its police, fire, and emergency services.

I.
The County is the lessee of land, owned by a volunteer fire company in an RC-2 (Resource Conservation) zone. A communication tower is a permitted use in this zone by special exception. The County constructed a 620 foot wireless tower on this property as part of a countywide technologically advanced governmental communication system. Believing that it was not subject to its own zoning regulations, the County did not apply for a special exception to use the property for this purpose. An adjacent property owner challenged the right of the County to use the property to erect the communication tower unless it obtained a special exception.

The Deputy Zoning Commissioner, after a hearing, agreed with the County's position. The County Board of Appeals affirmed, concluding that the County was exempt from its own zoning regulations. It said:

"The general trend is that the municipality has immunity from [its] zoning laws where the use is important in carrying out a governmental function."

The County's lease is for twenty-five years, renewable for two additional twenty-five year terms.

function. Based on the testimony at this hearing, the Board finds that nothing could be more important than the potential savings of a life of a police officer or a fire fighter."

On appeal, the Circuit Court for Baltimore County (Brennan, J.) affirmed the order of the County Board of Appeals. The Court of Special Appeals, in affirming the circuit court in an unreported opinion, held that the County "received its immunity status from the State's sovereignty and because it is acting on behalf of the State, i.e., in a governmental capacity, Baltimore County is entitled to exemption from its own zoning regulations." We granted certiorari to consider the important issue raised in the case.

II.

In City of Baltimore v. State, 281 Md. 217, 378 A.2d 1329 (1977), Baltimore City claimed that the State was required to comply with the City's zoning ordinance when using land for a public works project. We noted that the City's zoning powers were granted to it by public general law enacted by the General Assembly, which "neither specifically provides nor clearly implies that the State is intended to be subject to its provisions." 281 Md. at 223. In this regard, we said that "it is a basic long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the

State is to be bound." Id. From State v. McQueen, 9 Gill 105, at 118 (1850), we quoted Mr. Justice Story thusly:

"[G]eneral acts of the legislature are meant to regulate and direct the acts and rights of citizens, and in most cases, the reasoning applicable to them applies with very different, and often contrary force, to the government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act."

Because the General Assembly neither named the State nor manifested an intention that it be bound by the provisions of the enabling act which granted zoning authority to the City, we concluded that the City was without power to subject the State's use of the property to its zoning ordinance.

Maryland Code (1987 Repl. Vol.), Article 25A, § 5(X), which grants Baltimore County its authority to enact a zoning ordinance, neither specifically provides, nor clearly implies, that the County is subject to the requirements of its own zoning ordinance and regulation. That statute (a part of the Express Powers Act governing home rule counties) provides in subsection (X)(2)(i) that it is "the policy of this State that the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls"; and subsection (ii) thereof specifies that "zoning controls shall be implemented by local government."

In Board v. Marker, 316 Md. 683, 561 A.2d 219 (1989), involving exemptions from Baltimore County's zoning regulations,

we said that the State's exemption from these regulations under our holding in City of Baltimore v. State, supra "extends to the State's agencies and instrumentalities." 316 Md. at 693. A county is one of the public territorial divisions of the state, created and organized for public political purposes connected with the administration of state government, and specially charged with the administration and superintendence of the local affairs of the community. Claus v. Board of Education, 181 Md. 513, 30 A.2d 779 (1943); Talbot County Comm'rs v. Queen Anne's County Comm'rs, 50 Md. 245 (1849). See also Maryland Committee v. Taves, 229 Md. 406, 184 A.2d 715, rev'd on other grounds, 337 U.S. 656 (1962). The counties of Maryland are "mere instruments of government, appointed to aid in the administration of public affairs, and are parts of the State." Howard County v. Matthews, 146 Md. 553, 561, 127 A.2d 118 (1924). Nothing in Article 25A, § 5(X), or in the Baltimore County Zoning ordinance or regulations, even remotely suggests an intention that the County be subject to its own zoning laws. Accordingly, as a matter of statutory construction, our holding in City of Baltimore v. State, supra, extends to Baltimore County.

Our determination that Baltimore County is not subject to its own zoning regulations is consistent with the holdings of courts in a number of states. In Nehbras v. Village of Lloyd Harbor, 2 N.Y.2d 190, 140 N.E.2d, 241, 242 (1957), the New York Court of Appeals set forth the reasons for this rule:

we said that the State's exemption from these regulations under our holding in City of Baltimore v. State, supra "extends to the State's agencies and instrumentalities." 316 Md. at 693. A county is one of the public territorial divisions of the state, created and organized for public political purposes connected with the administration of state government, and specially charged with the administration and superintendence of the local affairs of the community. Claus v. Board of Education, 181 Md. 513, 30 A.2d 779 (1943); Talbot County Comm'rs v. Queen Anne's County Comm'rs, 50 Md. 245 (1849). See also Maryland Committee v. Taves, 229 Md. 406, 184 A.2d 715, rev'd on other grounds, 337 U.S. 656 (1962). The counties of Maryland are "mere instruments of government, appointed to aid in the administration of public affairs, and are parts of the State." Howard County v. Matthews, 146 Md. 553, 561, 127 A.2d 118 (1924). Nothing in Article 25A, § 5(X), or in the Baltimore County Zoning ordinance or regulations, even remotely suggests an intention that the County be subject to its own zoning laws. Accordingly, as a matter of statutory construction, our holding in City of Baltimore v. State, supra, extends to Baltimore County.

Our determination that Baltimore County is not subject to its own zoning regulations is consistent with the holdings of courts in a number of states. In Nehbras v. Village of Lloyd Harbor, 2 N.Y.2d 190, 140 N.E.2d, 241, 242 (1957), the New York Court of Appeals set forth the reasons for this rule:

stated in 3 McQuillan Municipal Corporations, § 25.15 (3rd ed. 1983):

"Municipal zoning regulations or restrictions usually do not apply to the State or any of its subdivisions or agencies, unless the legislature has clearly manifested a contrary intent. Thus, properties and the uses thereof may be immune or exempt from the operation of municipal zoning regulations where owned or controlled by counties, school districts or boards, park districts or like bodies, or by other agencies or subdivisions of the state."

A contrary view was espoused in Clarke v. Town of Estes Park, 686 P.2d 777 (Colo. 1984), where the court held that unless a municipal zoning ordinance specifically exempted the municipality, it was not exempt. We are unpersuaded by this minority holding.

Nor does City of Annapolis v. Anne Arundel County, 271 Md. 265, 316 A.2d 807 (1974), mandate a different result. Our holding in that case that the County was required to comply with the city's historical zoning provisions was premised on an enactment of the General Assembly manifesting a clear intention "that the political subdivision owning land within a historic district be subject to the jurisdiction of the Historic Area Commission." Id. at 291. As we have said in the present case, there is no intention manifested by the General Assembly, or by Baltimore County itself, that it be subject to its own zoning ordinances.

Finally, we have considered, but find no merit in the argument of the objecting property owner, that because the Baltimore County zoning regulations include public uses,

including communication towers, that the County is thereby subject to its own zoning law. As we have said, the County is not bound by its own zoning regulations unless it is so provided in the state enabling law or in the zoning ordinance itself. In this regard, there is no clear and indisputable intention that the County be so bound and, accordingly, it was not obliged to obtain a special exception to locate the communication tower on its leased property.

JUDGMENT AFFIRMED, WITH COSTS.

UNREPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND
NO. 330

September Term, 1989

ELIZABETH W. GLASCOCK

v.

BALTIMORE COUNTY, MARYLAND

Bell, Rosalyn B.
Bell, Robert M.
Wenner

JJ.

PER CURIAM

Filed: January 10, 1990

follows the general rule that where the use is governmental, it becomes sovereign use of the State and thus is exempt from local regulations.

The circuit court, in affirming the Board, stated:

The Board based its decision on the testimony of various witnesses that the proposed tower is for a public purpose and that it would carry out an important governmental function: i.e., further the health, safety and welfare of Baltimore County citizens as well as police and fire personnel. Based on the law of the standing rule that municipalities are not bound by their own ordinances and the reasoning of various appellate court opinions..., the Board properly concluded that Baltimore County is exempt from the requirements of its zoning regulations.

Both the Board and the circuit court cited in support of their respective positions Mayor and City Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570 (1978); The Youngstown Cartage Co. v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975) and City of Annapolis v. Anne Arundel County, 271 Md. 265 (1974). Appellant points out that "both opinions relied upon the rule of State immunity from local zoning for the proposition that Baltimore County is immune from its own zoning ordinance." She argues, "[t]his is an error. The State's immunity is founded upon a principle of State immunity." (Emphasis in the original) She cites City of Baltimore v. State, 281 Md. 217, 223 (1977), in which the Court of Appeals said:

In this regard, it is a basic and long-standing principle of statutory

This appeal by Elizabeth W. Glascock, appellant, from the judgment of the Circuit Court for Baltimore County affirming the decision of the County Board of Appeals raises three questions:

1. Does the State's immunity attach to the County?
2. Does the County's Zoning Ordinance exempt the County?
3. How can the two legislative policies be reconciled without preferring one over the other?

For reasons that follow, we will affirm.

Baltimore County, Maryland, appellee (hereinafter sometimes referred to as Baltimore County and appellee) proposes to construct on property leased from the Arcadia Volunteer Fire Department a 620 foot wireless communication tower as a part of a county wide logically advanced public safety communication system. The tower, the function of which, it has been stipulated, is a governmental one, would be used solely for the County's police, fire, and emergency services and would replace a part of the grossly inadequate communication system currently in use.

The Arcadia Volunteer Fire Department property on which the tower is proposed to be built lies within the RC2 (Resource Conservation) zone and is adjacent to property owned by appellant. The wireless communications tower is a

construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound.

In short, appellant's approach is simple, depending for its effect upon the absence of any reference to any entity other than the State. Thus, she argues "[t]here is no sovereign use of the State involved here; so far as the testimony indicates, the use is purely a County one and the State is not involved at all."

We are not persuaded by appellant's simplistic argument.

"A county in its political and legal aspect is a civil division of the territory of a state and a governmental agency of the State - or in a sense a municipal corporation, to aid in the administration of governmental affairs and to exercise delegated sovereign powers of the state." 1 McQuillin Municipal Corporations, § 1.24, 3d Ed. (1987). That is certainly true of Baltimore County, which is a home rule, charter county organized pursuant to Art. XI - A of the Maryland Constitution. Pursuant to § 2 of that article, "The Express Powers Act," Maryland Code Ann. art. 25A, sets out the general powers exercisable by a County. Section 5(x) of article 25A, pertaining to the zoning authority of a county, provides Baltimore County with its specific zoning authority. In that regard, it should be noted that there is no provision in the code which specifically provides, or

permitted use in that zone by special exception. 1. Section

502.7.C sets forth eleven requirements for the grant of a special exception for a wireless transmitting or receiving structure in the R.C. zone.

Claiming immunity from the County Zoning Regulations, Baltimore County did not apply for a special exception to construct the tower. Appellant, however, initiated these proceedings, by applying for a special hearing to determine whether Baltimore County's assertion was correct. The Deputy Zoning Commissioner, after hearing, ruled that it was. Appellant appealed to the County Board of Appeals

¹Baltimore County Zoning Ordinance, § 1A01.2.C.23 provides:

The following uses, only, may be permitted by special exception in any R.C.2 zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under item 24, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land not appropriately used for primary agricultural uses:

23. Wireless transmitting or receiving facilities as principal uses.

even fairly implies, that the County must be subject to its own zoning ordinance.

The recent case of The Board of Child Care of the Baltimore Annual Conference of the Methodist Church v. Barker, 316 Md. 683 (1989) is instructive on this point. There, the Methodist Board, a nonprofit charitable corporation, intending to operate a State licensed and regulated child care facility on its own property, sought exemption from local zoning regulations for that purpose. The Court of Appeals declined to exempt it, pointing out:

That the exemption from county zoning regulations accorded to the State under our holding in City of Baltimore v. State, supra, extends to the State's agencies and instrumentalities is entirely manifest. Plainly, the Methodist Board is not a unit of State government. It was not created by legislative enactment and the State exercises no control over it beyond licensing its child care facilities and prescribing various operating standards.

316 Md. at 693.

As we have seen, the County is not a private individual or organization. On the contrary, it is a unit of State government, created by legislative enactment, which must act in accordance with enabling legislation passed by the General Assembly. As such, it, in the words of appellee, "possesses the essential indicia of a lesser governmental unit. And, the implementation of a public safety system which is requisite for police, fire, emergency personnel to

which heard the matter de novo. Rejecting appellant's arguments, the Board decided that the county was exempt from the zoning regulations. The Circuit Court for Baltimore County agreed and affirmed.

On appeal, appellant attacks the correctness of the circuit court's judgment on two bases: (1) the County is not a unit of state government and, thus, the State's immunity does not attach to it and (2) the County is not exempt from Baltimore County Zoning Regulations, § 102.1, requiring that all land in the county be zoned. The third issue she raises is simply one of the rationales supporting her first issue.²

The Board of Appeals found as a fact that Baltimore County was exempt from its zoning regulations. In support of that finding, it opined:

The general rule is municipalities are not bound by their own ordinances. It may be exempt from the operation of its own zoning laws. The general trend is that the municipality has immunity from the zoning laws where the use is important in carrying out a governmental function. Based upon the testimony at this hearing, the Board finds that nothing could be more important than the potential savings of a life of a police officer or a firefighter. The law in Maryland is clear that Maryland

²Appellant is correct that the Baltimore County Zoning Regulations do not expressly exempt Baltimore County from their reach; but neither do they specifically include it. Therefore, if the County is immune, it is for some reason other than the exemption from

render essential public services is a legitimate exercise of the police power conferred upon Baltimore County pursuant to Md. Code Ann., Article 25A, Section 5 [(x)]." See also 8 McQuillin Municipal Corporations, § 25.15, (3d Ed. 1983), wherein it is stated:

Municipal zoning regulations or restrictions usually do not apply to the state or any of its subdivisions or agencies, unless the legislature has clearly manifested a contrary intent. Thus, properties and the uses thereof may be immune or exempt from the operation of municipal zoning regulations where owned or controlled by counties, school districts or boards, park districts or like bodies, or by other agencies or subdivisions of the state. (Footnotes omitted).

Having received its immunity status from the State's sovereignty and because it is acting on behalf of the State, i.e., in a governmental capacity, Baltimore County is entitled to exemption from its own zoning regulations.³

Appellant's reliance upon The City of Annapolis v. Anne Arundel County, 271 Md. 265 (1974) is unavailing. There, although the Court of Appeals held that the County was bound by the City's historical zoning provisions, it recognized that both the City and the County had subjected themselves

³It cannot seriously be questioned that what the County is doing is governmental in nature and, indeed, appellant makes no such contention.

to their own zoning laws. From this it may be argued that it also recognized the general rule unless the County subjects itself to its own zoning laws it is exempt from the zoning laws of a municipality. 271 Md. at 290. In any event, the basis for the Court's decision rested upon its "opinion that there are substantial and significant differences between traditional zoning and historic area zoning." See Id., at 290-292. These differences, it concluded, "indicate that the General Assembly...intended that the political subdivisions owning land within a historic district be subject to the jurisdiction of the historic area commission." 271 Md. at 291 (Footnote omitted). That is not the case here. The zoning at issue is traditional zoning.

88-182 SP4

ELIZABETH W. GLASCOCK	*	IN THE
Plaintiff	*	CIRCUIT COURT
V.	*	FOR
BALTIMORE COUNTY	*	BALTIMORE COUNTY
Defendant	*	Case No. 88-CG-2712

* * * * *

Zoning Case No. 88-182-SPH

MEMORANDUM OPINION

This case comes before this Court on appeal from an Order of the County Board of Appeals of Baltimore County affirming the decision of the Deputy Zoning Commissioner. The Commissioner ruled that Baltimore County was exempt from complying with the special exception process with respect to the erection of a 600 foot wireless transmitting and receiving tower. The Appellant argues on appeal that the tower is subject to Section 1A01.2.C.23 of the Baltimore County Zoning Regulations, requiring that the special exception process be complied with for such use in an R.C.-2 Zone. The County maintains that a special exception is not required because the proposed tower is for a public use and, therefore, the County is exempt from local zoning regulations.

The basic facts in this case are not in dispute. The testimony before the Zoning Commissioner revealed that the County fire, police and emergency communication systems are in desperate need of modernization and the County cannot afford to wait for a satellite or fiber optics. In an effort to remedy this situation, the County has proposed to erect a technologically

advanced public safety radio system. The proposed tower, subject to this appeal, is an integral part of that system.

The proposed 600 foot wireless transmitting and receiving tower would be erected on 51.29 acres of land owned by the Arcadia Volunteer Fire Department, located on Trenton and Carnival Roads in the Upperco Section of Baltimore County. The proposed site adjoins the Appellant's property and is zoned R.C.-2. Relocation of the tower would detrimentally affect the system's efficiency and the vendor could not guarantee coverage of the system.

On appeal, the Appellant argues that there is no blanket exemption of governmental uses from the Baltimore County Zoning Regulations, and, that since the County has enacted specific regulations for Wireless Transmitting and Receiving Facilities, that the County is subject to the regulations. The County maintains its position that the proposed tower is exempt from local zoning regulations because it serves a public purpose.

In considering the scope of review on an appeal from an administrative agency, such as a county zoning board, the Court has held that the decision of the Board must be upheld on review if it is not premised upon an error of law and the agency's conclusions reasonably may be based upon the facts proven.

Ad + Soil, Inc. v. County Comm'rs., 307 Md. 307, 338 (1986).

The Court has reviewed the record presented, the arguments and memoranda submitted by counsel and has concluded that the County Board of Appeals' decision was not based on an error of law and is reasonably based on the facts.

The Board based its decision on the testimony of various witnesses that the proposed tower is for a public purpose and that it would carry out an important governmental function; i.e. further the health, safety and welfare of Baltimore County citizens as well as police and fire personnel. Based on the long standing rule that municipalities are not bound by their own ordinances and the reasoning of various appellate court opinions, City of Baltimore v. State Dept. of Health, 38 Md. App. 570 (1978), Youngstown Cartridge Co. v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975), Mayor, City of Annapolis v. Anne Arundel County, 271 Md. 265 (1974), the Board properly concluded that Baltimore county is exempt from the requirements of its zoning regulations. Even though an appellate court of this state has not decided that exact issue, such a conclusion by the Board is not an error of law in the opinion of this Court as to warrant reversal.

ACCORDINGLY, it is hereby ORDERED this 2nd day of February, 1989, that the decision of the Board of Appeals is affirmed.


JUDGE ALFRED L. BRENNAN, SR.

Copies to: John Murphy, Esquire
Nancy West, Esquire
Board of Appeals
Court File

LAW OFFICES
JOHN C. MURPHY
SUITE 206 - 516 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21204
(301) 625-4828

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Md. 21204

Re: Petition for Special
Hearing No. 128
Baltimore County--Glascok

Dear Mr. Haines:

I represent the Petitioner in the above matter. It involves the question of whether the County is subject to a Baltimore County Zoning Regulations in the construction of a communications tower in Baltimore County on land owned by private parties. Due to the importance of this question and great public interest in this matter, I respectfully request that no permits for construction be issued pending the results of the hearing and that the hearing be held at the earliest possible time.

Thank you for your consideration.
Sincerely,

JCM/vb
cc: Arnold E. Jablon, Esq.

John C. Murphy

RECEIVED
OCT 9 1987
ZONING OFFICE

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 5th
Routed for: Special Hearing
Petitioner: Mrs. Elizabeth W. Glascock
Location of property: NW 1/4 of Section 14, opposite Old Quaker Rd., also NE 1/4 of Section 14, North of Arcadia Ave.
Location of Sign: NW 1/4 of Section 14, opposite Old Quaker Rd., also NE 1/4 of Section 14, North of Arcadia Ave.
Remarks: L.J. Grata
Posted by: L.J. Grata
Number of Signs: 2
Date of Posting: October 31, 1987
Date of return: November 6, 1987

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
27th day of September, 1987.

Petitioner: Mrs. Elizabeth W. Glascock
Petitioner's Attorney: John C. Murphy, Esquire
Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353
J. ROBERT HAINES
ZONING COMMISSIONER

John C. Murphy
516 N. Charles St., Suite 206
Baltimore, MD 21201

Ret for JPH
NW 1/4 of Section 14 opposite Old Quaker Rd.
also NE 1/4 of Section 14, North of Arcadia Ave.
5th E.D. 3rd C.D.
88-182-SPH

This is to advise you that \$6.66 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

Please make the check payable to Baltimore County, Maryland, and remit to Zoning Office, Room 112, County Office Building, Towson, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 45921

DATE: 10/21/87 ACCOUNT: R-01-615-000

AMOUNT: \$ 96.66

RECEIVED FROM: John C. Murphy
FOR: Posting, Advertising

8 885*****9666 88-182 SPH

VALIDATION OR SIGNATURE OF CASHIER

LANDMARK COMMUNITY NEWSPAPERS OF

Westminster, Md., Oct.

THIS IS TO CERTIFY that the annexed... was published for one (1) day of October, 1987 to the 29th day of October, 1987

- ☐ Carroll County Times, a daily newspaper in Westminster, Carroll County, Maryland
- ☐ Randallstown News, a weekly newspaper in Randallstown, Baltimore County, Maryland
- ☒ Community Times, a weekly newspaper in Baltimore County, Maryland

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND

CERTIFICATE OF PUBLICATION

TOWSON, MD., Oct. 29, 1987

THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Oct. 29, 1987

THE JEFFERSONIAN,

Susan Sinden O'Brien

Publisher

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
No. 128, opposite Old Quaker Rd., also NE 1/4 of Section 14, North of Arcadia Ave.
5th E.D. District - 3rd Councilmanic District
Mrs. Elizabeth W. Glascock - Petitioner
Towson, Baltimore County
Case No. 88-182-SPH

TIME: 10:00 a.m.
DATE: Monday, November 16, 1987
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

John C. Murphy
J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 41670

DATE: 10/21/87 ACCOUNT: R-01-615-000

AMOUNT: \$ 100.00

RECEIVED FROM: John C. Murphy
FOR: Sub # 128

8 885*****1000 88-182 SPH

VALIDATION OR SIGNATURE OF CASHIER

2/02/89 - Board AFFIRMED. (J. Brennan, Sr.)

ELIZABETH W. GLASCOCK
Plaintiff
V.
BALTIMORE COUNTY
Defendant
Case No. 88-CG-2712

MEMORANDUM OPINION

This case comes before this Court on appeal from an Order of the County Board of Appeals of Baltimore County affirming the decision of the Deputy Zoning Commissioner. The Commissioner ruled that Baltimore County was exempt from complying with the special exception process with respect to the erection of a 600 foot wireless transmitting and receiving tower. The Appellant argues on appeal that the tower is subject to Section 1A01.2.C.23 of the Baltimore County Zoning Regulations, requiring that the special exception process be complied with for such use in an R.C.-2 Zone. The County maintains that a special exception is not required because the proposed tower is for a public use and, therefore, the County is exempt from local zoning regulations.

The basic facts in this case are not in dispute. The testimony before the Zoning Commissioner revealed that the County fire, police and emergency communication systems are in desperate need of modernization and the County cannot afford to wait for a satellite or fiber optics. In an effort to remedy this situation, the County has proposed to erect a technologically

advanced public safety radio system. The proposed tower, subject to this appeal, is an integral part of that system.

The proposed 600 foot wireless transmitting and receiving tower would be erected on 51.29 acres of land owned by the Arcadia Volunteer Fire Department, located on Trenton and Carnival Roads in the Upperco Section of Baltimore County. The proposed site adjoins the Appellant's property and is zoned R.C.-2. Relocation of the tower would detrimentally affect the system's efficiency and the vendor could not guarantee coverage of the system.

On appeal, the Appellant argues that there is no blanket exemption of governmental uses from the Baltimore County Zoning Regulations, and, that since the County has enacted specific regulations for Wireless Transmitting and Receiving Facilities, that the County is subject to the regulations. The County maintains its position that the proposed tower is exempt from local zoning regulations because it serves a public purpose.

In considering the scope of review on an appeal from an administrative agency, such as a county zoning board, the Court has held that the decision of the Board must be upheld on review if it is not premised upon an error of law and the agency's conclusions reasonably may be based upon the facts proven. Ad + Soil, Inc. v. County Comm'rs., 307 Md. 307, 338 (1986). The Court has reviewed the record presented, the arguments and memoranda submitted by counsel and has concluded that the County Board of Appeals' decision was not based on an error of law and is reasonably based on the facts.

The Board based its decision on the testimony of various witnesses that the proposed tower is for a public purpose and that it would carry out an important governmental function; i.e. further the health, safety and welfare of Baltimore County citizens as well as police and fire personnel. Based on the long standing rule that municipalities are not bound by their own ordinances and the reasoning of various appellate court opinions, City of Baltimore v. State Dept. of Health, 35 Md. App. 570 (1978), Youngtown Cartridge Co. v. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975), Mayor, City of Annapolis v. Anne Arundel County, 271 Md. 265 (1977), the Board properly concluded that Baltimore County is exempt from the requirements of its zoning regulations. Even though an appellate court of this state has not decided that exact issue, such a conclusion by the Board is not an error of law in the opinion of this Court as to warrant reversal. ACCORDINGLY, it is hereby ORDERED this 2nd day of February, 1989, that the decision of the Board of Appeals is affirmed.

ALFRED L. BRENNAN, SR.

Copies to: John Murphy, Esquire
Nancy West, Esquire
Board of Appeals
Court File

Elizabeth W. Glascock
Case No. 88-182-SPH

November 4, 1987 Comments of Baltimore County Zoning Plans Advisory Committee filed

November 16 At 9:00 a.m. hearing held on petition by Deputy Zoning Commissioner

January 21, 1988 Order of the Deputy Zoning Commissioner that the erection of a 600 ft. wireless transmitting and receiving structure by Balto. County on leased land, as more particularly described in Petitioner's Exhibit 1, be exempt from the requirements of the BCZR and Balto. County is not required to file a Petition for Special Exception prior to construction of the tower.

February 17 Order for Appeal to the C.B. of A. from John C. Murphy, Esq., on behalf of the Petitioner.

April 27 Hearing on appeal before County Board of Appeals

May 20 Order of County Board of Appeals that the erection of a 600 ft. wireless transmitting and receiving structure by Baltimore County on leased land, shall be exempt from the requirements of the Baltimore County Zoning Regulations.

June 20 Order for Appeal filed in the Circuit Ct. for Baltimore County by John C. Murphy, Esq. on behalf of Petitioner.

June 20 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.

June 21 Certificate of Notice sent to interested parties

August 18, 1988 Transcript of testimony filed

August 18, 1988 Balto. County Exhibit No. 1 - Amendment to Agreement of Lease, dated March 21, 1988.

August 18, 1988 Record of proceedings filed in the Circuit Ct. 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.

cc: John C. Murphy, Esq.
Arnold Jablon, Esq.

Respectfully submitted,

John C. Murphy
John C. Murphy, Esq.
Attorney for Petitioner

Elizabeth W. Glascock
16154 Trenton Road
Upperco, Md. 21155
Plaintiff
v.
Baltimore County
Courthouse
Towson, Md. 21204
Defendant

* In the Circuit Court
* For
* Baltimore County
* Docket 57
* Folio 312
* Case No. 88-CG-2712

MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT

Elizabeth W. Glascock, Petitioner, by John C. Murphy, her attorney, moves for the passage of an order extending the time to file the transcript in the above case to August 19, 1988 and for cause says:

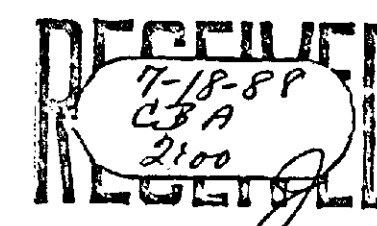
1. This case is an administrative appeal from the Board of Appeals and the appeal was filed on June 19, 1988;
 2. Pursuant to Maryland Rule B7a, the transcript is required to be filed on July 20, 1988;
 3. The court reporter, Carolyn Peatt, has advised counsel for Petitioner that she will be out of town for several days and unable to prepare the transcript.
- WHEREFORE, Petitioner moves for an extension of 30 days to file the transcript, or until August 19, 1988.

John C. Murphy
John C. Murphy
516 N. Charles St.
Baltimore, Md. 21201
625-4828
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 14 day of July, 1988, I mailed a copy of the foregoing Motion for Extension of Time to Arnold E. Jablon, Esquire, County Attorney, and to the Board of Appeals, Courthouse, Towson, Md. 21204.

John C. Murphy
John C. Murphy



Elizabeth W. Glascock
16154 Trenton Road
Upperco, Md. 21155
Plaintiff
v.
Baltimore County
Courthouse
Towson, Md. 21204
Defendant

* In the Circuit Court
* For
* Baltimore County
* Docket 57
* Folio 312
* Case No. 88-CG-2712

ORDER

Upon the foregoing Motion for extension of time to file transcript, it is this day of July, 1988, by the Circuit Court of Baltimore County,

ORDERED, that the time to file the transcript in the above

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines, Zoning Commissioner
FROM: Mr. Norman E. Gerber, AICP, Director
SUBJECT: Zoning Petition No. 88-182-SPH

Date: October 22, 1987

In view of the subject of this petition, this office offers no comment.

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

NEG/JHW/jat
cc: Ms. Shirley M. Hers, Legal Assistant, People's Counsel
File

Baltimore County
Fire Department
Towson, Maryland 21204
444-4444
John H. Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: Arcadia Volunteer Fire Dept., Inc.
Petitioner: Elizabeth W. Glascock
Location: 16154 Trenton Road (off. Old Quarter Road, NE end of Carnival Road), N of Arcadia Road
Item No.: 128
Zoning Appeal: Meeting of 10/13/87

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

() 1. Fire hydrants for the referenced property are required and shall be located at intervals of 100 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 _____
- () 4. The maximum allowed by the Fire Department.

- () 5. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 6. 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.

- () 7. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments at this time.

Noted and Approved: *John F. O'Neill*
John F. O'Neill
Planning Group
Special Inspection Division

ELIZABETH W. GLASCOCK
Plaintiff
v.
BALTIMORE COUNTY
Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 88-CG-2712

Zoning Case No. 88-182-SPH

MEMORANDUM OPINION

This case comes before this Court on appeal from an Order of the County Board of Appeals of Baltimore County affirming the decision of the Deputy Zoning Commissioner. The Commissioner ruled that Baltimore County was exempt from complying with the special exception process with respect to the erection of a 600 foot wireless transmitting and receiving tower. The Appellant argues on appeal that the tower is subject to Section 1A01.2.C.23 of the Baltimore County Zoning Regulations, requiring that the special exception process be complied with for such use in an R.C.-2 Zone. The County maintains that a special exception is not required because the proposed tower is for a public use and, therefore, the County is exempt from local zoning regulations.

The basic facts in this case are not in dispute. The testimony before the Zoning Commissioner revealed that the County fire, police and emergency communication systems are in desperate need of modernization and the County cannot afford to wait for a satellite or fiber optics. In an effort to remedy this situation, the County has proposed to erect a technologically

advanced public safety radio system. The proposed tower, subject to this appeal, is an integral part of that system.

The proposed 600 foot wireless transmitting and receiving tower would be erected on 51.29 acres of land owned by the Arcadia Volunteer Fire Department, located on Trenton and Carnival Roads in the Upperco Section of Baltimore County. The proposed site adjoins the Appellant's property and is zoned R.C.-2. Relocation of the tower would detrimentally affect the system's efficiency and the vendor could not guarantee coverage of the system.

On appeal, the Appellant argues that there is no blanket exemption of governmental uses from the Baltimore County Zoning Regulations, and, that since the County has enacted specific regulations for Wireless Transmitting and Receiving Facilities, that the County is subject to the regulations. The County maintains its position that the proposed tower is exempt from local zoning regulations because it serves a public purpose.

In considering the scope of review on an appeal from an administrative agency, such as a county zoning board, the Court has held that the decision of the Board must be upheld on review if it is not premised upon an error of law and the agency's conclusions reasonably may be based upon the facts proven. *Ad + Soil, Inc. v. County Comm'rs.*, 307 Md. 307, 338 (1986). The Court has reviewed the record presented, the arguments and memoranda submitted by counsel and has concluded that the County Board of Appeals' decision was not based on an error of law and is reasonably based on the facts.

The Board based its decision on the testimony of various witnesses that the proposed tower is for a public purpose and that it would carry out an important governmental function; i.e. further the health, safety and welfare of Baltimore County citizens as well as police and fire personnel. Based on the long standing rule that municipalities are not bound by their own ordinances and the reasoning of various appellate court opinions, *City of Baltimore v. State Dept. of Health*, 38 Md. App. 570 (1978), *Youngstown Cartridge Co. v. North Point Peninsula Community Coordinating Council*, 24 Md. App. 624 (1975), *Mayor, City of Annapolis v. Anne Arundel County*, 271 Md. 265 (1974), the Board properly concluded that Baltimore County is exempt from the requirements of its zoning regulations. Even though an appellate court of this state has not decided that exact issue, such a conclusion by the Board is not an error of law in the opinion of this Court as to warrant reversal.

ACCORDINGLY, it is hereby ORDERED this 2nd day of February, 1989, that the decision of the Board of Appeals is affirmed.

Alfred L. Brennan, Sr.
JUDGE ALFRED L. BRENNAN, SR.

Copies to: John Murphy, Esquire
Nancy West, Esquire
Board of Appeals
Court File

IN THE MATTER OF
THE APPLICATION OF
ELIZABETH W. GLASCOCK
FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NORTHWEST SIDE TRENTON RD.,
OPPOSITE OLD QUAKER RD., ALSO
NORTHWEST END OF CARVAL RD.,
NORTH OF ARCADIA AVE.,
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
Case No. 88-182-SPH

ORDER

This case comes before the Board on an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County, ordering that the erection of a 600 ft. wireless transmitting and receiving structure by Baltimore County shall be exempt from the requirements of the Baltimore County Zoning Regulations (BCZR).

Counsel for the Protestants and the County Attorney stipulated that the operation of the proposed structure is a governmental function. Several witnesses testified for the protestants. Elizabeth Glascock testified that she owns the property adjacent to the proposed structure and that the value of her property will be decreased and she objects because environmentally the structure will disturb wildlife and the migrating geese. Miss Jensen testified that she reviewed the site of the proposed structure and it could possibly but is not currently in the historic district. Mrs. Mary A. Brown testified that the proposed structure is in the migratory route for songbirds. Mr. Wayne Fasley testified as well as Mr. Redmond Finney that they are opposed to the structure.

The County utilized two witnesses; James Dyer, an expert in zoning, and Colonel Philip G. Huber of the Baltimore County Police Department, as well as one exhibit.

Elizabeth W. Glascock
Case No. 88-182-SPH

This testimony and exhibit revealed that the land which is the subject of the petition, is owned by Arcadia Volunteer Fire Department. The property consists of approximately 51.29 acres and is located on the north side of Trenton Road. The property is zoned RC-2. Baltimore County entered into a 25 year lease agreement commencing August 1, 1987, with the Arcadia Volunteer Fire Company. The property has been leased by Baltimore County for the purpose of constructing, installing, operating and maintaining an antenna tower communication system which is necessary to protect the life, health and welfare of its citizens and the communication needs and the lives of its police and fire fighters. The new tower is required to replace an antiquated system, to shorten the response time of police, fire and other emergency vehicles and to cut down on interference in communications, which is presently a very serious problem.

The Board finds as a fact that the operation of the proposed tower is a governmental function and is in dire need by Baltimore County to protect the lives of its citizens, police and fire fighters. The potential saving of the life of just one police officer or fire fighter is not worth all the migratory birds or historic landmarks in the whole County. The Board finds as a fact that the development regulations exempt public buildings and structures for public purpose and that Baltimore County may choose when it wishes to be exempt from its own regulations.

The general rule is municipalities are not bound by their own ordinances. It may be exempt from the operation of its own zoning laws. The general trend is that the municipality has immunity from the zoning laws where the use is important in carrying out a governmental function. Based on the testimony at this hearing, the Board finds that nothing could be more important than the potential savings of a life of a police officer or a fire fighter.

Elizabeth W. Glascock
Case No. 88-182-SPH

The law in Maryland is clear that Maryland follows the general rule that where the use is governmental, it becomes sovereign use of the State and thus is exempt from local regulations. See The City of Baltimore vs. State Department of Health, 38 Md. App. 570 (1978); Youngstown Cartridge Co. vs. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975); Mayor, City of Annapolis vs. Anne Arundel County, 316 A2d, 807, (1974).

ORDER

For the reasons set forth in the foregoing Opinion, it is this 20th day of May, 1988, by the County Board of Appeals, ORDERED that the erection of a 600 foot wireless transmitting and receiving structure by Baltimore County on leased land, shall be exempt from the requirements of the Baltimore County Zoning Regulations.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Thomas J. Bollinger
Thomas J. Bollinger
Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN RE: PETITION FOR SPECIAL HEARING
NWS Trenton Road, opposite
Old Quaker Road; also, NW end
Carnival Road, N of Arcadia
Avenue
5th Election District
3rd Councilmanic District

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 88-182-SPH

Elizabeth Glascock
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner herein requests a special hearing to determine if the erection of a 600-foot wireless transmitting and receiving structure by Baltimore County on leased land, as more particularly described on Petitioner's Exhibit 1, is exempt from the Special Exception (public hearing) process.

Petitioner appeared and was represented by John C. Murphy, Esquire. Col. Phillip G. Huber appeared on behalf of the Baltimore County Police Department, the Lessee. Baltimore County was represented by Arnold Jablon, Esquire, County Attorney. It should be noted that Petitioner is protesting the proposed use of the subject property by Baltimore County, as set forth in Petitioner's Exhibit 1. The Petitioner argued that Baltimore County is required to file a Petition for Special Exception prior to the installation of the tower. The County contends that it is exempt from the Baltimore County Zoning Regulations (B.C.Z.R.) and as such, is not required to file said Petition. Petitioner properly filed the instant Petition for Special Hearing pursuant to Section 507 of the B.C.Z.R. Numerous residents of the community appeared to show their support of Petitioner's position. (See Petitioner's Sign-In Sheet).

By agreement of the parties, testimony was presented by proffer of Counsel. The following is a brief synopsis of the facts: The land, which is the subject of this Petition, is owned by Arcadia Volunteer Fire Department. The subject property consists of approximately 51.29 acres and is located on the north side of Trenton Road opposite Old Quaker Road and also the NE end of Car-

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Date 5/19/88
By [Signature]

total East North of Arcadia Avenue. The property is zoned B.C. 2 and abuts Petitioner's property. Baltimore County entered into a twenty-five year lease agreement commencing August 1, 1987 with the Arcadia Volunteer Fire Company. The property has been leased by Baltimore County for the purpose of "constructing, installing, operating and maintaining an antenna tower communication system." The County's intent is to use the property for a public use and does not intend to file a petition for Special Exception as it contends it is exempt from the B.C.Z.R. Petitioner argued that the County is subject to the B.C.Z.R.

The County stated that it is not subject to the B.C.Z.R., pursuant to Section 103.2, as its proposed use of the property is a public use which will benefit the public. The County stated the construction of the tower is necessary to protect the life, health and welfare of its citizens. The tower will serve the communications needs of the Baltimore County Police and Fire Departments and other County agencies. The County contends the new tower is required for the following reasons: to replace an antiquated system to shorten the response time of police, fire, and other emergency vehicles; and to cut down on interference in communications, which is presently a problem.

Following the hearing, Petitioner filed "Petitioner's Local Memorandum." Petitioner presented therein, as are set at the time of the hearing, five reasons for requesting the Deputy Zoning Commissioner to find the County is required under the law to apply for a Special Exception in order to be able to utilize the subject property in the manner it intends. The reasons presented shall be discussed in the order presented in the Memorandum.

1 Section 103.2 of the B.C.Z.R. is no longer in effect
Section 103.2 reads as follows:

When any public use ceases or when title of unowned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these Regulations.

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Petitioner grounds this claim on her reading of that portion of the language which states, "until (public land or buildings) shall have been zoned in conformance with these Regulations." According to Petitioner, this language, coupled with the date of passage of Section 103.2 in 1955, and the fact that all land has been zoned since 1976, should be interpreted to mean Section 103.2 has been superseded (rendered superfluous) by the passage of Baltimore County Code provisions zoning all land.

It is accepted for the purpose of this case that all land was zoned as of 1976. It is not accepted that all Baltimore County public uses were constructed on unzoned land prior to the date. A review of the zoning maps and public uses established by the County Government indicate that all such uses were not located on unzoned land. For example, the County highway/utility maintenance yards and fire and police stations, which in the past were not held by the Office of Zoning to be subject to the B.C.Z.R., were located on zoned land. However, this is not to say that the zoning classification was compatible with the use and area regulations of the zone in question.

The Deputy Zoning Commissioner has been unable to discern that Section 103.2 applied, prior to 1976, only to public uses on unzoned land. Therefore, it is determined that Section 103.2 applied to public uses on both zoned and unzoned land. Petitioner seeks to have the Deputy Zoning Commissioner conclude that Section 103.2 is no longer in effect based on the following assertions: 1) since Section 103.2 contained the above quoted language; 2) since Section 103.2 was passed in 1955; 3) since all land in Baltimore County was zoned as of 1976; and 4) since there is no unzoned land in Baltimore County presently. What Petitioner is seeking is for the Zoning Commissioner to usurp the power of the legislative body of Baltimore County -- the Baltimore County Council -- by repealing a Section of the B.C.Z.R. To do so is not only beyond the scope of the authority of the Deputy Zoning Commissioner but also unconstitutional. It is

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noted that the B.C.Z.R. reflects numerous additions and modifications and repeals since 1955 and since 1976. Had the Baltimore County Council desired to repeal Section 103.2 it has had ample opportunity to do so.

Further examining the argument of Petitioner, it should be seen the language of Section 103.2 is disjunctive, not conjunctive. Therefore, it is felt the Section addresses two different situations. One situation is the passage of title of public, unzoned land into private ownership; the other situation is the cessation of public use in either zoned or unzoned land. It was in 1955 and still is possible for public use to cease on zoned land. Once that occurred then, or occurs now, the use of the land must be zoned in conformance with the B.C.Z.R. before it is utilized in a fashion other than public use. Zoning is more than a classification of land. Zoning normally focuses on the use of the land. See Rohan Zoning and Land Use Controls, Matthew Bender, Section 40.03 (1).

II The B.C.Z.R. regulates public uses

Petitioner's thesis is not disputed. Petitioner appropriately sets forth the question on Page 9 of her Memorandum, "has the County [regulated County facilities or public uses?]" Petitioner alleges the County has regulated the public use of land as it pertains to schools, civic buildings, volunteer fire companies, and sanitary landfills, among other uses. Assuming for the purpose of this opinion her assertions are correct, Petitioner then attempts to extrapolate that argument to contend that since the County has regulated some public uses of land it follows all public use of land is regulated so that the County must obtain a Special Exception to utilize the subject property in the way it intends.

One need look no further than Petitioner's own Memorandum to respond to her argument. Therein, Petitioner cites 2. R. Anderson, American Law of Zoning in which it is stated a municipality may totally exempt itself, partially exempt

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By [Signature]

itself, or not exempt itself from its zoning regulations. (See 2. R. Anderson, American Law of Zoning, 3d ed. 1986, p. 695). It is undisputed that the B.C.Z.R. do not regulate many County public uses such as police and fire stations. It is found for the reasons set forth herein that Baltimore County has not subjected itself to the B.C.Z.R. in this instance. However, it has chosen to subject itself in those instances where specific provisions are made for public uses.

The County argued that it is exempt from the B.C.Z.R. In support of its position, the County cites the following two Baltimore County Zoning decisions: In re: Petition for Special Hearing, the City of Baltimore, Case No. 88-8-SPH and, In re: Petition for Special Hearing, Hubert H. Barker, Jr., Case No. 87-323-SPH. The issue in the first case was whether an existing golf course, known as Pine Ridge and situated on City-owned property in Baltimore County, could be expanded without complying with the B.C.Z.R. The golf course, though privately managed, was found to be "open for the public and operated for the public benefit" and not subject to the B.C.Z.R. In the second case, the Board of Child Care purchased 17 acres zoned B.C.2 and B.C.5 to construct a residential emergency care shelter facility consisting of 5 cottages, each housing up to 12 Baltimore County children who would be placed through Baltimore County's Department of Social Services. The adjoining property owners contended the Board was required to comply with the B.C.Z.R. and requested the Zoning Commissioner disapprove the use of the property in the manner proposed by the Board. The Zoning Commissioner held that the Board's proposed use of the property was permitted as a matter of right as the use was one which was a public use or conferred public benefit and local zoning regulations were inapplicable. While the cases are relevant, neither are dispositive as neither dealt with a Baltimore County government use of the property in question. Thus we need to look further.

The general, though not universal, rule is that municipalities are not bound by their own ordinances. A municipality or other local governmental unit

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Date 5/19/88
By [Signature]

John C. Murphy
510 N. Charles Street
Baltimore, Maryland
Petitioner for Special
Hearing on Trenton Road
NW End of Carnival Road
5th Election District
3rd Councilmanic District
Case No. 88-182-SPH
Dear Mr. Murphy
Enclosed please
find the petition
for a Special
Exception to the
B.C.Z.R. for the
errection of a
600 foot wireless
transmitting and
receiving structure
on leased land.

may be exempt from the operation of its own zoning laws in carrying out activities that are otherwise immune. Zoning normally focuses on use not ownership. The general trend is to grant immunity where the use is important in carrying out a governmental or public function. The form of ownership in which the government occupies property is not relevant to either standard zoning considerations or questions of immunity. See Rohan, Zoning and Land Use Controls 40.03 (1).

The case law in Maryland is clear that it follows the general rule. The test is whether the use of the property is for a governmental use or a proprietary use, unless the local jurisdiction subjects itself to their ordinances. If the use is determined to be governmental, a use of the property as a public use or a use that confers public benefit, the State use is exempt from local regulations. See The City of Baltimore vs. State Department of Health, 38 Md. Ad2 570 (1978). The property need not be publicly owned, provided the use is public. However, publicly owned property leased to private individuals for private use is subject to local regulations. See Youngstown Cartridge Co. vs. North Point Peninsula Community Coordinating Council, 24 Md. App. 624 (1975).

The case law in Maryland is clear that a local jurisdiction can voluntarily subject itself to its regulations, but need not. See Mayor, City of Annapolis vs. Anne Arundel County, 316 Ad2, 807 (1974). In that case, the Court stated:

"We observe that the City of Annapolis has subjected itself to the provisions of its own zoning laws (See Code of the City of Annapolis, Section 27-5) and that the County has also subjected itself to its zoning laws (See Anne Arundel County Code, Section 13-33A). City of Annapolis vs. Id. 316 Ad2, 807 (1974). The fact that the City

of Annapolis. Anne Arundel County has subjected themselves to their local zoning regulations does not mean that Baltimore County must do so or has done so.

In the opinion of the Deputy Zoning Commissioner for the reasons disclosed earlier, Section 103.2 as drafted does not subject Baltimore County to the local zoning regulations.

III Baltimore County uses are not exempt from Environmental and Historical Regulations

Petitioner contends that there is specific legislation that regulates the use which is the subject of this particular case, to wit, Section 502.7 (D)(2). However, this Section deals with public utilities at existing locations and defines the pertinent public utilities as "gas and electric or land-based and local telephone public utility communication needs at existing facilities." In the opinion of the Deputy Zoning Commissioner, the communication needs of Baltimore County, are not included. The services provided by the local telephone public utility, C & P, or gas and electric, BG & E, would fall within the definitional test criteria of a proprietary function and not a governmental function.

The County attorney did not dispute Petitioner's argument that the County may be subject to various other County and State environmental regulations concerning the construction of the tower; however, he argued those regulations are not within the jurisdiction of the Zoning Commissioner or Deputy Zoning Commissioner. The Deputy Zoning Commissioner also questions the relevance of this argument. It may be a proper argument but the Deputy Zoning Commissioner does not see it as being made in the proper forum.

IV There can be no guarantee of exclusive County use

This issue raised by Petitioner is conceded as correct. However, there is no justiciable issue before the Deputy Zoning Commissioner as to a non-County

use at this time. The Deputy Zoning Commissioner is unable to rule in a vacuum or on issues not presented before her.

V The County has waived its immunity

Petitioner argued that in the event the County is immune from the B.C.Z.R., the County waived its immunity. In support of this argument the Petitioner cites Paragraph 6 of the Lease between the County and the Arcadia Volunteer Fire Company wherein the County agreed to "promptly comply with all laws, ordinances, notices, orders, rules, regulations, and requirements of or made by any and all federal, state, or municipal governments of the appropriate departments..." Section 4 of the lease, which deals with the use of the property, states the Lessee agreed to "comply with all applicable zoning and other laws and regulations..."

Petitioner has raised a contractual matter and not a zoning issue. Thus, the general principals of contract law must be met. Generally, a contract cannot be enforced by one not a party to it unless the contract was made for his benefit. Maryland has adopted the doctrine of third party beneficiary contracts. A third party beneficiary may avail himself of the benefits intended for him by a contract to which he is not a party, however, before a third party may maintain an action on a contract, it must be shown the contract was intended for his benefit. It is not enough that the contract may operate to his benefit. It must be clearly proven that the parties intended to recognize him as a primary party in interest and as primary to the promise. See Hamilton Speigel, Inc. vs. Board of Education of Montgomery, 233, Md. 196, 195 Ad2 710 (1963). There has been no evidence introduced by the Petitioner indicating that the Petitioner or the adjoining community was an intended beneficiary of the terms of the contract. The Deputy Zoning Commissioner cannot find standing on the part of Petitioner to raise this issue for the reasons given.

In conclusion, it is the opinion of the Deputy Zoning Commissioner that in this particular factual instance, Baltimore County has not subjected itself to its zoning regulations by enactment of Section 103.2 of the B.C.Z.R. as contended by Petitioner. The determinative factor as to whether a use is subject to the regulations is whether the use is important in carrying out a governmental or public function. If governmental, local zoning regulations are inapplicable unless the local jurisdictions choose to subject themselves to the legislation.

In review of the instant factual case, The Deputy Zoning Commissioner finds that the construction of the tower on the subject property by Baltimore County for use by the Baltimore County Police Department and other County agencies is the carrying out of a governmental function and/or a public use which will confer a public benefit in its efforts to improve the health, safety and welfare of the general public. Further, in the opinion of the Deputy Zoning Commissioner, Baltimore County has chosen to exempt itself from the B.C.Z.R. when the use of the property is a public use by enactment of Section 103.2 of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, in the opinion of the Deputy Zoning Commissioner, the relief requested in the Petition for Special Hearing should be granted and the Deputy Zoning Commissioner finds that Baltimore County is exempt from complying with the Special Exception process set forth in the B.C.Z.R., as the proposed use is a public use.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 21st day of January, 1988, that the erection of a 600-foot wireless transmitting and receiving structure by Baltimore County on leased land, as more particularly described in Petitioner's Exhibit 1, be exempt from the re-

requirements of the B.C.Z.R. and Baltimore County is not required to file a petition for a special exception with the Zoning Commission.

January 21, 1988

John C. Murphy, Esquire
516 N. Charles Street
Baltimore, Maryland 21201

RE: Petition for Special Hearing
#4/3 Trenton Road, opposite Old Quaker Road and also,
#2/2nd of Carnival Road, N of Arcadia Avenue
5th Election District 3rd Councilmanic District
Elizabeth Glascock - Petitioner
Case No. 88-182-SPH

Dear Mr. Murphy:

Enclosed please find the decision rendered in the above-referenced case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN H. HASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AMH:bjs

Enclosures

cc: Arcadia Volunteer Fire Department, Inc., Owner
5415 Arcadia Avenue, Upperco, Maryland 21215

Arnold Jablon, Esquire
Baltimore County Attorney
Old Courthouse, Towson, Maryland 21204

People's Counsel

File

PETITION FOR SPECIAL HEARING
TO THE ZONING COMMISSIONER 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 for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should ~~approve~~ determine if the erection of a 600 ft. wireless transmitting and receiving structure by Baltimore County on leased land is exempt from the special exception (public hearing) process.

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

I, or we, agree to pay expenses of the above Special Hearing advertising, 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.

OWNER: ARCADIA VOL. FIRE DEPT. INC.
5415 Arcadia Ave.
Upperco, Md. 21215 Phone- 374-4111

Lessee

Contract # 01/55

Signature

County Office Building

Address Col. Huber, BACOPD X 2252

TOWSON, Md. 21204 ms# 11025

City and State

Attorney for Petitioner:

John C. Murphy

(Type or Print Name)

Signature

516 N. Charles St., Suite 206

Baltimore, Md. 21201

City and State

Owner's Telephone No.: 625-4828

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

Petitioner

(Mrs.) Elizabeth W. Glascock

(Type or Print Name)

Signature

(Type or Print Name)

Signature

16154 Trenton Road, 239-7881

Address

Upperco, Md. 21155

City and State

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

Name

Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of January, 1988, that the subject matter of this petition be advertised, as provided by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 16th day of January, 1988, at 9:00 o'clock.

J. Robert Haines
Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING 2 Full (over)
AVAILABLE FOR HEARING 10/2/87
NOT FORWARDED - SENT TWO MONTHS
ALL
FORWARDED BY: LCR DATE 10/2/87

PETITION FOR SPECIAL HEARING
5th Election District - 3rd Councilmanic District
Case No. 88-182-SPH

LOCATION: Northwest Side of Trenton Road, opposite Old Quaker Road, also Northeast End of Carnival Road North of Arcadia Avenue

DATE AND TIME: Monday, November 15, 1987, at 9:00 a.m.

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

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to determine if the erection of a 600 foot wireless transmitting and receiving structure by Baltimore County on leased land is exempt from the special exception (public hearing) process

Being the property of Mrs. Elizabeth W. Glascock, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

J. ROBERT HAINES
ZONING COMMISSIONER
OF BALTIMORE COUNTY

ELIZABETH GLASCOCK #88-182-SPH
NW/4 Trenton Road, opposite Old Quaker
Road, also NE/end of Carnival Road,
N of Arcadia Avenue
5th Election District
3rd Councilmanic District

SPH - Erection of 600' wireless transmitting and
receiving structure by BCO on leased land is
exempt from public hearing process

October 2, 1987 Petition for Special Hearing by Elizabeth Glascock
to determine if erection of wireless transmitting
and receiving tower by BCO on leased land is exempt
from special exception process (public hearing).

November 16 Hearing held on petition by Deputy Zoning
Commissioner

January 21, 1988 Order of the D.Z.C.: that erection of 600' wireless
transmitting and receiving structure as described
in Petitioner's Exhibit No. 1 is exempt from
B.C.Z.R. and BCO is not required to file a
Petition for Special Exception prior to construction
of tower.

February 17 Order of Appeal to C.B. of A. from John C. Murphy,
Esq., on behalf of Petitioner/protestant

April 27 Hearing before the C.B. of A.

May 20 Order of C.B. of A. that: erection of said tower
is exempt from B.C.Z.R.

June 20 Order for Appeal filed in COT, BCO by John C.
Murphy, Esq., on behalf of Elizabeth Glascock.

June 21 Certificate of Notice sent to interested parties

August 15 Transcript of testimony filed; record of
proceedings filed in COT, BCO.

February 2, 1988 Order of the Circuit Court that the decision
of the C.B. of A. is AFFIRMED. (Judge Alfred L.
Brennan, Jr.)

March 2 Order of Appeal to the Court of Special Appeals
filed by John C. Murphy on behalf of Elizabeth Glascock.

March 10 Order of the Court of Special Appeals AFFIRMING COT.

November 2, 1988 Order of the Court of Appeals AFFIRMING Court of Special
Appeals.



County Board of Appeals of Baltimore County

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

HEARING ROOM #218

March 1, 1988

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). NO POSTPONEMENTS
WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING
DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL
BILL NO. 59-79.

CASE NO. 88-182-SPH ELIZABETH GLASCOCK
NW/4 Trenton Road, opposite Old Quaker Road,
also, NE/end of Carnival Road, North of
Arcadia Avenue (Baltimore County transmitting
structure)
5th Election District
3rd Councilmanic District
SPH - to determine if erection of Baltimore County
transmitting/receiving structure on leased
land is exempt from Special Exception process
1/21/88 - D.Z.C.'s Order - the erection of said
structure is exempt from B.C.Z.R.

ASSIGNED FOR: WEDNESDAY, APRIL 27, 1988 at 10:00 a.m.

cc: John C. Murphy, Esq. Counsel for Petitioner/Appellant
Elizabeth W. Glascock Petitioner/Appellant
Arcadia Volunteer Fire Co. Property Owner
Arnold Jablon, County Attorney For Baltimore County Lessee of Property
Phyllis Cole Friedman, Esq.
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robyn Clark

Kathleen C. Weidenhammer
Administrative Secretary

3/01/88 - Notice sent to following advising of hearing set for Wednesday,
April 27, 1988 at 10:00 a.m.:

John C. Murphy, Esq.
Elizabeth W. Glascock
Arcadia Volunteer Fire Dept.
Arnold Jablon
Phyllis C. Friedman
David Fields
Jim Hoswell
Robert Haines
Ann Nastarowicz
Jim Dyer
Robyn Clark

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

February 23, 1988

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Special Hearing
NW/4 Trenton Road, opposite Old Quaker Road;
also, NE/end of Carnival Road, N of Arcadia Avenue
5th Election District; 3rd Councilmanic District
Elizabeth Glascock - Petitioner
Case No. 88-182-SPH

Dear Board:

Please be advised that an appeal of the decision rendered in the above-
referenced matter was filed on February 17, 1988 by John C. Murphy, Esquire,
attorney for the Petitioner. All materials relative to the case are being for-
warded to your office herewith.

Please notify all parties of the date and time of the appeal hearing
when it has been scheduled. If you have any questions on the subject, please do
not hesitate to call this office.

Very truly yours,

J. Robert Haines
Zoning Commissioner

JRH:bjs

cc: John C. Murphy, Esquire, Attorney for Petitioner
516 N. Charles Street, Baltimore, Md. 21201

Arcadia Volunteer Fire Department, Inc., Property Owner
5415 Arcadia Avenue, Upperco, Md. 21155

Arnold Jablon
County Solicitor for Baltimore County, Lessee of Property

Phyllis Friedman, Esquire
People's Counsel of Baltimore County
Rm. 223, Old Courthouse
Towson, Maryland 21204

File

Elizabeth W. Glascock
16154 Trenton Road
Upperco, Md. 21155
Plaintiff
v.
Baltimore County
Court House
Towson, Md. 21204
Defendant

• In the Circuit Court
• For
• Baltimore County
• Docket 57
• Folio 312
• Case No. 88-CG-2712

ORDER OF APPEAL

Mr. Clerk:

Please enter an appeal to the Court of Special Appeals on
behalf of Elizabeth W. Glascock from the Opinion and Order of
the Circuit Court for Baltimore County dated February 2, 1988,
a copy of which is attached hereto.

John C. Murphy

John C. Murphy
516 N. Charles St.
Baltimore, Md. 21201
301-625-4828

IN THE MATTER OF
THE APPLICATION OF
ELIZABETH W. GLASCOCK
FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NORTHWEST SIDE TRENTON RD.,
OPPOSITE OLD QUAKER RD., ALSO
NORTHEAST END OF CARNIVAL RD.,
NORTH OF ARCADIA AVE.
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
ELIZABETH W. GLASCOCK,
PETITIONER-PLAINTIFF
ZONING FILE NO. 88-182-SPH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 57
Folio No. 312
File No. 88-CG-2712

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d), of the Maryland Rules
of Procedure, William T. Hackett, Thomas J. Bollinger and Harry E. Buchheister,
Jr., 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, Mrs. Elizabeth W. Glascock, 16154 Trenton
Rd., Upperco, MD. 21155, Petitioner-Plaintiff; John C. Murphy, Esq., 516 N.
Charles St., Balto., MD. 21201, Counsel for Petitioner-Plaintiff; Arcadia
Volunteer Fire Dept., Inc., 5415 Arcadia Ave., Upperco, MD. 21155, Property
Owner; and Arnold Jablon, Esq. and Nancy West, Esq., County Attorneys for
Baltimore County, a copy of which Notice is attached hereto and prayed that it
may be made a part thereof.

John Holman
County Board of Appeals of Baltimore
County, Rm. 200, Court House, Towson, Md.
494-3180

Elizabeth W. Glascock
Case No. 88-182-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of
Notice has been mailed to Mrs. Elizabeth W. Glascock, 16154 Trenton Rd.,
Upperco, MD. 21155, Petitioner-Plaintiff; John C. Murphy, Esq., 516 N.
Charles St., Balto., MD. 21201, Counsel for Petitioner-Plaintiff; Arcadia
Volunteer Fire Dept., Inc., 5415 Arcadia Ave., Upperco, MD. 21155, Property
Owner; and Arnold Jablon, Esq. and Nancy West, Esq., County Attorneys for
Baltimore County, Court House, Towson, MD. 21204, on this 21st day of
June, 1988.

John Holman
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
ELIZABETH W. GLASCOCK
FOR SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NORTHWEST SIDE TRENTON RD.,
OPPOSITE OLD QUAKER RD., ALSO
NORTHEAST END OF CARNIVAL RD.,
NORTH OF ARCADIA AVE.
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
ELIZABETH W. GLASCOCK,
PETITIONER-PLAINTIFF
ZONING FILE NO. 88-182-SPH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 57
Folio No. 312
File No. 88-CG-2712

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING
COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE
COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Thomas J. Bollinger, and
Harry E. Buchheister, Jr., 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 Zoning Department of Baltimore County:

No. 88-182-SPH
October 2, 1987 Petition of Elizabeth W. Glascock for special hearing
to determine if the erection of a 600 ft. wireless
transmitting and receiving structure by Baltimore County
on leased land is exempt from the special exception
(public hearing) process.
October 2 Order of Zoning Commissioner directing advertisement and
posting of property - date of hearing set for Nov. 16,
1987, at 9:00 A.M.
October 29 Certificate of Publication in newspaper filed
October 31 Certificate of Posting of property filed
October 22 Comments of Baltimore County Director of Planning filed

89 APR -5 PM 2:16
RECEIVED
COUNTY CLERK'S OFFICE

PETITION FOR SPECIAL HEARING * BEFORE THE ZONING COMMISSIONER
NW/S Trenton Rd., opp. Old * OF BALTIMORE COUNTY
Quaker Road, also NE/End of *
Carnival Road N. of Arcadia *
Ave., 5th Election District *
Elizabeth W. Glascock, * Case No. 88-182-SPH
Petitioner *

PETITIONER'S LEGAL MEMORANDUM

Introduction

Baltimore County plans to erect a 620 foot tower to serve the County's emergency communications system. The site for the tower is property owned by the Arcadia volunteer fire company.

The legal question is whether this use is subject to the Baltimore County Zoning Regulations (BCZR). At the hearing, a good deal of argument revolved around Section 103.2 of the ordinance which seems to imply that public uses are exempt from the ordinance. It has now been discovered that Section 103.2 is no longer in effect in Baltimore County because it was written for the County when public uses were unzoned; and the County abandoned the practice of not zoning public uses in 1976. Once Section 103.2 is understood as no longer being applicable, the question becomes: Are public uses covered by the regulations? The County Attorney argues that they are not. The Petitioner rebuts this argument not with any involved legal rationales but simply by pointing to the ordinance. It is the County which has zoned for a wide variety of public uses in the ordinance.

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This memorandum is divided into six parts. The first addresses the statutory background of this particular case. Here the point is made that we are not concerned with a zoning technicality but rather with issues of vital concern to the health, safety and welfare of the citizens of the County--the preservation of agricultural land, protection from unsafe radiation, and the avoidance of damage to historic districts. The second argument explains that Section 103.2 of the regulations, which is central to the County's claim for exemption, is no longer of any effect. It was written to require the zoning of previously unzoned public uses. The practice of not zoning public uses and public land was abandoned by the County in 1976. Now all land is zoned.

The third part explains that the County does zone public uses. The County Attorney makes the point that public uses are exempt from the ordinance. He is wrong. By deliberate legislative policy, expressed in a myriad of ways in the ordinance, the County has subjected public uses to the ordinance. The fourth argument is that to find an exemption for public uses would be directly contrary to the legislative intent of the zoning ordinance, and thus violate the cardinal rule of statutory construction--ascertain and carry out the legislative intent. The fifth argument is that the County can offer no assurance that the use will be exclusively for the County. To impose such a requirement is contrary to County and Federal policy to share uses on a tower as a way of avoiding a proliferation of towers. The final argument is that the County has expressly agreed to obey all laws and regulations.

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I

The Statutory Background

The property is zoned Resource Conservation 2, the most restrictive zone in Baltimore County. The County adopted this zone to preserve agricultural land, finding that urban uses not only consumed valuable agricultural land but were incompatible with the agricultural use of surrounding land. Baltimore County Zoning Regulations (BCZR), Section 1A01.1A1. The RC2 zone allows a number of permitted uses. The designation of a permitted use means that such use is compatible with the purpose of the zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). The tower proposed to be erected by Baltimore County is not included as a permitted use.

The tower is listed as a special exception use. This means that the County has determined that it may be allowed only after public hearing and approval by the Zoning Commissioner and the Board of Appeals upon a finding that it meets the standards of the regulations. In the RC2 zone, the regulations prescribe that no special exception may be granted unless the hearing authority finds that the use would not be detrimental to the primary agricultural uses in the vicinity. BCZR 1A01.2C.

In addition to these standards which must be met by every special exception use, the County has seen fit to adopt special legislation for communication towers. In 1984, the County amended BCZR 502.7 to prohibit towers within a certain distance from historic districts unless the Zoning Commissioner found that the tower would not detract from the affected historic

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district. More comprehensive legislation was adopted in 1986. In the R.C., D.R. and R.O. zones, it must be demonstrated that suitable locations are not available in business, office, or industrial zones, or that the antenna cannot be mounted on an existing structure. The Environmental Protection Agency standards must be met. A study must be performed of the expected emission levels. An environmental impact statement must be prepared which analyzes the effect on the ecosystem. The Zoning Commissioner must find that the structure will not have a substantial adverse impact on the environment or on surrounding property values, park lands or open space. See BCZR 502.7.

The very purpose which is the subject of this hearing was covered--communications for public safety purposes. The ordinance contains certain exemptions for utilities which are erecting towers at existing facilities where it can be demonstrated that the tower is necessary for "critical communication needs for public safety purposes". See BCZR 507.D(2).

In addition to these specific standards relating to the R.C. 2 zone, the use of all land in Baltimore County is subject to this unequivocal standard contained in Section 102.1 of the regulations:

"No land shall be used and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use".

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In summary, the regulations do not prohibit the proposed tower. They do regulate it, prescribing certain standards obviously designed to protect the County's environment, guard the health of its citizens, conserve its agricultural land and preserve its historic districts.

II

Section 103.2 Is No Longer In Effect

At the hearing the County placed great reliance on Section 103.2 which reads as follows:

"When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these Regulations".

The County argues that this section means that public use facilities are exempt from the ordinance. The County's reasoning is set forth in the Zoning Commissioner's decision in the Pine Ridge golf course case, 88-8-SPH:

"Section 103.2, BCZR, requires that after any public use ceases or when title of publicly-owned land passes into private ownership, such land or buildings cannot be used for private purposes unless they conform to the zoning regulations. Certainly, the reverse is equally true, i.e., property in public use is not subject to the BCZR. If land devoted to public use was subject to the Regulations, section 103.2 would be superfluous." (emphasis added).

Contrary to the Zoning Commissioner's decision, Section 103.2 is superfluous. It was written when public uses were unzoned. It doesn't say, as the Zoning Commissioner suggests,

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that after public use ceases, the property has to conform to the zoning ordinance. Rather, it says that after public use ceases, the property has to be zoned. So the implication is not that public uses are exempt but that they are unzoned. The implication was correct when the section was adopted in 1955. But since 1976, all property, public and non-public, has been zoned. So the direct mandate of the Section--that after public use ceases, property has to be zoned--is no longer of any effect because all property is zoned. And the implication of the section--that public uses are unzoned--is similarly incorrect because since 1976, all property has been zoned. The section no longer has any effect.

If one has any doubt about this, all one has to do is step over to the County Zoning Office and look at the old maps. For example, the 1971 map NE-10-A shows the site of the public library at East Chesapeake and York Road as unzoned--not in any zoning district at all. The same map in 1976 shows that same property in the B.M.C.T. zone.

In other words, in the Pine Ridge opinion, the Zoning Commissioner made a fundamental error. He interpreted Section 103.2 as saying that public uses were exempt from the zoning ordinance; and that when the public use ceases, the property could not be used for private purposes unless the use was allowed by the zoning.

But this is clearly not what the section means at all. It means that public property was unzoned; and when the public use ceased, it had to be zoned. The reverse was not that public

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uses were exempt; rather, it was that public uses were not zoned.

What continuing relevance does Section 103.2 have? It has none because now all land in Baltimore County is zoned. There is no necessity to "zone" land when public use ceases because it is already zoned. Clearly Section 103.2 is a remnant of a prior practice which has been abandoned.

At some point prior to 1976, the County made a deliberate decision to zone public land. If any conclusion could be drawn from the history, it would not be that public uses were exempt. They were never exempt, but only unzoned; and this practice was abandoned some time prior to 1976. If anything, the history might suggest that public uses are subject to the zoning ordinance. But such a conclusion doesn't have to rest on a mere suggestion. Public uses are expressly included in the zoning ordinance, as will be seen in the next section.

III

The Baltimore County Zoning Ordinance Regulates Public Uses

The County's central thesis is that public uses serve a public benefit and therefore they are exempt from the zoning regulations. For authority the County relies on two opinions written by the County Attorney when he served as the County's Zoning Commissioner and on court cases and an opinion of the Attorney General holding that uses mandated by the State were not subject to local zoning.

In the Emergency Shelter case, 87-323-SPH, the facility was held exempt because it "serves a definite public policy, satisfying our society's overriding concern for the

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benefit and welfare of children". In the Pine Ridge golf course case, the golf course, although privately operated, was held exempt because it was "open to the public and operated for the public benefit". Case No. 88-8-SPH. The seminal court opinion is Mayor and City Council of Baltimore v. State, 281 Md. 217, 378 A.2d 1326 (1977). There the Court held a State prison was not subject to the Baltimore City zoning ordinance. The reason was that the zoning enabling act for Baltimore City did not specify that the objects regulated included the State. The opinion followed the well established rule that the State is not bound by legislation unless the law specifically names the State or reveals an indisputable intention that the State be bound.

In Mayor and Council of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 570, 381 A.2d 1188 (1978), the rule concerning State facilities was applied to State property which was rented to a non-profit organization providing care for children pursuant to a State program. The Attorney General ruled that juvenile care programs which are operated pursuant to a State law are immune from local zoning. See 63 Opinions of the Attorney General 377 (1978). The Circuit Court for Caroline County reached a similar conclusion, again involving a program of the State Juvenile Services Administration. See County Commissioners of Caroline County v. Ricky J. Loscomb, et al., case No. 7175.

The cases involving State facilities and State programs have no relevance to the question before us. Clearly, if the

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Baltimore County zoning ordinance is to control State facilities, the County needs express authorization from the State General Assembly. That is all the cases and opinions involving State facilities and State programs say.

But no such difficulty is involved with County facilities or public uses mandated by County laws or programs. There is nothing to prevent the County from regulating County facilities or public uses mandated by County law. The question is, has the County done so? The way to determine this is to examine the ordinance. It is not necessary or even typical for an ordinance to have a separate statement which says that public facilities or uses are covered. Rather, when an ordinance regulates public facilities or uses, it does so simply by including them among the uses regulated. By doing this, a local government "subjects itself" to the ordinance. For example, in Mayor and City of Annapolis v. Anne Arundel County, 271 Md. 265, 316 A. 807, 820 (1974), the Court of Appeals stated:

"We observe that the City of Annapolis has subjected itself to the provisions of its own zoning law (see Code of the City of Annapolis, section 22-5) and that the County has also subjected itself to its own zoning laws. (See Anne Arundel County Code, section 13-334 A).

By examining the relevant ordinances, one sees that elementary schools and penal institutions are expressly included in the Annapolis regulations (see Code Section 22-45 (d)(1) and 22-46 (b)(1)(f)). In Anne Arundel County, public parks and playgrounds are a permitted use in the R.A. zone. See Section 2-204(A)(20).

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When one looks to the Baltimore County zoning regulations, one sees that public uses are covered. Keep in mind that the immunity concept propounded by the County Attorney extends not only to County facilities but to uses which carry out a public purpose and serve the public.

What could be more of a public use than a public school? Yet "public schools" are expressly listed as a permitted use in the R.C.2 zone. It will be recalled at the hearing the County Attorney made a point of ridiculing the notion that the ordinance covered public uses by pointing out that in the D.R. zone, schools are not included. Upon examination, it turns out that the County Attorney is wrong. Schools are included as a permitted use in the D.R. zone. In fact it appears that the County has adopted a more restrictive stance towards schools in the R.C.2 zone. There only public schools are allowed as a permitted use; other schools are only allowed as special exceptions. This is of course totally consistent with the restrictive nature of the R.C. 2 zone. Another example is civic buildings which are special exceptions in the residential zones. Under the County Attorney's interpretation, public schools and civic buildings would be exempt from the ordinance. Yet the fact of the matter is that they appear in the zoning ordinance.

What about other public uses? What has a stronger purpose of serving the public than a volunteer fire company? Yet in all zones volunteer fire companies are special exceptions. What about a sanitary landfill? In Baltimore County, landfills can

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be either public or private, although they are mostly governmentally owned. They are allowed as special exceptions in the manufacturing zones. Under the County Attorney's interpretation, landfills could be placed anywhere since as a use serving a strong public purpose, they are exempt from the ordinance. What about community care centers? In the R.C.2 zone, they are limited to facilities serving no more than 15 persons; in the D.R. zone, the number of occupants is unlimited. In both zones, they are special exceptions. Under the County Attorney's ruling, the zoning ordinance is ineffective in establishing any restrictions, and community care facilities are exempt since they serve a public purpose.

What about the very use which is the subject of this opinion--emergency communication facilities? The County Council has legislated that public utilities at existing locations are exempt from some of the County legislation on communications towers if it can be demonstrated that the tower is necessary to serve communication needs for public safety purposes. See 502.7 D(2). Again, under the County Attorney's interpretation, all the utility would have to do is demonstrate to the Zoning Commissioner that it was performing a public service, and it would be exempt from the ordinance entirely.

In other words, the County Attorney's interpretation, based on his prior decisions as Zoning Commissioner, is fundamentally at odds with the County legislation as expressed through its zoning ordinance. There is no question but that the

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County could exempt itself, together with all uses serving public purposes, from the zoning ordinance. In the absence of any legislation on the subject, an argument might be made that the County is automatically exempt. But it is equally without question that the County can subject itself to its own zoning ordinance. As the leading zoning treatise points out, this is a matter for the County to decide:

"A municipality need not await a court decision concerning the governmental or proprietary character of its conduct in order to resolve the question of the application of the zoning regulations to municipal conduct. It can provide by ordinance for the application, non-application, or partial application of the zoning regulations to municipal functions. The cases reflect a broad spectrum of policy. Municipal ordinances have been sustained which exempted the municipality from, which partially exempted it from, and which subjected the municipality to, its own zoning regulations."

2 R. Anderson, American Law of Zoning, 3d ed., 1986, p. 485.

It should not be a cause for regret if the County is subject to its own zoning ordinance. To the contrary, the immunity of local governments in the past has been harshly criticized as inconsistent with sound land use planning. See Note, Governmental Immunity From Local Zoning Ordinances, 84 Harv.L.Rev. 869 (1971). In this particular case, subjecting the County to its own zoning ordinance does not mean that the use is denied. All it means is that the County must obtain the approval of the Zoning Commissioner or Board of Appeals through the public hearing process.

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IV

County Uses Are Not exempt From Environmental and Historical Regulation

There is a fundamental difference between the aims of traditional zoning, such as the preservation of a single family neighborhood, and the values sought to be protected through environmental and historical laws. In the case of traditional zoning, governmental uses, such as a school, are not incompatible with the goal sought to be achieved; or even if there is an incompatibility, the benefit of the governmental use outweighs the possible detriment. This is the basis for the governmental immunity which, in the absence of any language in the zoning ordinance, has been accorded by some court decisions to local governments. See Note, Governmental Immunity From Local Zoning Ordinances, *supra*; Annotation, 61 A.L.R. 2d 979.

But these considerations are not applicable to environmental and historic preservation laws. Indeed, the Federal laws on this subject are specifically directed to the Federal government. See the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4335, and the National Historic Preservation Act of 1966, 16 U.S.C. 470(a). At the hearing on November 16, 1987, the County Attorney made the startling admission that the County is subject to the County environmental laws, such as the laws which prohibit construction in floodplains.

If this is true, why is not the County subject to the 1986 legislation for towers contained in Section 507.2 of the

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zoning regulations? This is environmental legislation. It requires the preparation of an environmental impact statement as a means to analyze the effect on the ecosystem; and requires an analysis of radiation effects. It is exalting form over substance to say the County does not have to abide by the 1986 legislation because it is part of the zoning code, while the County does have to abide by the floodplain legislation which is not a part of the zoning code.

But there is a more substantial reason why the County is subject to the special environmental and historical standards for communication towers now embodied in the 1986 legislation. That reason is that the actions of the County are as potentially as harmful to the environment or to historical resources as are the actions of a private person. To carry out the expressed intent of the County Council to protect the environment and historic resources, it is necessary that actions of the County be included. This reasoning is set forth by the Court of Appeals in Mayor and Aldermen of the City of Annapolis v. Anne Arundel County, *supra* at 316 A.2d 821:

"Secondly, to accomplish the primary purpose of historic area zoning, it is necessary that the exterior of the building having historic or architectural value be preserved against destruction or substantial impairment by every one, whether a private citizen or governmental body. In short, the historically or architecturally valuable building is just as much lost by destruction by a private body as it would be by a private owner. The facts in the present case should lay to rest

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the notion that public bodies--as contrasted with private owners--would not be likely to press for demolition of buildings having established historic or architectural value. The General Assembly could well conclude that, to accomplish historic and architectural preservation, the jurisdiction of the commission should extend to all owners be they private persons or governmental agencies. Otherwise, the primary purpose of the legislation would be frustrated."

It is important to keep in mind that the zoning ordinance by its terms applies to all land and uses. Section 102.1. An exemption for the County is based upon an assumption that the health, safety or welfare of the County would be hindered by making the County government subject to the zoning ordinance.

But this rationale doesn't apply to historical or environmental legislation. To use an obvious example, the effects of radiation from a County tower are just as deadly as they are from a private tower. To suggest that the County meant to make a distinction between public radiation and private radiation is absurd. As the Court of Appeals said, it would defeat the very purpose of the legislation to exempt the County. Thus it makes no sense to imply an exemption for the County.

In summary, the point is made that even if it is felt that the County is ordinarily not subject to the zoning regulations, a special case is presented here. We are talking here about the effects of radiation on the citizen's health, damage to the environment, the preservation of historical areas, the

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conservation of agricultural land. It would not promote the health, safety, or general welfare to exempt the County from the special legislation for communication towers.

V

There Can Be No Guaranty of Exclusive County Use

At the hearing on November 16, 1987, the County Attorney said he could offer "no guaranty" that the tower would be used exclusively by the County. It is noteworthy that the lease offered in evidence by the County contains a specific provision (paragraph 7) allowing the County to lease space. Once a tower is erected, it can be used by a variety of users--radio and t.v., public utilities, private phone companies, etc. If the use is unrestricted, the County use might end up being only a small part of the total use. In these circumstances, it would be ludicrous to maintain that the tower is exempt because of the County's immunity.

There should be no restriction on the use of the tower. The way to avoid a proliferation of towers is to encourage their shared use. This is policy specifically adopted by the Federal Communications Commission, certainly the supreme authority on the subject of communication towers:

"...the use of existing buildings and towers is an environmentally desirable alternative and is encouraged". 47 C.F.R. Section 1.1306, Note 1.

The County legislation on towers expresses an identical policy. It requires an applicant for permission to construct a new tower to demonstrate that it is not possible to locate on an existing tower. BCZR, Section 502.7C(1).

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So the county request for recognition of an exemption presents an impossible dilemma. On the one hand, there is no assurance that this will remain a predominantly County facility. Nor should it according to established FCC and County policy. On the other hand, to require that only County use be permitted is to go against the established FCC and County policies.

The solution is to recognize that there is no real distinction between a tower erected by the County and a tower erected by private interests. This is apparent in the County legislation on the subject which provides special treatment for towers serving emergency communication purposes. The County has enacted comprehensive legislation on towers which seeks to protect the public interest. To attempt to set a public tower apart from the public interest expressed in the legislation represents an impossible task. Therefore the claim for exemption must be denied.

VI

The County has Waived Its Immunity

In paragraph 6 of the lease with the Arcadia Volunteer Fire Company, the County agreed to comply with all laws, regulations and ordinances made by any State, Federal or local government. Yet at the hearing on November 16, 1987, the County Attorney claimed the County was not subject to this provision, that it obligated the County to comply only with environmental legislation.

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There is a fundamental difficulty with the County Attorney's position. No matter what the County zoning ordinance says, no matter what the County has agreed to do in a written lease, the County Attorney reserves the right to exempt the County from the regulation or repudiate the written lease. This immunity does not exist. Every government has an obligation to obey its own regulations. A unit of government is as much bound by its regulations as are the persons affected by them. Service v. Dulles, 359 U.S. 363 (1957). Baltimore County is bound by its written contracts and may not claim sovereign immunity with respect to them. Article 25 A, Section 1A, Annotated Code of Maryland (1981 Repl. Vol.).

Consider the posture of the County. A volunteer fire company exists to serve the residents of the community. The fire company enters into a lease with the County whereby the County agrees to abide by all governmental laws and regulations. The written obligation of the County to abide by the laws presumably exists so that the fire company could be sure that the County use would not be harmful to the residents of the community it serves. In other words, the clause is there to protect the public interest. Yet when challenged to obey the terms of the lease by the residents of the community, the County claims it is immune from the laws because of this same public interest.

It is suggested that the public interest would be served by the County obeying the applicable laws. This is not an

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original idea, but is found in the written document which the County signed to obtain the right to construct the tower. Having once agreed to it, the County is in no position to repudiate the obligation.

Respectfully submitted,

John C. Murphy
John C. Murphy
516 North Charles St.
Baltimore, Md. 21201
625-4828
Attorney for Petitioner

I hereby certify that on this 1st day of December, 1987, I mailed a copy of the foregoing Memorandum of Law to Arnold E. Jablon, Esquire, County Attorney, Courthouse, Towson, Md. 21204.

John C. Murphy
John C. Murphy

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LAW OFFICES
JOHN C. MURPHY
SUITE 206 - 316 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(301) 625-4828

November 17, 1987

Ann M. Nastarowicz, Esq.
Deputy Zoning Commissioner
County Office Building
Towson, Md. 21204

Re: Elizabeth W. Glascock--Baltimore County
88-182-SFH

Dear Ms. Nastarowicz:

Pursuant to our conversation of today, you have consented to my request for permission to file a memorandum within two weeks from today. I spoke with Mr. Jablon, and he indicated that he had no wish to file a memorandum.

Sincerely,

JCM/vb

cc: Arnold E. Jablon, Esq.

John C. Murphy

RECEIVED
NOV 18 1987
ZONING OFFICE

PETITION FOR SPECIAL HEARING * BEFORE THE ZONING COMMISSIONER
NW/S Trenton Rd., opp. Old * OF BALTIMORE COUNTY
Quaker Road, also NE/End of *
Carnival Road N. of Arcadia *
Ave., 5th Election District *
Elizabeth W. Glascock, * Case No. 88-182-SFH
Petitioner *
* * * * *

MEMORANDUM OF PETITIONER

The sole issue presented by this hearing is whether Baltimore County is subject to the County Zoning Regulations when it constructs a communication tower of 620 feet on property privately owned and located in the RC2 zoning district. The Petitioner submits two points for consideration:

1. In determining whether a public body is subject to its own zoning regulations, the fundamental question is what is the legislative intent--what has that same body provided in its zoning regulations. In the case of Baltimore County, an examination of the provisions for the RC2 zone shows without a doubt that public uses are included. Public schools and streets and ways are expressly included as permitted uses. Thus the legislative body had the intention of including public uses. Section 103.2 of the Zoning Regulations deals with unzoned land, or when a public use ceases, the land must be used in conformity with the regulations. This section is not inconsistent with public uses being subject to the zoning. It

is also highly relevant that public uses are expressly covered by the development regulations. See Section 22-43, Baltimore County Code. Finally, the enabling law for zoning in Baltimore County expressly mentions public requirements, including electric structures and facilities. Section 22-19, Baltimore County Code.

The County in this case claims an exemption for a public use on leased land, land which remains in private ownership. Consider what a threat this presents to orderly planning and zoning and neighborhood development. Government uses and facilities are today everywhere. Many privately-owned office buildings throughout the County lease space to units of government. If any facility which will be leased by a governmental unit is exempt from the County zoning, a very large exemption from the regulations appears, an exemption without any support in the regulations.

2. The traditional rule that governmental facilities are exempt has a certain rationale if one is thinking simply of use regulation. Here, however, the concern is beyond simple use regulation. At issue are agricultural preservation, historic resources, and environmental considerations, including the effects of radiation. Obviously all these concerns are not met if governmental bodies are exempt. This was the reasoning followed by the Maryland Court of Appeals in holding local governmental bodies subject to local historic zoning regulations, see City of Annapolis v. Anne Arundel County, 271 Md. 265, 316 A.2d 807 (1974). These same principles apply to

the special laws which the Baltimore County Council has passed for wireless towers, Bill No. 64-86 (1986) and Bill No. 117-84 (1984). If governmental bodies are exempt from this legislation, then the possibility exists for the frustration of the very purpose of the laws. This is a sufficient reason to distinguish ordinary zoning concerns and hold here that the County government is not exempt based upon the special facts of this case.

Respectfully submitted,

John C. Murphy
John C. Murphy
516 North Charles St.
Baltimore, Md. 21201
625-4828
Attorney for Petitioner



GILMAN SCHOOL
5407 ROLAND AVENUE • BALTIMORE, MARYLAND 21210 • (301) 323-3800

OFFICE OF THE HEADMASTER

November 17, 1987

RECEIVED
NOV 19 1987

ZONING OFFICE

The Honorable Dennis F. Rasmussen
400 Washington Avenue
Old Courthouse Mezzanine
Towson, MD 21204

Dear Mr. Rasmussen:

My family and I are relatively new property owners of a beautiful farm just north of Dover Road in the region of Upperco and Arcadia, Baltimore County. We bought the property in 1984 from the estate of the late George Arrowsmith, and one of our sons now farms the land.

It is our understanding that you have given your support to the construction of a 600 foot radio tower to be built on land being leased by the County in the vicinity of Arcadia. We further understand that this tower is to serve as a communications vehicle for fire and police service.

Naturally we want to be in support of both fire and police departments, and we can understand the need for reliable communication service. However, we do seriously question the need for a 600 foot tower which will unquestionably do much to mar the landscape and represent a hazard to wildlife. Are there not alternative routes to solve this communication problem? Is there not already a radio tower but a few miles away in Carroll County which can be used if Baltimore County could work out an arrangement with Carroll County?

Like an increasing number of people we have come to know, our family is vitally interested in the preservation of the beauty of the land, particularly agriculture districts. Indeed, we and our neighbor whose farm is just across Dover Road have both placed our property in the Agriculture Preservation District. We also have done much to enhance the natural environment and the beauty of our land.

Is there anything that can be done to forestall the building of this tower? Are there not other viable and less threatening alternatives? Yesterday at the hearing in Towson, the lawyer for Baltimore County, Mr. Arnold Jablon, made the statement that he "is not sure that the entire community is opposed." I do not understand on what basis he could make this statement. If it would be helpful to you, I will be more than willing to canvass the entire community to gather an accurate reflection of how people feel. I believe you and any others who may be in support of this 600 foot tower will be very surprised by the very strong sentiment in opposition; none wants to gaze at the sky at a 600 foot tower, either the sight of the tower by day, or the flashing red light at night.

The Honorable Dennis F. Rasmussen
November 17, 1987
Page Two

We entreat you to review this whole matter and to do your best to find other alternatives much less threatening to the landscape and this beautiful area of our county.

With kindest regards,

Very sincerely,

Redmond C. S. Finney
Redmond C. S. Finney

RCSF/bgh

cc: Ms. Ann Mastarowicz, Deputy Zoning Commissioner
Mr. Arnold Jablon
Mr. John C. Murphy
Mr. Frank Peltzer
Mr. Jervis S. Finney

PETITION - SPECIAL HEARING TO DETERMINE IF THE
ERECTION OF A 600 FT. WIRELESS
TRANSMITTING AND RECEIVING STRUCT.
BY BALTIMORE COUNTY ON LEASED LAND
IS EXEMPT FROM THE SPECIAL EXCEPTION
PROCESS (PUBLIC HEARING) IN THE
BALTIMORE COUNTY ZONING REGULATIONS.

OWNER: Arcadia Volunteer Fire Dept. Inc.
5415 Arcadia Ave.
Upperco, Md. 21215 Phone # 374-4111

LESSEE: Baltimore County
111 W. Chesapeake Ave. Col. Hubert BACOPD X-2252
Towson, Maryland 21204 MS# 1102E

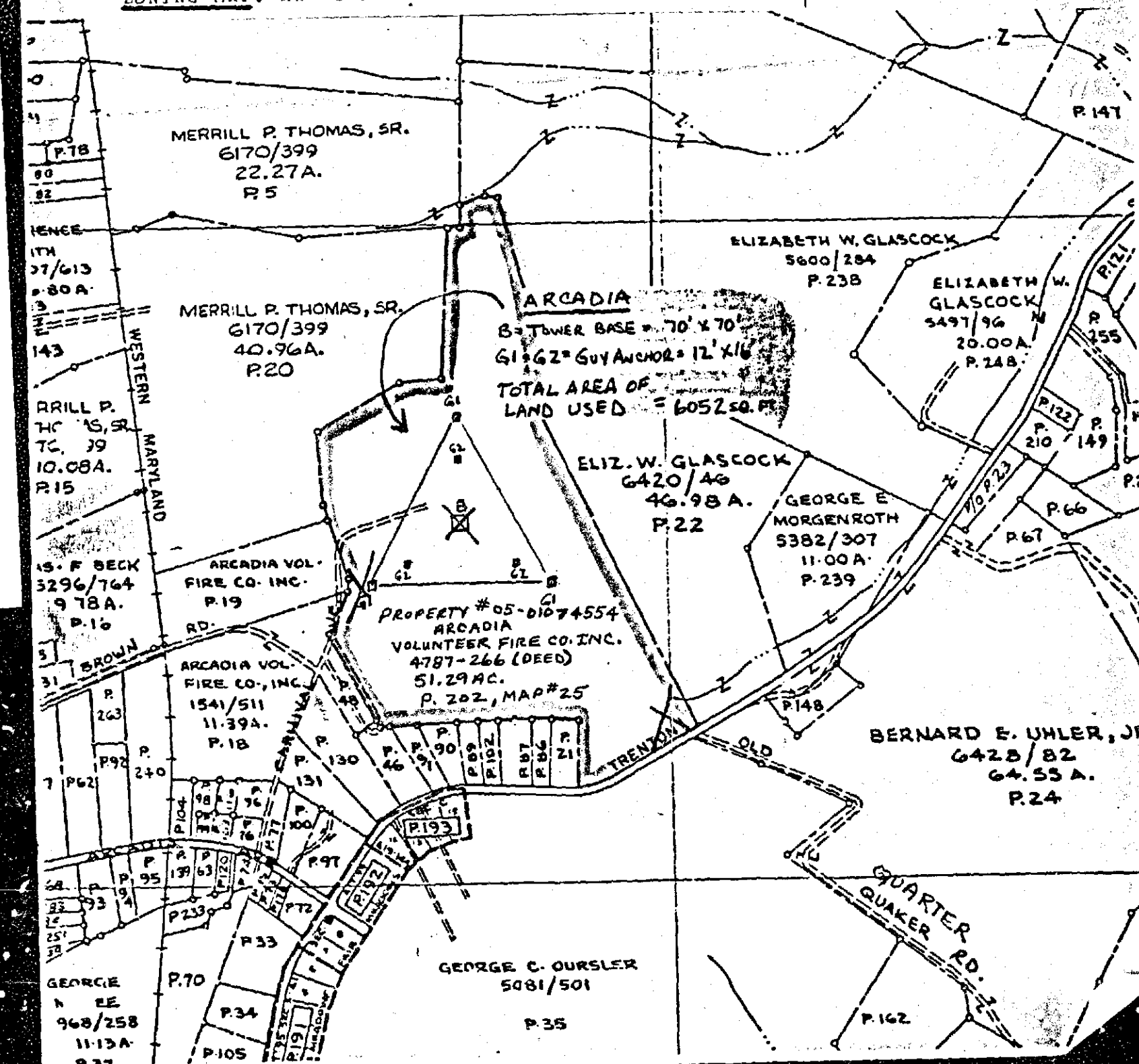
LOCATION: NW/S Trenton Road, opposite Old Quaker Road
Also NE/End of Carnival Road N. of
Arcadia Ave.

ACRES: Total tract- 51.29 Ac., Net. area used- 6052 Sq. ft.

ZONING: R.C. 2, SCALE: Approx. 1" = 600 ft.

ELECT. DIST.: 5, COUNCIL DISTRICT: 3

ZONING MAP: NW-25 K



PETITION - SPECIAL HEARING TO DETERMINE IF THE
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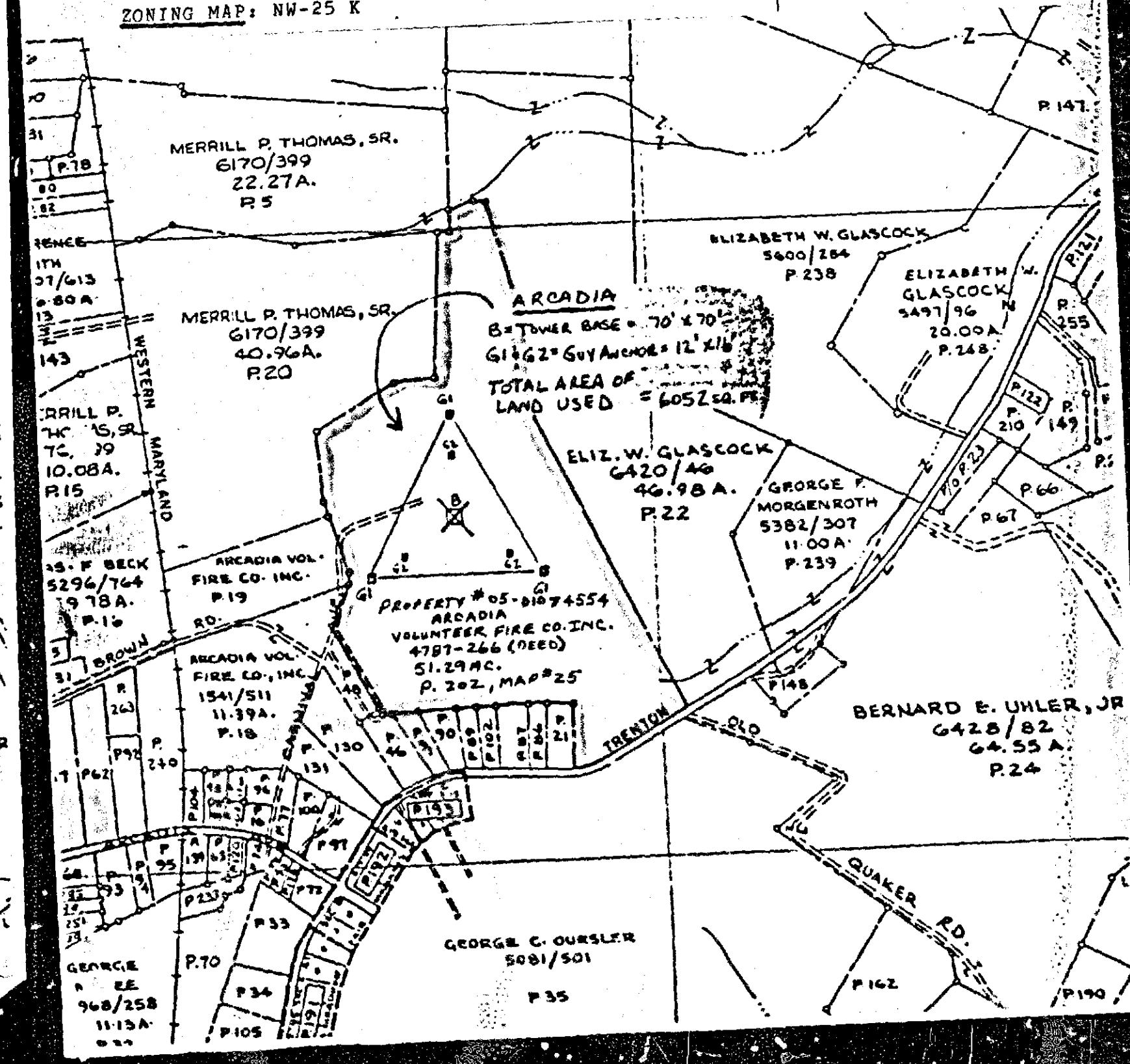
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ZONING MAP: NW-25 K



LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md. Oct. 27, 1987

THIS IS TO CERTIFY that the annexed Request for Information, P.C.#93750
was published for one (1) day on the 27th day of October 1987 in the

- ☐ Carroll County Times, a daily newspaper published in Westminster, Carroll County, Maryland.
- ☐ Randallstown News, a weekly newspaper published in Baltimore County, Maryland.
- ☒ Community Times, a weekly newspaper published in Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per *John C. Murphy*

September 29, 1987

Mr. Carl Richards
Baltimore County Zoning Office
County Office Building
Towson, Md. 21204

Dear Mr. Richards:

I wrote you on September 18, submitting a Petition for Special Hearing. I am enclosing a copy of my letter. Since I have not heard anything, I became concerned that you did not receive the letter. I do not wish to rush things in any way, but I do ask that you call me if you did not receive the letter and enclosed material.

Sincerely,

JCM/vb

John C. Murphy

RECEIVED
SEP 30 1987

ZONING OFFICE