

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 396  
September Term, 1990

Steven H. Gudeman et ux.

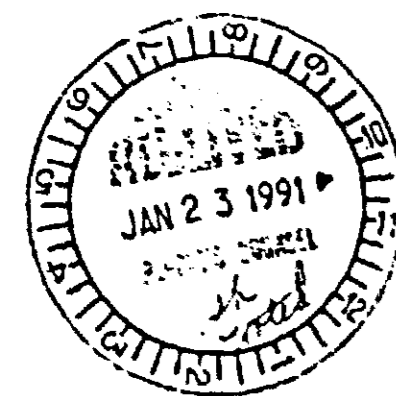
People's Counsel for Baltimore County

Bell, R.B.  
Fischer,  
Thayer, (specially  
assigned)

JJ.

Per Curiam

Filed: January 22, 1991



10-11-83 E2 NW 15  
STANDARD PRINTING

Steven H. Gudeman and Betty J. Gudeman, husband and wife, appeal from an adverse decision of the Circuit Court for Baltimore County (Howe, J.).

Appellants are owners of 44.75 acres of land in Baltimore County, Maryland. The property consists of 42.42 acres and 2.33 acres separated by a public road owned by Baltimore County. Desiring to develop the land, appellants, on March 16, 1988, filed a petition for approval of a plan of development. After taking testimony and considering argument from counsel, the Deputy Zoning Commissioner of Baltimore County issued an order dated July 28, 1988 granting appellants' petition. By her decision, the Deputy Zoning Commissioner reconfigured appellants' property into parcel A containing 2.33 acres and parcel B consisting of 42.42 acres. She found that each parcel was entitled to two density units -- a total of four for the entire property. The ruling also gave appellants permission to divide the property into four lots, three of which were to be relatively small building lots and the fourth lot would consist of the remainder of the property which would be used for farming. People's Counsel for Baltimore County appealed the Deputy Zoning Commissioner's decision to the Board of Appeals of Baltimore County. After a hearing, the Board, by its Opinion and Order dated February 16, 1989, reversed the Deputy Zoning Commissioner's decision. Appellants appealed to the Circuit Court for Baltimore County and the decision of the Board of Appeals was affirmed.

Appellants raise three issues for our review:

1. Did the circuit court err in ruling that a property separated by a fee simple public road is not two "lots of record" for purposes of density and subdivision calculations under the Baltimore County zoning regulations?
2. Did the circuit court err by indicating that the Baltimore County zoning regulations do not allow the transfer of density from one parcel to another within the R.C. zone?
3. Was the decision of the Board supported by substantial evidence?

I.  
Did the circuit court err in ruling that a property separated by a fee simple public road is not two "lots of record" for purposes of density and subdivision calculations under the Baltimore County zoning regulations?  
Appellants' property consists of 44.75 acres of land transected by a Baltimore County-owned public road which divides the property into two parcels of 42.42 acres and 2.33 acres. Baltimore County Zoning Regulation 1A01.3.B1 provides in part:

Subdivision for Density No lot of record lying within an R.C. 2 zone [agricultural] and having a gross area of less than 2 acres may be subdivided. No such lot having a gross area between 2 and 100 acres may be subdivided into more than 2 lots (total).  
Pursuant to this regulation, appellants' property, if one lot of record, could be subdivided to two lots or two building units and if two lots of record, to four lots or four building units.  
Appellants aver that their property is not one continuous tract, but rather two plots of land that are

physically separated from each other by the intervening public road owned by Baltimore County. The Board of Appeals, in its Opinion and Order dated February 16, 1989, stated in pertinent part:

[The Board is of the opinion that the site containing some 44.75 acres is an entity in itself. The existence of Stockton Road created in 1899 does not in fact create two parcels on the site. The deed and survey clearly show one parcel that contains 44.785 acres and in which Stockton Road is incidental, and its existence known to the purchaser at the time of sale. The Board can find no basis that would allow the separation of this site into Parcel A and Parcel B.

Judge Howe, in her Opinion and Order dated February 6, 1990, stated that the Board did not err as a matter of law in its finding that appellants' property consists of one lot of record.

Paul Solomon, Administrative Director of the Baltimore County Preservation Program stated that he was the planner overseeing development of the regulations applicable to the R.C. zone. He also testified that the agricultural zone was intended to preserve farming as an industry, and, "[I]t was determined that a 50 acre parcel could, in fact, accommodate a viable economic effort or entity." When asked whether roads going through properties would cause the establishment of separate lots or parcels, he answered, "That was not considered at all. It was not our design.... It was not ever something that was conceived as a possibility or threat." Solomon added, "[W]e didn't even investigate

that occurring. We had no basis for envisioning that occurring."

Wallace Lippincott, a land planner for Baltimore County, testifying in response to a question whether roadways intersecting a property create additional lots, stated, "My opinion, it is that the road does not create a density per the purpose and planning perspective on the R.C. 2." When asked for his reasons he replied, "The reason is that there's no description in the zoning regulations that provide for the allocation of density in the R.C. 2 based on number of roads that are intersecting the property."

"Lot of record" is defined by Baltimore County Zoning Regulation 101 as:

A parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision, or other condition thereof.

Appellants' property was obtained by deed dated August 31, 1987. The description of the property in the deed is by metes and bounds. The description clearly refers to only one parcel of land being conveyed which consists of the main parcel plus a 0.329 acre parcel which was the subject of an earlier quit-claim deed which is not relevant to the matter under consideration.

It seems clear to us that the Board of Appeals was correct in its finding that the existence of the road transecting the subject property did not serve to change the one lot of record into two lots of record.

II.

Did the circuit court err by indicating that the Baltimore County zoning regulations do not allow the transfer of density from one parcel to another within the R.C. zone?

In a sense, this is a non-issue. The Deputy Zoning Commissioner, apparently acting upon a long standing practice, transferred two dwelling units from the 2.33 acre parcel to the 42.42 acre parcel. This had the result of granting four density units to the property rather than the two to which the property, as one lot, was entitled. Judge Howe found that there was no provision in the zoning regulation that permits transfer of density from one parcel to another and that the zoning commissioner could not allow such transfers under the guise of policy.

As we have decided that appellants hold only one lot, the question of density unit transfers is moot, and we decline to rule upon this issue.

III.

Was the decision of the Board supported by substantial evidence?

In view of the lengthy recitation, supra, of the evidence considered by the Board, it is obvious that the Board had substantial evidence before it upon which to base its decision.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

Form for Circuit Court for Baltimore County, Assignment Office, County Courts Building, 401 Bay Avenue, P.O. Box 6754, Towson, Maryland 21285-0754. Includes hearing date: MON JUN 18 - 9:30 AM - IN THE MATTER OF STEVEN H. GUDEMAN ET AL. HEARING DATE: WEDNESDAY, JULY 26, 1989 @ 9:30 a.m. ON THE FOLLOWING: APPEALS, 2 hours. Includes contact information for John Adams, Kathleen Adams, and Phyllis Cole.

CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL GENERAL

DOCKET 56 PAGE 111 CASE NO. 89 CG 911 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON THE PROPERTY LOCATED ON THE SOUTH SIDE OF STOCKTON ROAD, SOUTHWEST CORNER CARROLL MILL ROAD, 2200 STOCKTON ROAD, 19th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

STEVEN H. GUDEMAN and BETTY J. GUDEMAN Appellants

THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Protestant

ATTORNEYS

Stephen J. Nolan Douglas L. Burgess Nolan, Plumbhoff & Williams, Suite 1104, Hampton Plaza 300 East Joppa Road (04) 823-7800

Phyllis Cole Friedman Peter Max Zimmerman Rm 304, Co Office Bldg 111 W Chesapeake Ave (4) 817-2188 RHHS'S COUNSEL

- (1) March 17, 1989 - Appellants' STEVEN H. GUDEMAN AND BETTY J. GUDEMAN Notice for Appeal from the Decision/Order of the County Board of Appeals of Baltimore County fd.
- (2) March 20, 1989 - Certificate of Notice fd.
- (3) March 27, 1989 - Appellants' Petition on Appeal fd.
- (4) Apr 17, 1989 - Transcript of Record fd.
- (5) Apr 17, 1989 - Notice of Filing of Record fd. Copy sent.
- (6) Apr 25, 1989 - App of Phyllis Cole Friedman and Peter Max Zimmerman for the Protestant THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY and Same Day Answer to Appellants' Petition on Appeal fd.
- (7) May 1, 1989 - Correspondence fd.
- (8) May 26, 1989 - Appellants' Memorandum of Law fd.
- (9) June 19, 1989 - Correspondence fd.
- (10) July 11, 1989 - Protestant's Memorandum fd.
- July 26, 1989. Hon Barbara Kerr Howe. Hearing had. Disposition held sub curia.
- (11) Feb. 7, 1990 - Opinion and Order of Court that the Decision of the Board of Appeals is Affirmed this Sixth Day of Feb. 1990. fd. (BKH)



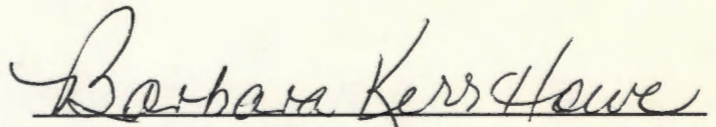
Two questions were presented on appeal: 1) Did the public road create two parcels of land, which can now be considered separate parcels for purpose of density and subdivision? and 2) Was the decision of the County Board of Appeals supported by substantial evidence on the record taken as a whole? The answer to the first question is No, and to the second question is Yes.

The standard for judicial review is to uphold the decision of the Board of Appeals unless it is based on an error of law or if the conclusions are not reasonably based upon the facts proven. The question of law presented here is the legal effect of the separation of a property bisected by a public road. The Board of Appeals stated as a conclusion that the existence of Stockton Road did not in fact create two parcels on this site. This property had always been deeded as an entirety and in fact the appellants acquired it in that fashion. There is no dispute that, ordinarily, and by statute, property of this size may only be allowed two development lots. Nothing in the statute permits roads to be used as density multipliers; there is also nothing in the statutes to allow transfers of density from one parcel to another. Despite this fact, for a number of years the Zoning Commissioner, pursuant to a "policy" has apparently been doing these things. The transfer of density is a zoning function which cannot even be accomplished by amendments to the master plan duly approved by a Planning Commission or Planning Board let alone by unilateral action by a zoning commissioner under the guise of "policy". West Montgomery Association v. MNCP&P Commission, 309 Md.183, 522 A.2d 1328 (1987). The court can find no error of law.

The Board of Appeals has made its own determination on all of the facts of this case and its decision is amply supported by substantial evidence on the record taken as a whole.

This court will not substitute its judgment for that of the Board where the issue is fairly debatable and the record contains substantial evidence supporting the Board decision.

The decision of the Board of Appeals is AFFIRMED this sixth day of February, 1990.

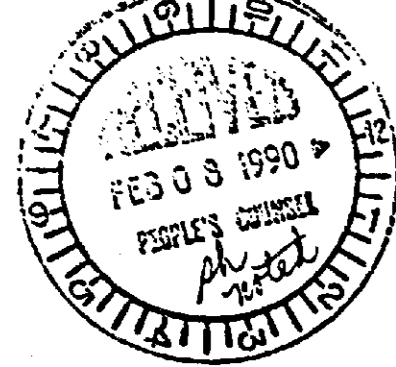
A handwritten signature in cursive script that reads "Barbara Kerr Howe". The signature is written in dark ink and is positioned above a horizontal line.

Barbara Kerr Howe

CC:

Stephen J. Nolan, Esquire

Peter Max Zimmerman, Esquire



IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF STOCKTON ROAD STEVEN H. GUDEMAN AND BETTY J. GUDEMAN APPELLANTS AND THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY 89 CG 911

OPINION AND ORDER

This matter came before the court from a decision of the Board of Appeals of Baltimore County dated February 16, 1989 which reversed the Deputy Zoning Commissioner and found that the existence of a public road did not create two parcels on the land in question and that these land areas must be considered as one R.C. 2 parcel.

Two questions were presented on appeal: 1) Did the public road create two parcels of land, which can now be considered separate parcels for purpose of density and subdivision? and 2) Was the decision of the County Board of Appeals supported by substantial evidence on the record taken as a whole? The answer to the first question is No, and to the second question is Yes.

The standard for judicial review is to uphold the decision of the Board of Appeals unless it is based on an error of law or if the conclusions are not reasonably based upon the facts proven. The question of law presented here is the legal effect of the separation of a property bisected by a public road. The Board of Appeals stated as a conclusion that the existence of Stockton Road did not in fact create two parcels on this site. This property had always been deemed as an entirety and in fact the appellants acquired it in that fashion. There is no dispute that, ordinarily, and by statute, property of this size may only be allowed two development lots. Nothing in the statute permits roads to be used as density multipliers; there is also nothing in the statutes to allow transfers of density from one parcel to another. Despite this fact, for a number of years the Zoning Commissioner, pursuant to a "policy" has apparently been doing these things. The transfer of density is a zoning function which cannot even be accomplished by amendments to the master plan duly approved by a Planning Commission or Planning Board let alone by unilateral action by a zoning commissioner under the guise of "policy". West Montgomery Association v. MNCPEP Commission, 309 Md.183, 522 A.2d 1328 (1987). The court can find no error of law.

The Board of Appeals has made its own determination on all of the facts of this case and its decision is amply supported by substantial evidence on the record taken as a whole.

This court will not substitute its judgment for that of the Board where the issue is fairly debatable and the record contains substantial evidence supporting the Board decision.

The decision of the Board of Appeals is AFFIRMED this sixth day of February, 1990.

Barbara Kerr Howe

Barbara Kerr Howe

CC: Stephen J. Nolan, Esquire Peter Max Zimmerman, Esquire

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF STOCKTON ROAD, SOUTHWEST CORNER OF CAROLL MILL ROAD, 2200 STOCKTON ROAD 10th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT STEVEN H. GUDEMAN, ET UX PETITIONERS-PLAINTIFFS ZONING FILE NO. 88-490-SPH

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW CG Doc. No. 66 Folio No. 111 File No. 89-CG-911

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS FOR BALTIMORE COUNTY TO THE HONORABLE, THE JUDGE OF SAID COURT: And now comes William T. Hackett, Henry H. Lewis and Lynn B. Moreland, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Board of Appeals of Baltimore County:

- April 6, 1988 Petition of Mr. and Mrs. Steven H. Gudeman for a special hearing to approve the realignment of the two parcels which comprise the subject property and to approve the transfer of density, with no increase in overall density permitted.
- June 2 Publication in newspaper - filed
- June 9 Publication in newspaper - filed
- May 31 Certificate of Posting of property - filed
- June 1 Comments of Baltimore County Zoning Plans Advisory Committee - filed.
- June 20 Hearing held on Petition at 9:00 a.m. by Deputy Zoning Commissioner.

Steven H. Gudeman, et ux, Case No. 89-CG-911  
July 28, 1988 Order of the Deputy Zoning Commissioner that the Petition for Special hearing to approve the realignment of the two parcels which comprise the subject property and to approve the transfer of density, with no increase in overall density permitted be GRANTED with restrictions.  
August 22 Notice of Appeal received from Phyllis Cole Friedman and Peter Max Zimmerman, People's Counsel for Baltimore County.  
February 1, 1989 Hearing on appeal before the Board of Appeals.  
February 16 Order of the Board ordering that the Petition for Special Hearing be DENIED.  
March 17 Order for Appeal filed in the Circuit Court for Baltimore County by Stephen J. Nolan, Esq., on behalf of Plaintiffs.  
March 27 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County.  
March 28 Certificate of Notice sent to all interested parties.  
April 17 Transcript of Testimony filed.  
Petitioner's Exhibit No. 1 - Plat dated August 16, 1988.  
2 - Photogrammetric Map  
3 - Zoning Map  
4 - Robert E. Carney, Jr. letter  
5 - Title Deed Price/Price  
6 - Plat dated August 24, 1987  
7 - Deed to road dated August 30, 1899  
8 - Plat to accompany 1899 Deed  
9 - Two photos  
10 - Two photos  
11 - Balto. Co. Policy Manual Sheets -3  
12 - Three photos  
13 - Tax Map No. 35  
14 - Tax Map No. 43  
15 - Tax Map No. 34  
16 - Front page of Policy Manual (9/85)

Steven H. Gudeman, et ux, Case No. 89-CG-911  
Petitioner's Exhibit No. 17 - A, B, C, and D - Copies of Zoning Commissioner's Findings re: transfer of density cases  
People's Counsel's Exhibit No. 1 - Deed and accompanying plat Price/Price dated February 22, 1974  
2 - Quit Claim Deed  
3 - Deed of entire property dated August 31, 1987  
4 - Soil Survey  
5 - County Board of Appeals Opinion dated April 22, 1985 (Case No. 86-8-SPH)  
6 - Resume of Wallace S. Lippincott, Jr., M.S.  
7 - Memo to the Zoning Commissioner from P. David Fields dated June 9, 1988  
April 17 Record of proceedings filed in the Circuit Court for Baltimore County.  
Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted, Linda Lee M. Kuzmaul, Linda Lee M. Kuzmaul, County Board of Appeals of Baltimore County

cc: Stephen J. Nolan, Esquire Mr. and Mrs. Steven H. Gudeman Phyllis C. Friedman, Esquire

LAW OFFICES NOLAN, PLUMHOFF & WILLIAMS CHARTERED SUITE 1105, HAMPTON PLAZA 300 EAST JONNA ROAD TOWSON, MARYLAND 21204-3095 DOV 823-7800 TELEFAX 800 298-2765  
J. EARLE PLUMHOFF 1930-1989 JAMES D. NOLAN (RETIRED 1980) OF COUNSEL RALPH E. DEITZ 9028 LIBERTY ROAD RANDALLSTOWN, MARYLAND 21133 301 922-2121  
March 24, 1989  
Ms. Linda Lee M. Kuzmaul Legal Secretary County Board of Appeals of Baltimore County County Office Building, Room 315 111 W. Chesapeake Avenue Towson, MD 21204  
RE: 88-490-SPH Appellants: Steven H. Gudeman, Et ux  
Dear Ms. Kuzmaul: Thank you for your letter dated March 20, 1989 together with the Certificate of Notice which was attached thereto. The purpose of this letter is to assure your office and the court reporter that we will promptly reimburse your office and the court reporter for all transcript costs and copy costs associated with the preparation of the transcript and the record in the above-captioned appeal. If your court reporter, Ms. Carolyn Peatt, determines that more than thirty (30) days will be necessary in order to submit the transcript and the record from the Board Hearing to the Circuit Court, please advise Doug Burgess of my office at 823-7800 in order that we can move for additional time at the Circuit Court level. Thank you for your assistance in this matter. Very truly yours, Stephen J. Nolan, Stephen J. Nolan  
cc: Douglas L. Burgess, Esquire Mr. and Mrs. Steven H. Gudeman  
92 MAR 28 1990 RECEIVED COUNTY BOARD OF APPEALS

**PETITION FOR SPECIAL HEARING**  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **88-490-SPH**

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 the realignment of the two parcels which comprise the subject property.

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.

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

Contract Purchaser: Stephen H. Gudeman  
(Type or Print Name)  
Signature: [Signature]  
Address: 2200 Stockton Road  
City and State: Phoenix, MD 21131

Legal Owner(s): Stephen H. Gudeman  
(Type or Print Name)  
Signature: [Signature]  
Address: 300 E. Joppa Road, Suite 1105  
City and State: Towson, Maryland 21204

Attorney for Petitioner: Stephen J. Nolan  
(Type or Print Name)  
Signature: [Signature]  
Address: 300 E. Joppa Road, Towson, MD 21204  
City and State: Towson, Maryland 21204  
Attorney's Telephone No.: 823-7800

ORDERED BY The Zoning Commissioner of Baltimore County, this 6th day of APRIL, 1988, that the subject matter of this petition be advertised, as required 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 30th day of JUNE, 1988, at 9 o'clock A.M.

J. Robert Hince  
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING: 1 1/2 HRS.  
AVAILABLE FOR HEARING: ALL MON. TUES. WED. - NEXT TWO MONTHS  
REVISABLE BY: [Signature] DATE: 3-1-88

**GERHOLD, CROSS & ETZEL**  
Registered Professional Land Surveyors  
412 DELAWARE AVENUE  
TOWSON, MARYLAND 21204  
823-4470

**Zoning Description**  
All that piece or parcel of land situate, lying and being in the Tenth Election District of Baltimore County, State of Maryland and described as follows to wit:  
Beginning for the same at the intersection of the center line of Stockton Road and the centerline of Carroll Mill Road and running thence and binding in or near the center of Stockton Road, the two following courses and distances viz: North 69 degrees 21 minutes 21 seconds West 649.61 feet and North 74 degrees 21 minutes 45 seconds West 238.32 feet, thence running the six following courses and distances viz: North 69 degrees 13 seconds West 1150 feet, South 66 degrees 00 minutes 40 minutes East 148.95 feet, South 67 degrees 25 seconds East 21 degrees 30 seconds North 823 feet, North 80 degrees 00 seconds East 557.23 feet and North 9 degrees 54 minutes 00 seconds East 957.97 feet to the center of Stockton Road and thence binding in the center of Stockton Road, North 64 degrees 40 minutes 10 seconds West 21.40 feet to the place of beginning.  
Containing 44.75 Acres of land more or less.



IN RE: PETITION FOR SPECIAL HEARING  
S/S Stockton Road, SW/Corner  
Carroll Mill Road  
(2200 Stockton Road)  
10th Election District  
3rd Councilmanic District  
Steven H. Gudeman, et ux  
Petitioners

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
The Petitioners herein request a special hearing to approve the realignment of two parcels of land, identified as Parcels A and B, which will require a reconfiguration of the density with no increase in the overall density permitted, as more particularly described on Petitioner's Exhibit 1.  
The Petitioners appeared, testified and were represented by Stephen J. Nolan, Esquire. Also appearing on behalf of the Petition were David Ransone, a Property Line Surveyor with Gerhold, Cross & Etzel, and Hugh E. Gelston, a realtor and real estate appraisal expert. Louis F. Ensor, manager for the adjoining property owner, John M. Fox; and Mr. Wallace S. Lippincott, Jr. of the Baltimore County Office of Planning, appeared not as Protestants, but as parties in interest. There were no Protestants.  
Testimony indicated that the subject property, zoned R.C. 2, consists of two parcels identified as Parcels A and B on Petitioner's Exhibit 1. Parcel A contains 2.33 Acres, plus or minus, and is permitted two density units under the R.C.2 regulations. Parcel B consists of 42.42 Acres, plus or minus, and is also permitted two density units under the R.C.2 regulations. Mr. Gudeman testified that he would like to realign the two parcels so that all four density units would be clustered on Parcel B. He testified that he is a developer and was the developer of the adjoining property known as the Stockton Woods subdivision. He testified that he has been a developer for 25 years. It is his position that the reconfiguration of the two parcels in question and the clustering of the density units would be in keeping with the spirit and intent of the R.C. 2 regulations. Petitioner contends their proposal will promote the conservation of land.  
Mr. Gudeman testified that it was his intention, due to the unique characteristics of Parcel A, including, but not limited to, the grading of the property and its location close to Stockton Road, to merge the acreage in Parcel A with the adjacent property known as Lot 1 of Stockton Woods, for their private residence. He further testified that if the clustering of the density units from Parcel A to Parcel B was permitted, appropriate documentation would be filed in the Land Records of Baltimore County to insure that the additional acreage added to Lot 1 would not be used with the present acreage of Lot 1 in the calculation of density units for Lot 1. Mr. Gudeman testified that at the present time, he intends to divide off less than six acres from Parcel B. Three residences would be built and marketed for sale. He indicated that the remaining 46 acres, plus or minus, would continue to be leased for farming. He testified that there would be no further subdivision of Lots 1, 2 and 3. The remaining acreage would permit development of one additional density unit in the future.  
Mr. Gelston testified that he has been in the real estate brokerage and appraisal business for approximately 60 years. He testified that he is very familiar with the property as his home for the past 30 years is approximately two city blocks away. Mr. Gelston testified that in his

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By: [Signature]

**ORDER RECEIVED FOR FILING**  
Date: 3/28/88  
By: [Signature]

in keeping with the spirit and intent of the R.C. regulations and encourage agricultural use. He indicated further that in his professional opinion, the realignment of Parcels A and B and the clustering of the density units on Parcel B would have no adverse impact on the health, safety and/or welfare of the general community or upon property values.  
Mr. Ensor, manager of the adjoining farm owned by John M. Fox, testified that he was concerned that Petitioners' request would result in the loss of existing valuable screening between the properties which provides protection for crops on the Fox farm. He further indicated that Mr. Fox was concerned about dogs from the adjoining residences running loose and damaging the crops. After a discussion between Mr. Gudeman and Mr. Ensor, it was agreed that there would be no clearing of trees or bushes in the existing hedgerow along the eastern property line between the Fox property and the subject property, and that there would be restrictive covenants filed in the Land Records for Baltimore County indicating that each residence would be permitted to have no more than one dog.  
Mr. Lippincott appeared to express the concerns of the Planning office as set forth in their comments. He further indicated that Planning was concerned about the loss of the natural hedge along the subject property which is clearly depicted in Petitioner's Exhibit 7. The Petitioner agreed to preserve the large trees along the eastern property line as shown in Petitioner's Exhibit 1.  
As requested, the Petitioner submitted a revised site plan dated June 20, 1988 which designates the actual acreage proposed for Lots 1, 2 and 3. Said plan shall be incorporated into the file and is identified as Petitioner's Exhibit A.

ORDER RECEIVED FOR FILING  
Date: 3/28/88  
By: [Signature]

The Petitioner through Counsel argued that the relief requested is appropriate after a special hearing pursuant to Policy RSD-7. He further argued that the testimony presented clearly shows that the relief, if granted, would not result in detriment to the community, is consistent with the legislative intent of the R.C. 2 regulations and would encourage the continued agricultural use of the majority of the property.  
Based upon the testimony and evidence presented, the relief requested in the special hearing should be granted, subject to the restrictions set forth hereinafter. It is clear from the testimony that if the request is granted, it would not be contrary to the spirit of the B.C.Z.R. and would not be detrimental to the public health, safety and general welfare.  
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.  
THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of July, 1988 that the Petition for Special Hearing to approve the realignment of two parcels of land, identified as Parcels A and B, which will require a reconfiguration of the density with no increase in the overall density permitted, in accordance with Petitioner's Exhibit A, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:  
1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.  
2) There will be no clearing of trees or bushes from the existing hedgerow along the eastern property line between the Fox property and the subject property.  
3) Within forty-five (45) days of the date of this Order, Petitioners shall file the appropriate deeds and/or restrictive covenants evidencing the following:  
a) That Lots 1, 2 and 3, as shown on Petitioner's Exhibit A, shall be subject to no further subdivision;  
b) That Parcel A, which consists of 2.33 Acres, plus or minus, shall be merged with Lot 1 of Stockton Woods, and, for the purposes of calculating the density units, shall at all times from this day forward and forever, be considered as having no density units;  
c) That following the removal of Lots 1, 2 and 3 from Parcel B, the remaining 36.72 acres, plus or minus, shall be considered to have no more than one density unit and shall not be resubdivided for a period of twenty (20) years, even if a zoning change would occur in the interim which would permit further subdivision;  
d) That there shall be no more than one (1) dog permitted per lot on Parcel B.

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Date: 3/28/88  
By: [Signature]

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Date: 3/28/88  
By: [Signature]

**STEVEN H. GUDEMAN, ET UX**  
S/S Stockton Road, SW/Corner Carroll Mill Road (2200 Stockton Road)  
10th E; 3rd C

SPH - to approve the realignment of the two parcels which comprise the subject property as shown on accompanying plat & approve transfer of density, with no increase in overall density permitted.

April 6, 1988 Petition for Special Hearing to approve the realignment of two parcels which comprise the subject property and to approve the transfer of density, with no increase in overall density permitted.  
July 28 Order of D.Z.C. that Petition for Special Hearing be GRANTED with restrictions.  
August 22 Order for Appeal to C.B. of A. from Phyllis C. Friedman, Esq., People's Counsel for Baltimore County.  
February 1, 1989 Hearing before Board.  
February 16 Order of Board that Petition for Special Hearing be DENIED.  
March 17 Order for Appeal filed in CCT, BCO by Stephen J. Nolan, Esq., on behalf of Plaintiffs.  
March 20 Certificate of Notice sent.  
March 27 Petition to accompany appeal filed.  
April 17 Transcript of testimony filed.  
February 6, 1990 Order of the Circuit Court AFFIRMING C.B. of A. (Barbara Kerr Howe)  
March 6 Order for Appeal to Court of Special Appeals by Stephen J. Nolan, Esquire on behalf of Mr. Gudeman.  
January 22, 1991 Order of the Court of Special Appeals AFFIRMING CCT which AFFIRMED C.B. of A.

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
S/S Stockton Rd., SW Corner  
Carroll Mill Rd., 10th Election : OF BALTIMORE COUNTY  
District; 3rd Councilmanic  
District :  
STEVEN H. GUDEMAN, et ux, : Case No. 88-490-SPH  
Petitioners

NOTICE OF APPEAL

Please note an appeal from the decision of the Deputy Zoning Commissioner in the above-captioned matter, under date of July 28, 1988, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 304, County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 19th day of August, 1988, a copy of the foregoing Notice of Appeal was mailed to Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Suite 1105, Hampton Plaza, 300 E. Joppa Rd., Towson, MD 21204; Mr. Louis F. Enzor, 2315 Stockton Rd., Phoenix, MD 21131; and Mr. Wallace S. Lippincott, Jr., Office of Planning, Courts Building, Towson, MD 21204.

RECEIVED ZONING OFFICE  
DATE 8-23-88

*Peter Max Zimmerman*  
Peter Max Zimmerman

IN THE MATTER OF : BEFORE  
THE APPLICATION OF : COUNTY BOARD OF APPEALS  
STEVEN H. GUDEMAN, ET UX :  
FOR A PETITION FOR SPECIAL : OF  
HEARING ON THE PROPERTY LOCATED : BALTIMORE COUNTY  
ON THE SOUTH SIDE OF STOCKTON :  
ROAD, SOUTH WEST CORNER CARROLL :  
MILL ROAD, 2200 STOCKTON ROAD : CASE NO.: 88-490-SPH  
10th ELECTION DISTRICT :  
3rd COUNCILMANIC DISTRICT :

OPINION

This case comes before the Board on appeal from an Order of the Deputy Zoning Commissioner granting the Petition for a Special Hearing to approve the transfer of density on the subject site. The case was heard this day in its entirety.

The Petitioner presented as his first witness David Ransome, a land surveyor. He testified that he prepared the plat for the original Hearing and the plat with the most recent revisions entered as Petitioner's Exhibit No. 1 in this Hearing. He testified that the property is classified RC 2 and RC 4. He further described the development that has occurred in the general area i.e. Stockton Woods, Hickory Hill, Brookfield and Coopersfield. On cross-examination, he testified that as far as the deed indicates this is just one parcel. It was his contention that the creation of Stockton Road bisecting the property separated this as two parcels each with a permitted density of two residential units. The Petitioner next presented Steven Piper, a local farmer, who testified that he farms a total of 2,160 acres in this area and that he has leased this site to farm in 1988. It was his testimony that the density transfer proposed will keep the farm area in one parcel and would be proper. Robert E. Carney, an attorney who works as a Title Examiner, testified as to the deed searches he had conducted. He especially noted the August 15, 1899 deed which conveyed to the County

Case No. 88-490-SPH  
Steven H. Gudeman, et ux

the road bed that crosses one corner of the parcel. Steven Gudeman, the property owner and a real estate developer, testified as to his reasons for requesting the density transfer. He testified that placing the lots on the east side of the property gave them accessibility and pledged that no further building would be permitted on what he designates as parcel A. He further stated that if the density transfer is permitted, his intentions are to merge Parcel A with his own property shown as Lot No. 1, to erect three residences for sale on what he designates as Parcel B, with the remainder of Parcel B to have no further residential development. Hugh Gelston, a real estate appraiser and broker, testified in favor of the proposal, noting the gradual increase in development in this mostly farm land area and stated that, in his opinion, to allow the development of the three lots will protect the farming operation on the remainder of the site. This completed Petitioner's case.

People's Counsel, who took the appeal in this case, presented as their first witness Paul Solomon, Administrative Director, Baltimore County Resource Conservationist and testified that he was involved in the design of the RC zones in 1976 and in the amendments to those zones in 1979. It was his opinion that RC 2 zoning was the proper zoning for this property and that it contained all the requirements for prime farm land. It was his further testimony that in the RC 2 zoning no consideration was afforded County roads that may bisect a parcel. It was his firm opinion that in the preservation of the RC 2 zones only two density units should be permitted on this site. Wallace Lippincott, a land planner for Baltimore County, testified that he was involved in the 1988 comprehensive map process in this area and that the RC 2 zoning was correct and that in his opinion the existence of the 70 foot road does not create separate parcels on the site.

Case No. 88-490-SPH  
Steven H. Gudeman, et ux

The Board in no way intends this brief summation to indicate the total testimony received in this case but will let the record produced speak for itself.

After a review and consideration of all the testimony and evidence presented and especially a study of the Exhibits presented, the Board is of the opinion that the site containing some 44.785 acres is an entity in itself. The existence of Stockton Road created in 1899 does not in fact create two parcels on this site. The Deed and the survey clearly show one parcel that contains 44.785 acres and in which Stockton Road is incidental, and its existence known to the purchaser at the time of sale. The Board can find no basis that would allow the separation of this site into Parcel A and Parcel B. It is therefore, the opinion of this Board that Mr. Gudeman does not have two density units as he claims on Parcel A and, therefore, has no density units to transfer. It is the opinion of this Board that the property as purchased contains 44.785 acres, is one parcel and one entity and, therefore, may be afforded only its allowed two density units.

ORDER

It is therefore, this 16th day of February, 1989, by the Baltimore County Board of Appeals ORDERED THAT THE Petition for Special Hearing to allow the transfer of the density units as proposed be and the same is hereby denied.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

*William T. Hackett*  
William T. Hackett, Chairman

*Henry H. Lewis*  
Henry H. Lewis  
*Lynn B. Morland*  
Lynn B. Morland

IN THE MATTER OF THE APPLICATION : IN THE CIRCUIT COURT  
OF STEVEN H. GUDEMAN, ET UX FOR : FOR BALTIMORE COUNTY  
A PETITION FOR SPECIAL HEARING :  
ON THE PROPERTY LOCATED ON THE : AT LAW  
SOUTH SIDE OF STOCKTON ROAD, :  
SOUTHWEST CORNER OF STOCKTON : Appeal from the County  
ROAD, 10th ELECTION DISTRICT : Board of Appeals  
3rd COUNCILMANIC DISTRICT : Case No. 89-CG-911  
STEVEN H. GUDEMAN, ET UX :  
PETITIONERS-PLAINTIFFS :  
ZONING FILE NO. 88-490-SPH :

ANSWER TO APPELLANTS' PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellee herein, answers the Appellants' Petition on Appeal heretofore filed by the Appellant, viz:

1. That the Appellee admits the allegations made and contained in Paragraph No. 1 of said Petition.
2. That the Appellee denies the allegations made and contained in Paragraph No. 2 A., B., C., D., and E. of said Petition.
3. That the decision of the County Board of Appeals was proper and justified by the evidence before it and that the decision of the Board should therefore be sustained as being properly and legally made.

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

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 304, County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204  
(301) 887-2188

69 APR 25 PM 11:53  
BALTIMORE COUNTY CLERK

CERTIFICATE OF SERVICE

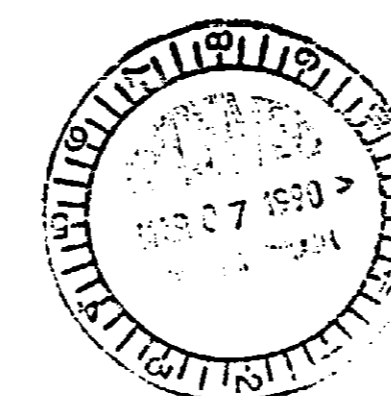
I HEREBY CERTIFY that on this 24th day of April, 1989, a copy of the foregoing Answer to Appellants' Petition on Appeal was delivered to the Administrative Secretary, County Board of Appeals of Baltimore County, Room 315, County Office Bldg., 111 W. Chesapeake Ave., Towson, MD 21204; and a copy was mailed to Stephen J. Nolan, Esquire, and Douglas L. Burgess, Esquire, Nolan, Plumhoff & Williams, Chtd., Suite 1105, Hampton Plaza, 300 E. Joppa Rd., Towson, MD 21204-3095.

*Peter Max Zimmerman*  
Peter Max Zimmerman

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH OF STOCKTON ROAD, SOUTHWEST CORNER CARROLL MILL ROAD, 2200 STOCKTON ROAD, 10th ELECTION DISTRICT, 3rd COUNCILMANIC DISTRICT \* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY \*  
STEVEN H. GUDEMAN \*  
and \*  
BETTY J. GUDEMAN \* CASE NO.: 89CG911 \*  
Appellants \*

NOTICE OF APPEAL

STEVEN H. GUDEMAN and BETTY J. GUDEMAN, Appellants, hereby notice an appeal from the final judgment entered in this action on February 6, 1990.



*Stephen J. Nolan*  
STEPHEN J. NOLAN  
Nolan, Plumhoff & Williams, Chtd  
Suite 700, Court Towers  
210 West Pennsylvania Avenue  
Towson, Maryland 21204  
(301) 823-7800  
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 1990, a copy of the foregoing Notice of Appeal was mailed, postage

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

LAW OFFICES  
NOLAN, PLUMHOFF & WILLIAMS  
CHARTERED  
SUITE 700, COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5340  
(301) 823-7800  
TELEFAX: (301) 823-7808  
March 6, 1990

HAND DELIVERY

Suzanne Menseh, Clerk  
Circuit Court for Baltimore County  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

Re: Steven H. Gudeman, et ux  
Case No.: 89 CG 911  
Notice of Appeal to Court  
of Special Appeals of Maryland

Dear Ms. Menseh:

Enclosed please find a check in the amount of Fifty (\$50.00) Dollars made payable to the Court of Special Appeals for filing a Notice of Appeal in the above-referenced case.

Thank you for your attention to this matter.

Very truly yours,

Stephen J. Nolan

SJN/mao

Enclosures

CC: Phyllis Cole Friedman, Esquire  
Peter M. Zimmerman  
People's Counsel for Baltimore County

Honorable Ann M. Nastarowicz  
Deputy Zoning Commissioner for  
Baltimore County

Mr. P. David Fields, Director  
Baltimore County Office of Planning and Zoning

Arnold Jablon, Esquire  
County Attorney

Mr. and Mrs. Steven H. Gudeman

prepaid to: Phyllis Cole Friedman, Esquire, Peter M. Zimmerman, People's Counsel for Baltimore County, County Office Building, Towson, Maryland 21204; Honorable Ann M. Nastarowicz, Deputy Zoning Commissioner for Baltimore County, County Office Building, Towson, Maryland 21204; Mr. P. David Fields, Director, Baltimore County Office of Planning and Zoning, County Courts Building, Towson, Maryland 21204 and Arnold Jablon, Esquire, County Attorney, Court House, Towson, Maryland 21204.

*Stephen J. Nolan*  
STEPHEN J. NOLAN

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON THE SOUTH SIDE LOCATED ON THE PROPERTY OF STOCKTON ROAD, SOUTHWEST CORNER CARROLL MILL ROAD, 2200 STOCKTON ROAD, 10th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

STEVEN H. GUDEMAN and BETTY J. GUDEMAN Appellants

ORDER FOR APPEAL

STEVEN H. GUDEMAN and BETTY J. GUDEMAN, whose address is 2200 Stockton Road, Phoenix, Maryland 21131, Appellants, by their attorneys, Stephen J. Nolan, Douglas L. Burgess and Nolan, Plumhoff and Williams, Chartered, hereby note an appeal from the Opinion and Order of the County Board of Appeals of Baltimore County dated February 16, 1989, a copy of which is attached hereto and marked "Appellant's Exhibit A."

Stephen J. Nolan, STEPHEN J. NOLAN

LAW OFFICES NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

27-C-113 LI 11/11/89

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED SOUTH SIDE OF STOCKTON ROAD, SOUTHWEST CORNER CARROLL MILL ROAD, 2200 STOCKTON ROAD, 10th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 66 Folio No. 111 File No. 89-CG-911

CERTIFICATE OF NOTICE

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Henry H. Lewis and Lynn B. Moreland, 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, Mr. and Mrs. Steven H. Gudeman, 2200 Stockton Road, Phoenix, Maryland 21131, Petitioners; Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 1105, Hampton Plaza, 300 E. Joppa Road, Towson, Maryland 21204, Counsel for Petitioners; and Phyllis C. Friedman, People's Counsel for Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda Lee M. Kuszmaul, Linda Lee M. Kuszmaul, County Board of Appeals of Baltimore County, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 (301) 887-3180

MICROFILMED

Steven H. Gudeman, et ux Case No. 89-CG-911 Case No. 88-490-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Mr. and Mrs. Steven H. Gudeman, 2200 Stockton Road, Phoenix, Maryland 21131, Petitioners; Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 1105, Hampton Plaza, 300 E. Joppa Road, Towson, Maryland 21204, Counsel for Petitioners; and Phyllis C. Friedman, People's Counsel for Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, on this 20th day of March, 1989.

Linda Lee M. Kuszmaul, Linda Lee M. Kuszmaul, County Board of Appeals of Baltimore County

MICROFILMED

Baltimore County Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204 494-3554



Dennis F. Rasmussen County Executive

May 6, 1988

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

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

Very truly yours,

Stephen E. Weber, P.E., Assistant Traffic Engineer

SEW/RF/pml-b

MICROFILMED

RECEIVED MAY 11 1988 ZONING OFFICE

88-490-SPH

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 6th day of April, 1988.

Received by: James E. Dyer, Chairman, Zoning Plans Advisory Committee

GERHOLD, CROSS & ETZEL Registered Professional Land Surveyors 412 DELAWARE AVENUE TOWSON, MARYLAND 21204 823-4470

March 14, 1988

Zoning Description

All that piece or parcel of land situate, lying and being in the Tenth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at the intersection of the center line of Stockton Road and the centerline of Carroll Mill Road and running thence and binding in or near the center of Stockton Road, the two following courses and distances viz: North 69 degrees 55 minutes 21 seconds West 649.61 feet and North 70 degrees 21 minutes 45 seconds West 238.32 feet, thence running the six following courses and distances viz: North 69 degrees 57 minutes 43 seconds West 639 feet, South 21 degrees 40 minutes 13 seconds West 1150 feet, South 66 degrees 06 minutes 30 seconds East 448.95 feet, South 67 degrees 29 minutes 00 seconds East 825 feet, North 80 degrees 47 minutes 25 seconds East 557.23 feet and North 9 degrees 54 minutes 00 seconds East 957.97 feet to the center of Stockton Road and thence binding in the center of Stockton Road, North 64 degrees 40 minutes 10 seconds West 21.40 feet to the place of beginning.

Containing 44.75 Acres of land more or less.

MICROFILMED



D. M. ...

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

March 20, 1989

Stephen J. Nolan, Esquire Nolan, Plumhoff & Williams, Chtd. Suite 1105, Hampton Plaza 300 E. Joppa Road Towson, Maryland 21204

Re: Case No. 88-490-SPH (Steven H. Gudeman, et ux)

Dear Mr. Nolan:

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

The cost of the transcript of the record must be paid by you. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

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

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M. Kuszmaul, Linda Lee M. Kuszmaul, Legal Secretary

Encl. cci: Mr. and Mrs. Steven H. Gudeman

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

March 20, 1989

Phyllis C. Friedman, Esquire People's Counsel for Baltimore County County Office Building 111 W. Chesapeake Avenue, Room 304 Towson, Maryland 21204

Re: Case No. 88-490-SPH Steven H. Gudeman, et ux

Dear Ms. Friedman:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuszmaul, Linda Lee M. Kuszmaul, Legal Secretary

cc: Mr. Hugh E. Getston, Mr. Louis F. Ensor, Wallace S. Lippincott, Jr., P. David Fields, Pat Keller, J. Robert Haines, Ann M. Nastarowicz, James E. Dyer, Docket Clerk - Zoning, Arnold S. Jablon, Esquire

MICROFILMED

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

4/1/88 Date

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

Zoning Item # 343, Zoning Advisory Committee Meeting of April 5, 1988 Property Owner: Steven H. Gudeman, et ux Location: 22 Stockton Rd, SW Carroll Mill Rd District 10 Water Supply private Sewage Disposal private

- COMMENTS ARE AS FOLLOWS: ( ) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval. ( ) Prior to new installation/s of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 494-3775, to obtain requirements for such installation/s before work begins. ( ) A permit to construct from the Bureau of Air Quality Management is required for such items as spray paint processes, underground gasoline storage tanks (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere. ( ) A permit to construct from the Bureau of Air Quality Management is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more. ( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval. ( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, sauna, whirlpools, hot tubs, water and sewerage facilities or other amusements pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Recreational Systems Section, Bureau of Regional Community Services, 494-3811. ( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health. ( ) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment. ( ) Prior to raising of existing structure/s, petitioner must contact the Division of Waste Management at 494-3788, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 494-3775. ( ) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 494-3788. ( ) Soil percolation tests, have been conducted. ( ) The results are valid until ( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required. ( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled. ( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test ( ) shall be valid until ( ) is not acceptable and must be repeated. This must be accomplished prior to conveyance of property and approval of Building Permit Applications. ( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples. ( ) If submission of plans to the County Review Group is required, a hydrogeological study and an Environmental Effects Report must be submitted. ( ) Others

Karen M. Sherry

BUREAU OF WATER QUALITY AND RESOURCE MANAGEMENT





Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21284  
494-3353

J. Robert Haines  
Zoning Commissioner

Mr. Daniel M. Twomey  
Hessey & Hessey  
1311 Fidelity Building  
Charles and Lexington Streets  
Baltimore, MD 21201

June 9, 1988



Dennis F. Rasmussen  
County Executive

RE: Gentry Lane Property  
CRG #88061  
Meeting 5/20/88  
North end of Gentry Lane,  
North Lakeview Road  
District 9c4

Dear Mr. Twomey:

Thank you for your letter of May 20, 1988 to J. Robert Haines, Zoning Commissioner, which has been referred to me for reply. You have requested a "final determination" by this office that (I'll change your words for clarity) a subdivision tract comprising of D.R.-1 zoning, 6.88 acres and D.R.-3.5 zoning, 2.91 acres may be treated as one single tract for the purposes of clustering 11 lots on the D.R.-1 portion of the subdivision tract.

You have also used the phrase "final determination" which may indicate that you have received other determinations from this office. I have received at least two inquiries, and I believe at least one of which from yourself, concerning the application of D.R. density to subject property. I apologize for my non-final answers of determinations by myself or anyone else in this office and I hope to clarify the position of the Zoning Commissioner and this office since September 19, 1970 when D.R. zoning was effective (Bill #100).

First, the Zoning Commissioner's decision, as has been the decision of this office, is that within this "subdivision tract" density may accrue from one D.R. zone to another D.R. zone permitting 11 lots on 6.88 acres of D.R.-1 zoned land. The total number of lots permitted after calculation may be distributed over the entire property without further regard to zone boundaries.

Mr. Daniel M. Twomey  
June 9, 1988  
Page 2

I will attempt to clarify the position of the Baltimore County Office of Zoning concerning D.R. zoning regulations with regard to density accruing or accumulating within a subdivision tract since September 19, 1970 when D.R. zoning was established.

In Section 1801.2.A.1 (B.C.Z.R.) which establishes density zoning, the use of the term "single tract" is predicated by the use of the term "subdivision tract". The intention of the B.C.Z.R. is that D.R. zones contiguous within a subdivision tract can accrue density from one D.R. zone to another.

Briefly, a "subdivision tract" is viewed from a zoning standpoint as a defined peripheral, parcels, lots or smaller tracts, that have been more ownerships, parcels, lots or smaller tracts, that have been assembled and submitted to the County for consideration of subdivision or development as a whole. All lots, parcels or tracts that make up the subdivision tract must be contiguous.

The following four sections of the Baltimore County D.R. zoning regulations are applicable to the question being raised and they provide clear insight into the intent of the regulations:

1. Section 1801.3.B.1  
"1. Purpose. Pursuant to the regulations for D.R. zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted on the remainder of the tract may be subdivided for development at lessening the permitted density of development on the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density which the remainder of the tract may be developed. (See Paragraph 1801.2.A.). It is the purpose of this paragraph to assure that those factors will be identified in the sale of any portion of the tract in a D.R. zone, and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations."

2. Section 1801.3.B.2  
"2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under subparagraph 1802.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zone(s)."

Ann M. Nastarowicz  
Deputy Zoning Commissioner  
June 22, 1988  
Page 2

zoning decision, Mr. Gudeman is also committing to install a three board fence to be constructed from Stockton Road southerly along the east property line to where the hedge row begins to further separate and designate the agricultural use from the residential use.

I trust that this supplemental information addresses those points which you raised at the close of the hearing. Thanking you for your kind consideration of this matter, I am

Very truly yours,  
*Stephen J. Nolan*  
Stephen J. Nolan

SJN/emd

cc: Phyllis Cole Friedman, Esquire  
People's Counsel for Baltimore County

Mr. Wallace Lippincott  
Office of Planning and Zoning

Steven H. Gudeman  
Mr. David E. Ransone

LEAD OFFICES  
NOLAN, PLIMMER & WILLIAMS  
ATTORNEYS  
1000 N. HAMPTON PLACE  
SUITE 100 EAST JOPPA ROAD  
TOWSON, MARYLAND 21284-2002  
TELEPHONE 494-3353  
FAX 494-3354

OF COUNSEL  
RALPH B. DEITZ  
9026 LIBERTY ROAD  
PANDORF, MARYLAND 21133  
(301) 922-2121

June 22, 1988

HAND DELIVERY

Ann M. Nastarowicz  
Deputy Zoning Commissioner  
County Office Building  
First Floor  
Towson, Maryland 21204

Re: Case No. 88-490-SPH  
Gudeman Property  
Stockton Road

Dear Commissioner Nastarowicz:

At the hearing on Monday, June 20, 1988, you requested that we submit some additional information concerning our Petition for Special Hearing.

Therefore, I am enclosing herewith three (3) revised plats which now show the approximate acreage of lots 1, 2 and 3. A copy of that plat and a copy of this letter are also being forwarded to the Office of People's Counsel.

Additionally, my clients have authorized me to represent that they intend to record restrictive covenants which shall provide, inter alia, the following:

1. After the date of the Deputy Zoning Commissioner's Order, there shall be no further subdivision of lots 1, 2, 3, parcel A and parcel B;
2. There shall be no clearing of trees or brush to the existing hedge row along the eastern property line between the Fox property and the subject property;
3. The restrictive covenants shall also provide that there shall only be one dog permitted per lot.

Mr. Gudeman plans to meet with Mr. Lou Ensor, the farm manager for Mr. Fox, to discuss trimming of some of the taller trees along the subject hedge row. Subject to a favorable

Mr. Daniel M. Twomey  
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"...It is the intent of these Zoning Regulations to prohibit subdivision or re-subdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zone(s) for the entire tract. (Bill No. 100, 1970)"

3. Section 1801.2.A.1  
"1. Application of Maximum Density Standards to Tract in One Zone. The maximum gross residential density permitted in any one D.R. zone shall control only as applied to the total gross residential acreage within a subdivision tract, and shall not apply to or establish minimum areas of lots created by subdivision within such tract. (Bill No. 100, 1970)"

4. Section 1801.2.A.2  
"2. Application to Tract Divided by Zone Boundary. Wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Section 1802.2 in the zone within which the portion lies and totaling the results, shall be permitted without further regard to the zone boundary, and the units may be distributed over the tract as though it were in a single zone. (Bill No. 100, 1970)"

This office reviews approximately 300 subdivision plans a year, including over 200 C.R.G. plans, over 50% of which would include the application of this density zoning. Since September 19, 1970 this office has been consistent in its application of these standards.

Prior to 1970 and "density zoning" Baltimore County's Residential zoning was "structured". Each separate zone had its regulated density and bulk controls that were very "zone specific" and inflexible. To disapprove the accruing of density across zone lines would be turning the clock back 18 years in Baltimore County.

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However, if you would disagree with this interpretation and application of D.R. density, you or any other interested person or organization have the right to file a petition for a special hearing for reconsideration before the Zoning Commissioner pursuant to S.500.7 (B.C.Z.R.). As you have indicated in your letter, if you wish to proceed with the special hearing, please visit me in this office, so that I may supply you with the correct application forms and inform you of the correct filing procedure.

Very truly yours,

JAMES DYER  
Zoning Supervisor

By: W. CARL RICHARDS, JR.  
Zoning Coordinator

cc:

J. Robert Haines, Zoning Commissioner  
James Dyer, Zoning Supervisor  
zoning files  
C.R.G. files

LIBERS 5427 PAGE 00  
TRANSFER TAX NOT REQUIRED  
Walter R. Richardson  
Director of Records  
Pen. *Walter R. Richardson*  
Encapsulated Signature  
Richardson

This Deed, Made this 22nd day of February

In the year one thousand nine hundred and seventy-four, by and between T. Howard Price and Evelyn H. Price, his wife, of Baltimore County, in the State of Maryland, of the first part, and George A. Price and Eugene K. Price, his wife, of Baltimore County, in the State of Maryland, of the second part.

Witnesseth, that in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations the said T. Howard Price and Evelyn H. Price, his wife, of the first part, do grant and convey unto the said George A. Price and Eugene K. Price, his wife, of the second part, as tenants by the entireties, their assigns, the survivors of them and the heirs and assigns of the survivors,

Witnesseth, that in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations the said T. Howard Price and Evelyn H. Price, his wife, of the first part, do grant and convey unto the said George A. Price and Eugene K. Price, his wife, of the second part, as tenants by the entireties, their assigns, the survivors of them and the heirs and assigns of the survivors,

Beginning for the same at a point at the end of 12 perches on the first line of the land described in a deed from Joshua F. C. Talbott, Jr. and wife to Thomas Richardson dated October 24, 1853 and recorded among the Land Records of Baltimore County in Liber MHF No. 6 folio 320 and running thence South 46-1/2 degrees East 200 perches to the end of the 45-1/6 perches on the South 19-3/4 degrees West 111 perches line of said land, thence by and with said line with an allowance of 2 degrees for variation, South 21-3/4 degrees West 66-5/6 perches to the end of said line, still with the lines of the whole tract of land aforesaid North 65-1/2 degrees West 193 perches to intersect the South 21-1/2 degrees West 74 perches line of the land heretofore conveyed by Goodwin and Dorsey to Amos Bosley by deed dated March 31, 1819 and recorded among the Land Records of Baltimore County in Liber WG No. 150 folio 573, thence with the lines of said land revised with an allowance of 2 degrees for variation, North 23-1/2 degrees East 13-6/10 perches to the beginning of said South 21-1/2 degrees West 74 perches line, thence North 22 degrees East 30 perches to a stone,

Containing 45.3 acres of land more or less.

Being a part of the first parcel of land in a deed dated February 24, 1931 and recorded among the Land Records of Baltimore County in Liber Howard Price and wife.

Being a part of the first parcel and all of the second parcel of land described in a deed dated March 31, 1819 and recorded among the Land Records of Baltimore County in Liber W.M.I. No. 128 folio 513 which was conveyed by Mary C. Royston et al to Thomas V. Richardson.

NOT RECORDED

279. U-961 PAGE 567  
PER-SINGLE DEED-COUNTY OF BALTIMORE FORM 848

This Deed, Made this twenty-third day of December

In the year one thousand nine hundred and sixty-nine, by and between SARA A. SAUER, Single of Baltimore County in the State of Maryland, of the first part, and GEORGE A. PRICE of Baltimore County in the State of Maryland of the second part.

Witnesseth, that in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations the said first party does grant and convey unto the said second party, his heirs and assigns, in fee simple, all that tract of the ground, situate, lying and being in the Tenth Election District of Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:—

Beginning for the same at a point at the end of 12 perches on the first line of the land described in a deed from Joshua F. C. Talbott, Jr. and wife to Thomas Richardson dated October 24, 1853 and recorded among the Land Records of Baltimore County in Liber MHF No. 6 folio 320 and running thence South 46-1/2 degrees East 200 perches to the end of the 45-1/6 perches on the South 19-3/4 degrees West 111 perches line of said land, thence by and with said line with an allowance of 2 degrees for variation, South 21-3/4 degrees West 66-5/6 perches to the end of said line, still with the lines of the whole tract of land aforesaid North 65-1/2 degrees West 193 perches to intersect the South 21-1/2 degrees West 74 perches line of the land heretofore conveyed by Goodwin and Dorsey to Amos Bosley by deed dated March 31, 1819 and recorded among the Land Records of Baltimore County in Liber WG No. 150 folio 573, thence with the lines of said land revised with an allowance of 2 degrees for variation, North 23-1/2 degrees East 13-6/10 perches to the beginning of said South 21-1/2 degrees West 74 perches line, thence North 22 degrees East 30 perches to a stone,



