

4/27/99

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 27, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed Files: CR-95-138 -Toll House, Inc. (Hayfields)
95-308-X -Hayfields, Inc.
CBA-96-142 -Hayfields Manor
96-347-SPHA -Hayfields, Inc.

Since the above captioned cases have been completed in the upper courts, we are hereby closing our file and returning same to you herewith.

Attachments (Case File Nos. CR-95-138; 95-308-X; CBA-96-142 w/ 96-347-SPHA clipped separately inside; 3 boxes containing transcripts, exhibits, and misc. info.; and large board exhibits)

IN THE MATTER OF
THE APPLICATION OF
TOLL HOUSE, INC. /HAYFIELDS
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED ON THE N/S SIDE
WESTERN RUN RD AND SHAWAN RD @
ITS INTERSECTION WITH 8-83
(301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
* No. 03-C-96-008878
*

(ZONING CASE NO. 95-308-X)

* * * * *

AMENDED OPINION PURSUANT TO REMAND ORDER OF THE
COURT OF SPECIAL APPEALS VIA THE ORDER OF THE CIRCUIT COURT

This case comes before this Board on remand from the Court of Special Appeals via the Circuit Court for Baltimore County on the the issue of the effect of the proposed golf course on the underlying aquifer. To that end, the matter was remanded with instructions by the Court of Special Appeals to resolve certain questions analyzing the country club's potential adverse impact on the Cockeysville Marble aquifer, namely:

1. Is the quality of the groundwater protected by a clay layer to such an extent that, by the clay layer along or in conjunction with implementation of the golf course management plan developed for the property, there would be no adverse impact to the aquifer in the proposed location?
2. Would the clay layer protect the Cockeysville Marble aquifer to such an extent that components of fertilizer, pesticides, and other chemicals used on the golf course are not more likely to reach the aquifer and pollute the groundwater than if the golf course was underlain by another type of soil layer?
3. Is the Cockeysville Marble more susceptible to contamination than other rock formations in the R.C. 2 zone?
4. What percentage of the remainder of the R.C. 2 zone is underlain by Cockeysville Marble?

On this particular matter, the Court of Special Appeals reviewed the testimony of Ms. Hau, the Developer's expert in environmental science, hydrogeology, and the environmental effect of golf courses. Ms. Hau was the principal of the company that

prepared the site's environmental impact report on its proposal to locate the golf course thereon. It also reviewed the testimony of Mr. Mogilnicki, a geohydrologist from the County's Department of Environmental Protection & Resource Management, and Dr. Ball, an expert in environmental engineering, with a doctoral specialty in the contaminant transport of organic chemicals in the subsurface environment.

In reviewing the Board's decision, the Court of Special Appeals noted that the Board strongly implied that the clay layer testified to by Ms. Hau at least helped in lessening the danger to water quality caused by possible contaminants from the golf course, but did not resolve the first question. Further, it indicated that the Board, in its written opinion, did not make the requisite comparison as set forth in questions two and three. Accordingly, it instructed that, if the Board answers any of the first three questions in the affirmative, it should so state and the legal problem would be resolved. It is only in the event that none of the first three questions can be answered in the affirmative that it is to proceed with inquiry into question 4 and resulting issues.

In this instance, the Board answers the first question in the affirmative and thus ends the inquiry. Ms. Hau testified specifically to the minimal environmental impact golf courses have if managed properly, noting with respect to this particular course that the vast majority of chemicals were going to be applied to relatively few acres and that measures were in place to assure that none of the chemicals get into the groundwater or stream system. The Board was persuaded by Ms. Hau's testimony that there was a minimal possibility of stream or groundwater contamination from the golf course if managed properly.

On the basis of the evidence presented by Ms. Hau, the Board finds that the quality of the groundwater is protected by a clay layer to such an extent that, by the clay layer in conjunction with the implementation of the golf course management plan developed for the property, there would be no adverse impact to the aquifer in the proposed location. As such, the Board need go no further.

O R D E R

ACCORDINGLY, IT IS THEREFORE this 27th day of November, 1998, by the County Board of Appeals of Baltimore County

ORDERED that the Opinion and Order of the Board dated August 6, 1996 be and is hereby AMENDED as set forth in the foregoing Opinion; and it is further

ORDERED that the Petition for Special Exception in Zoning Case No. 95-308-X be and is hereby GRANTED, all as previously ordered in this Board's Opinion and Order of August 6, 1996.

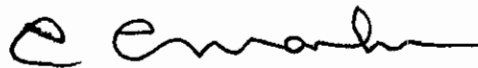
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Kristine K. Howanski, Chairman



Lawrence M. Stahl



Charles L. Marks



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

November 27, 1998

George A. Nilson, Esquire
PIPER & MARBURY
1100 Charles Center South
36 S. Charles Street
Baltimore, Maryland 21201

RE: Circuit Case #03-C-96-008878
Hayfields /Toll House, Inc.
(Zoning Case No. 95-308-X)

Dear Mr. Nilson:

Enclosed please find a copy of the Board's Opinion on Remand issued this date in response to the August 27, 1998 Remand Order of the Court of Special Appeals, via the October 15, 1998 Order of the Circuit Court for Baltimore County.

Very truly yours,

Charlotte E. Rodcliffe for
Kathleen C. Bianco
Administrator

Enclosure

cc: G. Scott Barhight, Esquire
John M. Mangione
Joseph LaVerghetta, Esquire
George Gavrelis
People's Counsel for Baltimore County
Jack Dillon, Exec. Director
Valleys Planning Counsel (VPC)
Dr. Richard W. McQuaid
Kenneth T. Bosley, Esquire
Ruth Mascari
Virginia Woodward
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
The Honorable James T. Smith, Jr., Judge
Circuit Court for Baltimore County
Clerk of the Court /Case No. 03-C-96-008878
Arnold Jablon, Director /PDM
Pat Keller /Planning Director
Douglas N. Silber, Assistant County Attorney
Virginia W. Barnhart, County Attorney



CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

11/02/98

Case Number: 03-C-96-008878 AE
Date Filed: 08/30/96
Status: Closed/Active
Reference Number: 95-308-X
Judge Assigned: To Be Assigned,

In The Case Of Appeal No. 95-308-X

C A S E H I S T O R Y

CONSOLIDATED/RELATED CASES

Lead CaseID: 03-C-96-009573

SubCaseID	Type	Start	End

03-C-96-008878	T	11/08/96	

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	95-308-X

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Entered
RES	001	Toll House Inc	CT DO 10/16/98 09/03/96
RES	002	Hayfields	CT DO 10/16/98 09/03/96

Attorney: 0016862 Barhight, G Scott
Whiteford, Taylor & Preston L.L.P
210 West Pennsylvania Ave
400 Court Towers
Towson, MD 21204-4515
(410)832-2000

PET 001 Valleys Planning Council Inc The
Attorney: 0027889 Nilson, George A

CT DO 10/16/98 08/30/96

Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, MD 21201
(410)539-2530

Type	Num	Name(Last,First,Mid,Title)	Entered
PET	002	Hastings, Lynn Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	CT DO 10/16/98 08/30/96
PET	003	Timmel, Dan Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	CT DO 10/16/98 08/30/96
PET	004	Timmel, Joanne Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	CT DO 10/16/98 08/30/96
PET	005	Baramki, Theodore Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	CT DO 10/16/98 08/30/96
PET	006	Baramki, Ingrid Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	CT DO 10/16/98 08/30/96
PET	007	Mand, Robert Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street	CT DO 10/16/98 08/30/96

Baltimore, MD 21201
(410)539-2530

Type	Num	Name(Last,First,Mid,Title)	Entered
PET	008	Mand, Shirley	CT DO 10/16/98 08/30/96
		Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	
PET	009	Hastings, Marguerite	CT DO 10/16/98 08/30/96
		Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	
PET	010	Chilimindris, Constantine, DR	CT DO 10/16/98 08/30/96
		Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	
PET	011	Chilimindris, Nancy	CT DO 10/16/98 08/30/96
		Attorney: 0027889 Nilson, George A Piper & Marbury L.L.P. Charles Center South 36 South Charles Street Baltimore, MD 21201 (410)539-2530	
ITP	001	County Board Of Appeals Of Baltimore County Old Courthouse/Room 49 400 Washington Avenue Baltimore, MD 21204	CT DO 10/16/98 08/30/96
ITP	002	McQuaid, Richard, Dr	CT DO 10/16/98 09/09/96
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961	
ITP	003	Bee Gaines, Mary	CT DO 10/16/98 09/09/96
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448	

(410)825-6961

Type	Num	Name(Last,First,Mid,Title)	Entered

ITP	004	Peoples Counsel For Baltimore County	CT DO 10/16/98 09/09/96

Attorney: 0005744 Demilio, Carole

Room 47, Courthouse

400 Washington Avenue

Towson, MD 21204

(410)887-2188

0029075 Zimmerman, Peter M

Room 47 Courthouse

400 Washington Ave

Towson, MD 21204

(410)887-2188

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of	Rslt	By	ResultDt	Jdg	T Notice	Rec

03/25/97	09:30A	006	yes	C1VI	TBA	01	/01	CON	C	03/26/97	JTS	P	Y

Stenographer(s): Steven D. Perrine

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN

TBA To Be Assigned,	J	08/30/96		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
001000	Petition for Judicial Review Appeal No. 95-308-X; In the Matter of the Application of Toll House, Inc./Petitioner/Hayfields For a Special Exception on Property Located On the Northwest Side Western Run Road and Shawan Road at its Intersection with I-83 (301 Western Run Road) 8th Election District 3rd Councilmanic District.	08/30/96		TBA	PET001		10/16/98	DA LG
001001	**Answer	09/09/96	09/06/96	TBA	RES002		10/16/98	JMG LG
001002	**Answer	10/21/96	10/18/96	TBA	RES002		10/16/98	JMG LG
002000	certificate of notice ***	09/09/96	09/05/96	TBA	000		10/16/98	PH LG

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
003000	Petition for Judicial Review	09/09/96	09/03/96	TBA	ITP002		10/16/98	DFF LG
003001	Answer	09/23/96	09/16/96	TBA	ITP004		10/16/98	JMG LG
004000	Petition for Judicial Review	09/09/96	09/03/96	TBA	ITP004		10/16/98	DFF LG
005000	* Second Certificate of Notice.	09/19/96	09/18/96	TBA	000		10/16/98	DFF LG
006000	* Certificate of Notice	09/19/96	09/18/96	TBA	000		10/16/98	DFF LG
007000	Motion to Transfer Petition for * Judicial Review (No DCM). Case 3-C-96-9081 transferred into case 3-C-96-8878	09/20/96	09/19/96	LRD	RES002	Granted	10/25/96	DFF PH
008000	Petition for Judicial Review	10/25/96	09/05/96	TBA	RES002		10/16/98	PH LG
008001	Answer	10/25/96	09/18/96	TBA	ITP004		10/16/98	PH LG
008002	Answer	10/25/96	09/24/96	TBA	PET001		10/16/98	PH LG
009000	Notice of Appeal and Certification	10/25/96	09/18/96	TBA	000		10/16/98	PH LG
010000	*Motion to Consolidate with case 03-c-96-9573 GRANTED as specified, fd	10/25/96	10/23/96	EAD	000	Granted	11/08/96	LG MR
010001	Answer filed by pet 1-11.	10/31/96	10/30/96	TBA	000		10/16/98	KP LG
010002	**Answer NO DCM!!!	11/07/96	11/06/96	TBA	RES002		10/16/98	JMG LG
011000	Transcript of Record from Adm Agency *	10/31/96	10/30/96	TBA	000		10/16/98	DFF LG
012000	Notice - Recpt of Record of Proceedings * Copies Sent.	10/31/96	10/30/96	TBA	000		10/16/98	DFF LG
013000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	PET001	10/31/96	10/31/96	DFF DFF
014000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	PET002	10/31/96	10/31/96	DFF DFF
015000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	ITP001	10/31/96	10/31/96	DFF DFF
016000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	RES001	10/31/96	10/31/96	DFF DFF
017000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	RES002	10/31/96	10/31/96	DFF DFF
018000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	ITP002	10/31/96	10/31/96	DFF DFF
019000	Notice of Appeal Sent	10/31/96	10/31/96	TBA	ITP004	10/31/96	10/31/96	DFF DFF

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
020000	Motion to Amend Order Granting Motion to Consolidate, with exhibits, fd	12/03/96	12/02/96	TBA	RES002		10/16/98	PS LG
021000	Memorandum in support of Petition	12/10/96	12/09/96	TBA	ITP004		10/16/98	PH LG
022000	Scheduling Order	12/10/96	12/10/96	TBA	000	12/10/96	12/10/96	JD JD
023000	Scheduling Order	12/15/96	12/15/96	TBA	000	12/15/96	12/15/96	JD JD
024000	Scheduling Order	12/15/96	12/15/96	TBA	000	12/15/96	12/15/96	JD JD
025000	Memorandum of law filed by ITPS #2 though 12	12/23/96		TBA	000		10/16/98	PH LG
026000	Memorandum in Support of Hayfield's Petition for Judicial Review***	12/27/96	12/23/96	TBA	RES002		10/16/98	DR LG
027000	Memorandum in Support of Hayfield's Petition for Judicial Review***	12/27/96	12/23/96	TBA	RES002		10/16/98	DR LG
027001	Response to People's Counsel's * Memorandum in Support of Petition for Judicial Review in Civil Actions 03-C-96-9573 and 03-C-96-8878 (No DCM).	01/14/97	01/13/97	TBA	RES002		10/16/98	DF LG
028000	Memorandum in Opposition to Petition for Judicial Review. filed by pet 2-11 ***	01/23/97	01/17/97	TBA	PET010		10/16/98	KP LG
029000	Reply memorandum **	01/30/97	01/28/97	TBA	ITP004		10/16/98	PH LG
029001	Reply To Memorandum Of Protestants. ** Valleys Plainning Council, Inc , Et Al. In Opposition To Petitioner. Hayfields, Inc.'s Petition For Judicial Review Of Certain conditions Imposed By The Baltimore County Board Of Appeals In Its Approval Of Hayfields' Petition For Special Exception	02/03/97	01/31/97	TBA	000		10/16/98	JH LG
030000	Response to memorandum **	01/30/97	01/21/97	TBA	RES002		10/16/98	PH LG
031000	Reply memorandum in support of Petition* Filed by ITP001-County Board Of Appeals Of Baltimore County. , PET001-Valleys Planning Council Inc The,	02/06/97	02/04/97	TBA	ITP001		02/06/97	PH PH
032000	Amended Order Consolitdating Case 03-c-96-9573 with case 03-c-96-8878	02/10/97		EAD	000	Granted	02/10/97	LG LG
033000	Motion to Preserve Maryland Antiquities inc. for leave to file Memorandum as amicus curiae.	02/26/97	02/21/97	BKH	000	Denied	03/12/97	LG LG
033001	Opposition to Motion	03/05/97	03/03/97	TBA	RES002			PH PH

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User	ID
034000	**Memorandum in Response to Motion of the Society for the Preservation of MD Antiquities Inc , Amicus Curiae fd.	03/25/97	03/24/97	TBA	RES002		03/25/97	DA	DA
035000	Open Court Proceeding March 25,1997 Hon James. T Smith Jr Hearing had. Decision held sub-curia.Opinion and Order to be filed	03/26/97		JTS	000		10/16/98	BH	LG
036000	Opinion and Order of Court affirming the decision of the Board in case No.03-C-96-9573 and in case no 03-C-96-8878 affirming the decision in part and striking it in part, etc., fd.	06/11/97		JTS	000	Ruled	06/11/97	AS	AS
037000	Appeal Order to COSA or COA ** 9/43	07/01/97	07/01/97	TBA	000		10/16/98	JH	LG
038000	Notice of Appeal to COSA or COA * (9/44). Filed by PET001-Valleys Planning Council Inc The, , PET002-Hastings, Lynn, PET003-Timmel, Dan, PET004-Timmel, Joanne, PET005-Baramki, Theodore, PET006-Baramki, Ingrid, PET007-Mand, Robert, PET008-Mand, Shirley, PET009-Hastings, Marguerite, PET010-Chilimindris, Constantine, DR, PET011-Chilimindris, Nancy	07/02/97	07/02/97	TBA	PET001		10/16/98	DFF	LG
039000	Order to proceed w/out prehearing conf * (9/44).	08/26/97	08/22/97	TBA	000		10/16/98	DFF	LG
040000	Original Record sent to COSA of maryland by certified mail on 9-26-97 with exhibits from box 461	09/26/97		TBA	000		10/16/98	CC	LG
041000	Order remanding case to Balto.Co Board of Appeals	10/16/98		JTS	000	Granted	10/16/98	LG	LG

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1YRT	One Year Tickle (Jud	CLOSED	08/30/97	365	no	no	DAAA	D
1ANS	1st Answer Tickle	CLOSED	09/06/96	0	no	no	DANS	D
SLTR	Set List For Trial	DONE	09/06/96	0	yes	yes	1ANS	T
SLMR	Set List For Motions	CANCEL	10/11/96	22	no	no	MMOT	D

03-C-96-008878 Date: 11/02/98 Time: 13:45

Page: 8

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type
SLMR Set List For Motions	CANCEL 11/14/96	22	no	no	DANS D
SLMR Set List For Motions	CANCEL 12/24/96	22	no	no	MMOT D
SLMR Set List For Motions	CANCEL 03/15/97	22	no	no	MOPP D
EXPU Exhibit Pickup Notic	OPEN 12/15/98	30	no		

EXHIBITS

Line #	Marked	Code Description	SpH	Sloc	NoticeDt	Disp Dt	Dls By
Offered By: ITP 001 County Board Of Appeals Of Ba							
000		B BOX 461/CBA TRANSC	B				

DIFFERENTIATED CASE MANAGEMENT TRACKS AND MILESTONES

Track . R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/10/96 Order Date : 12/15/96
Start Date : 12/10/96 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	12/25/96	10/16/98	CLOSED	
All Motions (excluding Motions in Limine	02/13/97	10/16/98	CLOSED	
TRIAL DATE is	03/25/97	03/10/97	03/26/97	REACHED

10/15/98

95-308-X; consolidated w/
96-347-SPHA & CBA-96-142
HAYFIELDS
10/15/98 -CCT REMANDS TO CBA

IN THE MATTER OF THE APPLICATIONS *
OF HAYFIELDS, INC:

(1) FOR A SPECIAL EXCEPTION (95-308-X) *
and

(2) FOR APPROVAL OF A DEVELOPMENT *
PLAN (VIII-661) AND FOR A SPECIAL

HEARING AND VARIANCES (96-347-SPA) *

APPEAL FROM THE BALTIMORE COUNTY *
BOARD OF APPEALS

IN THE CIRCUIT COURT (J.T. Smith,,

FOR BALTIMORE COUNTY

CONSOLIDATED CASE NOS.

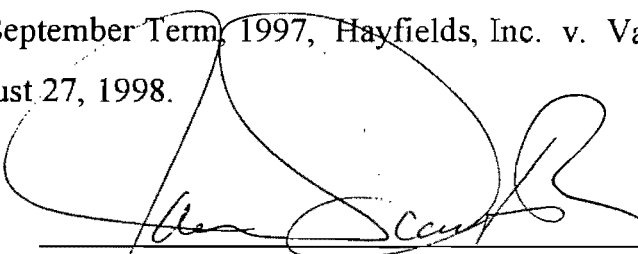
03-C-96-8878

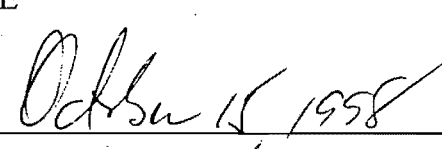
03-C-96-9573

*

ORDER

Pursuant to the Mandate of the Court of Special Appeals, this case is remanded to the Baltimore County Board of Appeals for further action consistent with the Opinion of the Court of Appeals in Case No. 1118, September Term, 1997, Hayfields, Inc. v. Valley's Planing Council, Inc., et al. filed August 27, 1998.


JAMES T. SMITH, JR.
JUDGE


DATE

JTS/sw

Copy: G. Scott Barhight, Esq.
Julie D. Wright, Esq.
George A. Nilson, Esq.
Peter M. Zimmerman, Esq.
Mr. Kenneth T. Bosley
J. Carroll Holzer, Esq.
County Board of Appeals of Baltimore County

RECEIVED
COUNTY BOARD OF APPEALS
98 OCT 19 PM 3:19

8-11-98
95-308-X and CBA-96-142 (VIII-661)
& 96-347-SPHA - consolidated
HAYFIELDS, INC. - CSA REVERSED
in pt; AFFIRMED in pt; case
REMANDED to CCT to REMAND TO
REPORTED CBA for further action
consistent with opinion

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1118

September Term, 1997

HAYFIELDS, INC.

v.

VALLEYS PLANNING COUNCIL,
INC., ET AL.

Murphy, C.J.,
Salmon,
Rhodes, Thurman H.
(Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: August 27, 1998

In 1995, Hayfields, Inc. ("Hayfields"), owner of Hayfields Farm (the Farm), proposed to develop its 475-acre Baltimore County property into a residential community of single-family dwellings and a country club with an 18-hole golf course and other related facilities.

Hayfields filed a petition for special exception with the Baltimore County Zoning Commission to permit the proposed country club on the Farm. Hayfields also submitted a development plan for nearly 300 acres of the Farm, which included the country club and a portion of the residential component of the project. Valleys Planning Council, Inc., and several individually named adjacent and nearby property owners (collectively "VPC"), protested the subdivision and development of the Farm. The Zoning Commissioner granted Hayfields' petition and approved the development plan. VPC appealed.¹ The County Board of Appeals of Baltimore County (the Board) approved the petition for special exception, subject to certain conditions, and also approved the development plan but reduced from five to three the number of lots into which the property could be subdivided. The Circuit Court for Baltimore County affirmed the Board's decisions but removed two of the conditions that had been imposed.

Hayfields appealed and presents one question for our review, which we have rephrased:

- 1) Did the Board err in ruling that Hayfields could subdivide its 295-acre tract of R.C. 2-zoned land into only three lots? JR

¹People's Counsel for Baltimore County also appealed to the Board but is not a party to this appeal or cross-appeal.

VPC cross-appealed, presenting six questions:

1. Did the Board err in disregarding the adverse impact of the proposed special exception use on significant on-site resources of public importance? 5
2. Did the Board err in its application of Schultz v. Pritts? 8
3. Did the Board err in failing to consider the adverse impact of the proposed special exception use on the historic Hayfields Farm and National Register Historic District in which the Hayfields Farm is located?⁽²⁾ 5
4. Did the Board incorrectly impose the burden of proof on Valley's Planning Council? 3
5. Did the Board properly impose certain conditions on the special exception use with respect to the golf driving range? 3
6. Did the Board err in concluding that the definition of "country club" as used in the Baltimore County Zoning Regulations Section 101 includes a golf course plus a multiplicity of other facilities that are open to the public? 3

²The National Trust for Historic Preservation, the Society for the Preservation of Maryland Antiquities, Inc., and the Baltimore County Historical Trust, Inc., jointly filed an amicus brief on this issue.

I. FACTS

Hayfields Farm has existed for nearly 200 years.³ Its soil is superior to that found on other farms in the region.⁴ A portion of the land is still being farmed.

The Farm is underlain by a geological formation known as Cockeysville Marble, a large aquifer that constitutes an important source of water for wells in the area. There are some experts who believe that the Cockeysville Marble aquifer is particularly vulnerable to contamination.

Hayfields Farm is located on the northwest corner of the intersection of Interstate 83 and Shawan Road. To the east is a commercial area, to the south are residential developments, and to the north and west are agricultural communities. The Farm is the "gateway" to the rural area of Baltimore County and to the Western Run - Belfast Road National Register Historic District, a rural historic district noted for its agricultural significance. The original country home (the manor house), slaves' quarters, barns, and outbuildings were all built prior to the Civil War.⁵ Baltimore

³Hayfields Farm earned its name from the Farm's production of prodigious crops of hay. Nicholas Bosley Merryman, Hayfields History, 19 History Trails 1, 6 (Winter 1984-85). In 1924, the Farm was selected as the "Best Cultivated Farm" by the Maryland Agricultural Society. Id.

⁴According to a Baltimore County soil survey in 1995, Hayfields Farm ranked third in the County's evaluation of prime and productive soils. Letter from J. Lawrence Pilson, Department of Environmental Protection and Resource Management, to Arnold Jablon, Zoning Administration and Development Management (May 5, 1995). The two farms that ranked first and second were only 35 acres and 90 acres, respectively, whereas the tested acreage on Hayfields Farm was 280 acres. Of the Farm's 280 acres, 95 percent of the soil was designated as prime and productive.

⁵One of the Farm's owners, John Merryman, was a minor figure in Civil War history. Merryman was seized at the beginning of the Civil War by Union troops because he was suspected of blowing up a bridge to prevent Union troops from marching to Baltimore. According to Chief Justice Roger B. Taney's later opinion, Merryman was charged with "treason and rebellion," albeit without proof. Ex parte Merryman, 17 F. Cas. 144, 147 (D. Md. 1861) (No. 9487). Merryman was imprisoned at (continued...)

County's Landmarks Preservation Commission (the LPC) has included these structures, seven in all, on its historic landmarks list. This designation provides the LPC with certain authority over proposed renovations of any listed structure. See Baltimore County Code §§ 26-540 through 26-555 (requiring the LPC to issue a certificate of appropriateness or notice to proceed to the building engineer prior to exterior changes being made to privately owned, landmarks-designated structures).

Hayfields' plan is to build an 18-hole golf course, driving range, clubhouse, restaurant, and other related facilities. The anticipated intensity of play at the golf course, which will be open to the public, is 45,000 rounds per year. This level of play is lower than that at other public golf courses in Baltimore County but higher than the level at almost all of the private courses in the area.⁶

VPC is concerned that development of the property will destroy invaluable agricultural and historical assets, resources that are allegedly of benefit to the general public. The premier and highly productive Farm with a history encompassing agricultural, political, and legal components is uniquely deserving of preservation, says VPC. Moreover, VPC believes that the chemicals

⁵(...continued)

Fort McHenry. A writ of habeas corpus was issued by Taney. *Id.* at 147-48. A military officer, however, "suspended the writ" and refused to produce Merryman before the Chief Justice. The Union officer claimed that he had a right to effect the suspension pursuant to authority granted to him by President Lincoln. The officer's response prompted Taney to write an exposition on the doctrine of separation of powers between the judicial and military authorities, not only with respect to habeas corpus proceedings, but in terms of the broader issue of interpreting and administering the laws. *Id.* at 148-53.

⁶This comparison must be considered approximate because the source for the County's existing courses does not provide the year the information was gathered.

applied to the golf course may contaminate the water in the Cockeysville Marble aquifer and nearby wells.

In terms of zoning restrictions on the land on which the Farm lies, the property is split-zoned under the County's R.C. 2 and R.C. 4 zoning classifications. Both of these zones are designated for resource conservation: R.C. 2 is zoned agricultural, and R.C. 4 is zoned for watershed protection. Although the use of land for single-family dwellings is permitted as of "right" (i.e., permitted without conditions) in both R.C. 2 and R.C. 4 zones, use of land for a country club in these zones is permissible only by special exception (i.e., permitted providing certain conditions have been met).

Prior to breaking ground on this project, the Baltimore County Code (BCC) and the Baltimore County Zoning Regulations (BCZR) required Hayfields to obtain approval from the Zoning Commissioner for the proposed country club as a special exception use. See BCC § 26-127; BCZR §§ 1A01, 2.C and 502. In addition, the project's development plan had to be approved under the procedures detailed in BCC § 26-206. As part of this process, a development plan that involves historically significant buildings or sites is subject to additional reviews. See BCC § 26-205(a)(11) and 26-207(a)(3); see also BCC § 26-545. Finally, approval must be requested for any variances necessary to comply with the BCZR.⁷ See BCZR § 307.1.

⁷Whereas a special exception is a legislatively permitted use if certain conditions are met, a variance authorizes a departure from zoning regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 699-703 (1995).

A. Petition for Special Exception and Development Plan

1. Petition for Special Exception

In the spring of 1995, Hayfields filed with Lawrence E. Schmidt, Zoning Commissioner for Baltimore County, a petition for special exception for a country club on approximately 228 acres of the Farm.⁰ The petition requested the Zoning Commissioner to approve the use of the land for an 18-hole golf course open to the public, with a limited membership component; a driving range with 30 tees, 3 target greens, and nighttime lighting; a pro shop; tennis and swimming facilities; a clubhouse; a public restaurant; a banquet hall; and limited overnight accommodations. Hayfields anticipated that the Farm's manor house would become the clubhouse, restaurant, and banquet hall; the building once used as slaves' quarters would be transformed into the pro shop; and the barns would be used for storage.

The Zoning Commissioner held a five-day public hearing and heard testimony from a variety of experts in the fields of agriculture, traffic engineering, hydrology and environmental science, environmental engineering, renovation of historic buildings, and landmarks preservation. Thirteen lay witnesses, many of whom live near the site, also testified. Additionally, the Baltimore County Zoning Plans Advisory Committee, comprised of several government agencies including the Office of Planning and Zoning and the Department of Environmental Protection and Resource Management, reviewed the zoning petition and submitted non-binding recommendations to the Zoning Commissioner.

⁴Of the 228± acres, approximately 225 acres are zoned R.C. 2 and 3.5 acres are zoned R.C. 4.

Based on Schultz v. Pritts, 291 Md. 1 (1981), Commissioner Schmidt analyzed the nature of the adverse impact associated with Hayfields' proposal. Following the Commissioner's conclusion that the impact on the locale surrounding the proposed site did not warrant the denial of the special exception, he granted Hayfields' petition and approved the site plan on June 30, 1995. VPC noted an appeal to the Board, which we discuss infra.

2. Submission of the Development Plan

In the spring of 1996, Hayfields submitted a development plan for Commissioner Schmidt's approval. The plan amended the number of R.C. 2 acres for the country club from approximately 225 acres to 273.1 acres and also included 21.8 acres of R.C. 2 land to be used for residential dwellings (for a total of 295 acres of R.C. 2 land incorporated in the development plan).⁹ At this time, Hayfields also filed two more zoning petitions — a petition for special hearing and a petition for variances.⁹ Mr. Schmidt heard Hayfields' petitions in his capacity as Zoning Commissioner; with respect to the development plan, he acted in his capacity as Baltimore County Hearing Officer.¹⁰ In the combined hearings, we refer to Commissioner Schmidt as Zoning Commissioner/Hearing Officer.

⁹The petition for special hearing requested an amendment to the previously approved special exception use in order to conform the site plan to the proposed development plan. Specifically, the petition for special hearing asked for permission, inter alia, to add 48 acres to the R.C. 2 acreage originally approved for the country club (for a total of 273.1 R.C. 2 acres).

The petition for variances requested deviation from height and distance zoning requirements for the existing structures on Hayfields Farm.

¹⁰The different administrative roles of Mr. Schmidt governed the standard of review applied by the Board when it reviewed his decisions on appeal. The Board reviewed the Hearing Officer's decision "on the record" but conducted a de novo review of the decision rendered by the Zoning Commissioner.

A four-day hearing was held on the development plan and the zoning issues. Testimony was presented by various witnesses, including experts who were involved in formulating the development plan, several individual property owners in the area, a land planner, and representatives from the County Department of Permits and Development, Management, the Department of Environmental Protection and Resource Management, the Planning Board, the Agricultural Preservation Program, and the State Highway Administration.

The Zoning Commissioner/Hearing Officer issued an order on June 12, 1996. The order, inter alia, approved the development plan, permitting the creation of a total of five lots on the site. VPC noted an appeal to the Board from this order.

B. Appeals to the Board of Appeals of Baltimore County

1. Appeal from the Order Granting the Special Exception

The Board conducted a de novo review of the Zoning Commissioner's grant of the special exception and heard over seven days of testimony. On August 6, 1996, Hayfields' petition for special exception was approved by the Board, subject to conditions, including restrictions that the golf practice facility/driving range: (1) is limited to use by those individuals preparing for play or completing a round of play on the golf course, and outside of this limitation, available for use by members only; and (2) is limited to 30 tees, of which no more than 15 may be in operation at any one time. VPC appealed to the Circuit Court for Baltimore County from the approval of the special exception. Hayfields also

filed a petition requesting review of several of the Board's conditions.

2. Appeal from the Order Approving the Development Plan

The Board conducted an "on the record" review of the approval of the development plan. On September 12, 1996, the Board affirmed the Zoning Commissioner/Hearing Officer's approval of the development plan but ruled that only three lots can be created on the Hayfields site.

The Board disagreed with the Zoning Commissioner/Hearing Officer's conclusion that the "country club lot should be considered as the exercise of a single right of subdivision," which would give Hayfields the right to create five lots on the R.C. 2-zoned property. According to the Board, the country club is a special exception use that occupies an area of 273.1 acres, and the permissible number of lots on the remaining 21.8 acres designated for residential use is limited to two lots, for a total of three lots. Hayfields filed, in the Circuit Court for Baltimore County, a petition for review of the Board's lot limitation.

C. Consolidated Appeal Before the Circuit Court

The Circuit Court for Baltimore County (Smith, J.) granted Hayfields' motion to consolidate the petition for review of the Board's decisions and orders in the two cases. Following a hearing, the court entered its written opinion and order on June 11, 1997, affirming the Board's approval of the petition for special exception but striking two of the conditions that the Board imposed — the restriction that the golf practice facility can be used only by those preparing for, or ending play on, the golf

course and otherwise limiting use of the practice facility to members only and the restriction that only 15 tees may be in use at one time. The trial court also affirmed the Board's conditional approval of the development plan, i.e., with the three-lot limitation. Hayfields appealed and VPC cross-appealed.

We will present additional facts as necessary to resolve the issues presented.

II. STANDARD OF REVIEW

As we stated recently in Colao v. Prince George's County, 109 Md. App. 431 [(1996) (quoting Columbia Road Citizens' Assoc. v. Montgomery County, 98 Md. App. 695, 698 (1994)], aff'd, 346 Md. 342 (1997), there are two general standards of review of a decision of a zoning board:

In regard to findings of fact, the trial court cannot substitute its judgment for that of the agency and must accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record; when reviewing findings of law, however, no such deference is given the agency's conclusions.

People's Counsel v. Prosser Co., 119 Md. App. 150, 167-68, cert. denied, 349 Md. 494 (1998). We review the decision of the Board, not the decision of the trial court, see Department of Educ. v. Shoop, 119 Md. App. 181, 196, cert. denied, 349 Md. 495 (1998), and apply the standard stated in Prosser Co.

III. ANALYSIS

A. Hayfields' Appeal

To reiterate, the Zoning Commissioner/Hearing Officer approved Hayfields' development plan with five subdivision lots in the Farm's R.C. 2 acreage, one lot for the country club and four lots for residential development. The Board affirmed approval of the plan but held that the number of subdivision lots permitted in this acreage is limited to three lots, two residential lots and one lot attributed to the country club. The Board explained:

We concur [with Mr. John Lewis, who represented the County's Department of Permits & Development Management, Zoning Review Section] that the R.C. 2 acreage designated for the golf course is not a density calculation since it does not bear any relationship to dwellings or bedrooms but, rather, is a special exception usage that occupies a designated area, and that the remainder of the R.C. 2 acreage designated for residential use carries its own density based on the expressed formula of two lots for up to 100 acres, or one lot per 50 acres.

Additionally, we concur with the portion of the Department of Permits & Development Management that an owner cannot use his acreage twice to support two different uses, i.e., a residential use permitted as of right and a special exception (such as country club). We believe that the distinction is important because of its impact and interpretation as development occurs in other R.C. 2 zones. This interpretation of the Board, we believe, is consistent with the spirit and intent of the R.C. 2 legislation.

In an R.C. 2 zone, the formula for calculating subdivision lot density, i.e., the number of lots that can be created from a given tract of land, is based on the number of acres comprising that tract. The issue presented by Hayfields requires us to determine

how many of the Farm's 295 acres designated for the country club and single-family dwellings form the gross acreage from which the number of lots for the residential component can be derived. We must decide whether the County's zoning regulations require that the 273.1 acres approved for country club use should be excluded prior to a determination of the number of residential lots into which the balance of the R.C. 2 acreage (21.8 acres) can be divided. Two interrelated questions must be considered. First, should the 273.1 acres be subtracted from the 295 acres because the country club is a special exception use, rather than a use permitted as of right, as is the plan for single-family dwellings on the remaining 21.8 acres? Alternatively, must the 273.1 acres be subtracted because the country club is a non-residential use, in contrast with the residential use proposed on the remainder of the R.C. 2 tract, thus involving different considerations from those that otherwise would exist if all of the 295 acres were to be used for residential development? Resolution of these questions presents issues of law, and as such, we afford no deference to the Board's determination. See Richmarr Holly Hills, Inc. v. American PCS, L.P., 117 Md. App. 607, 652 (1997) (citing Lee v. Maryland Nat'l Capital Park and Planning Comm'n, 107 Md. App. 486, 492 (1995), cert. denied, 343 Md. 333 (1996)).

The foundation of Hayfields' argument is that, under the plain language of BCZR § 1A01.3.B.1 through .4, it can subdivide the 295-acre tract of R.C. 2-zoned land into five lots. Under these regulations, asserts Hayfields, the acreage dedicated to the country club does not have to be removed prior to calculating the maximum number of lots that are available for the residential

dwellings. Hayfields explains that the zoning regulations applicable to an R.C. 2 zone incorporate neither a distinction between residential and nonresidential uses nor a distinction between special exception uses and uses permitted as of right. According to Hayfields, there is only one formula for calculating subdivision lot density in an R.C. 2 zone, and that formula permits the subdivision lot density to be computed from the overall acreage of the tract, notwithstanding the fact that the use on one lot will be different from the use proposed for the remaining lots. In Hayfields' view, it therefore is immaterial that the country club represents a nonresidential use (versus a residential use) and a special exception use (versus a use permitted by right).

BCZR § 1A01.3.B provides, in part:

1. Subdivision lot density. No lot of record lying within an R.C. 2 zone 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 divided into more than 2 lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of 1 lot for each 50 acres of gross area.

BCZR § 1A01.3.B.2 through .4 provides additional restrictions. Each lot created in an R.C. 2 zone must have an area not less than one acre, BCZR § 1A01.3.B.2; no dwelling or principal structure in an R.C. 2 zone may be situated within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line, BCZR § 1A01.3.B.3; and no more than one principal dwelling is permitted on any lot in an R.C. 2 zone, BCZR § 1A01.3.B.4.

We agree with Hayfields that the plain language of these R.C. 2 zoning regulations does not distinguish between residential

and nonresidential uses nor between uses permitted by special exception and permitted as of right.¹¹ Based on the terms of BCZR § 1A01.3.B.1, the maximum yield for Hayfields is five lots. A lot of record having a gross area in excess of 100 acres may be subdivided at a rate of one lot for every 50 acres of gross area; therefore, a lot of record with a gross area of 295 acres, such as the Hayfields tract, may be subdivided into a maximum of five lots. Hayfields' plan to create five lots also meets the minimum area, setback, and dwelling limit requirement in BCZR § 1A01.3.B.2 through .4. oh 2

Because Hayfields argues that it is not required to subtract the 273.1 R.C. 2 acres dedicated to the special exception country club use for purposes of calculating the number of lots for residential development that it can create in the remaining 21.8 R.C. 2 acres, VPC asserts that Hayfields is seeking to "double use" acreage. In other words, according to VPC, Hayfields is attempting "to use the 273.1 acres ~~twice~~ to support two different uses — a residential use permitted as a matter of right and a special exception country club use." VPC states that the clear language of BCZR § 1A01.3.B.1, when read together with BCZR § 102.2, prohibits such "double use."

¹¹Under BCZR's definitions section, "subdivision" is

[t]he division of any tract or parcel of land . . . into two or more lots, plots or other divisions of land for the purpose, whether immediate or future, of building development for rental or sale . . . provided, however, that this definition of a subdivision shall not include divisions of land for agricultural purposes.

BCZR § 101. In this definition, the only relevant distinction based on "use" concerns agricultural use.

Under the BCZR's general requirements, BCZR § 102.2 states:
"No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use." VPC posits:

[I]t is plain that a yard space that has already been dedicated to a special exception use may not also be considered as part of the minimum area to support a residential use. Accordingly, in the present case, the yard space dedicated to the special exception country club use (any part of the 273.1 acres) may not be considered as part of the minimum area in support of the proposed residential use of four lots in the R.C.-2 zone (200 acres).

Hayfields disputes the characterization that it is attempting to double-count acreage. So do we. We agree with Hayfields' position that BCZR § 102.2 is inapplicable to the calculation of subdivision lot density in an R.C. 2 zone. The prohibitions on double-using "yard space" and "minimum area" will be addressed separately.

Yard Space

We interpret the term "yard space" as being relevant to the setback requirements of BCZR § 1A01.3.B.3.¹² Although the BCZR does not provide a definition of "yard space," "yard" is defined as "[a]ny open space located on the same lot with a building The minimum depth or width of a yard shall consist of the horizontal distance between the lot line and the nearest point of the foundation wall of the main building." BCZR § 101. Hayfields' proposal to subdivide its 295 R.C. 2-zoned acres into five lots meets all the setback requirements under BCZR § 1A01.3.B.3. And in

¹²"Setback" is "[t]he required minimum horizontal distance between the building line (as defined in Section 101) and the related front, side, or rear property line." BCZR § 101. "Building line" is "[t]he line established by law beyond which a building shall not extend." BCZR § 101.

accordance with BCZR § 102.2, each one of the five lots meets the setback requirements without using depth or width demarcations from any other lot.

Minimum Area

With regard to the prohibition on double-using "minimum area," VPC argues that "minimum lot area" refers to the one acre minimum lot size in BCZR § 1A01.3.B.2, but "minimum area," the term used in BCZR § 102.2, refers to the gross acreage required by BCZR § 1A01.3.B.1 to divide the tract into a given number of lots. Because 273.1 acres have already been dedicated for the country club use, VPC says that this acreage cannot be considered as part of the lot of record's gross area when contemplating the remaining subdivisions. To create four lots for residential use, as Hayfields wishes to do, VPC states that the "minimum area" requirement of BCZR § 1A01.3.B.1 calls for a minimum of 200 acres. We interpret BCZR § 102.2's prohibition on using minimum area to support more than one use (or building) as being relevant only to the one acre lot size requirement of BCZR § 1A01.3.B.2 and disagree with the distinction VPC makes between minimum lot area (or minimum lot size) and minimum area.

We read BCZR §§ 1A01.3.B.2 and 102.2 together as preventing a situation in which, for example, a developer proposes to use a 250-acre tract in an R.C. 2 zone to create a 248-acre golf course in conjunction with four residential lots. BCZR § 102.2 prohibits such a proposal because in order to meet the one acre minimum lot size requirement of BCZR § 1A01.3.B.2, two acres would have to be "borrowed" from the golf course lot, thus double-using acreage.

Hayfields' plan, however, meets the lot size requirement of BCZR § 1A01.3.B.2. In accordance with BCZR § 102.2, each of the five lots meets the one acre minimum without having to "borrow" acreage from one of the other lots.

Density Requirement

Before addressing VPC's next argument, we note that both parties agree that R.C. 2 zoning regulations do not provide a method for calculating residential density as a discretionary use.¹³ VPC states, however, that, according to § 102.2 of the Zoning Commission's Policy Manual, "residential density may only be calculated on the overall property acreage if all uses are residential."¹⁴ Therefore, "to the extent there are nonresidential

¹³Other zones, such as R.C. 4, R.C. 5, and D.R., explicitly differentiate between residential and nonresidential uses. In a D.R. zone, for example, nonresidential acreage must be subtracted prior to calculating residential density - residential density is determined on gross residential acreage only. Under BCZR § 1B01.2.A.1, "[t]he 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." Accordingly, to calculate residential density for a tract that is zoned D.R. 3.5, with a gross residential acreage of 100 acres, the developer would multiply 3.5 (the number of residential density units permitted per acre) by 100 (the total residential acreage) to arrive at 350 residential density units for that tract of land. (A "density unit" is "[a]n expression of extent or density of dwelling use as related to number of rooms in, or type of, dwelling unit." BCZR § 101.)

¹⁴Section 102.2.A of the Zoning Commission's Policy Manual states, in pertinent part:

1. If several uses are proposed as separate structures on one property, each use must meet the zoning requirements as if it was a separate parcel.
2. Even if subdivision of the property is not proposed, the Zoning Commissioner may require that a line of division either a lease line or a zoning use division line between each use be shown on the plat.
 - a. Conditions: The following guidelines have been formulated so that this matter can be handled consistently:
 1. Both existing and proposed uses, as divided, must be able to meet the B.C.Z.R. requirements with respect to area, density,

(continued...)

uses on the lot, the acreage dedicated to the nonresidential use may not be considered in calculating residential density." In support of this proposition, VPC states:

[T]here is no formula for calculating residential density in the R.C.-2 zone. Instead, density in the R.C.-2 zone is determined by number of lots, as opposed to number of dwelling units. Thus, for all intents and purposes, "residential density" in the R.C.-2 zone is "subdivision lot density," particularly because only one dwelling unit is permitted per lot in the R.C.-2 zone. Thus, in making a density determination, whether it be by number of lots in the R.C.-2 zone or by number of dwelling units in the D.R. zone, a developer should not be permitted to "double use" acreage to achieve a higher density than contemplated by the Zoning Regulations.

(Citation to record extract and footnote omitted.)

Once again, we agree with Hayfields' response to VPC's position. Hayfields explains:

As the language of the relevant BCZR sections indicates, the calculation of residential density determines the number of residential density units which may be developed on a single tract of land; by contrast, the calculation of subdivision lot density determines the number of lots which may be subdivided from a lot of record in the R.C.-2 zone. . . . [VPC's] interpretation ignores the fact that, unlike the calculation of "residential density," the calculation of "subdivision lot density" does not contemplate subdivision based on distinctions among land uses; the subdivision lot density calculation does not consider the land uses which will be developed on the subdivided lots.

"(...continued)

parking, setbacks between buildings and to the division lines as if they were property lines.

- ii. Residential density may be calculated on the overall property acreage if all uses are residential and is allowed in that zone.

Moreover, VPC's reliance upon the Zoning Commission's Policy Manual § 102.2.A is misplaced. This section applies to a situation in which two uses are proposed on the same lot. In the case before us, Hayfields' development plan proposes only one use for each of the five lots created from the subdivision of the 295-acre, R.C. 2-zoned portion of the development site. The 273.1-acre lot is allocated to the country club and the remaining four lots will be developed into single-family residences.

Deference to Agency Interpretation

VPC also argues that, under Morris v. Prince George's County, 319 Md. 597, 613 (1990) (holding that in the face of legislative acquiescence a longstanding administrative interpretation is presumed to be correct), the Board properly gave deference to the testimony of Mr. John Lewis, a planner with the County's Department of Permits and Development Management (the PDM). Mr. Lewis testified before the Zoning Commissioner/Hearing Officer that the consistent practice of the PDM and the County generally, extending over the last ten years, is that a property owner cannot "use his acreage twice" to support two different uses, such as residential uses permitted as of right, on the one hand, and special exception uses such as a country club, on the other. To this Hayfields retorts that, if the Board should afford deference to an agency representative's interpretation, it should afford deference to the decision of the Zoning Commissioner/Hearing Officer.¹⁶

¹⁶Hayfields cites to BCZR §§ 500.6 and 500.7 for this proposition. These sections give the Zoning Commissioner the power to conduct hearings involving the proper interpretation of zoning regulations and to pass orders necessary for the proper enforcement of such regulations.

Assuming, arguendo, that the longstanding, consistent practices of the PDM and the County generally should be given deference, there was insufficient evidence in the record of a "longstanding and consistent practice of the PDM." As Hayfields points out, the two cases cited by Mr. Lewis to show PDM's interpretation do not in fact demonstrate a longstanding agency practice of subtracting special exception acreage prior to calculating residential subdivision lot density in an R.C. 2 zone."

Legislative Purpose

VPC's final argument is that "double use" of acreage in determining subdivision lot density is inconsistent with the legislative purpose of the R.C. 2 zoning classification. The resource conservation zone's purpose is to "protect both natural and man-made resources from compromising effects of specific forms and densities of development." BCZR § 1A00.2(c). We reject VPC's argument because, paradoxically, the formula for calculating subdivision lot density advocated by VPC may result in the creation of a greater number of lots compared with the result achieved under the formula we hold as correct. For example, a development plan for a 295-acre tract may designate 15 acres for use as a private school (a special exception use in an R.C. 2 zone) and 280 acres for use as single-family dwellings. With the approval of the special exception use, the acreage for the residential component could thereafter be subdivided into five lots, for a total of six

"Mr. Lewis cited to the Caves Valley and Pickersgill cases. During his testimony, he conceded that he did not believe that the application of the policy to which he testified was contested in Caves Valley and that Pickersgill involved land that was zoned D.R., not R.C. 2.

lots under VPC's formulation. "Our" formula would allow, of course, a maximum of five lots.

In summary, according to the plain language of BCZR § 1A01.3.B.1 through .4, the area for a special exception use in an R.C. 2-zoned property should not be removed prior to the calculation of subdivision lot density even though the development plan calls for residential use on the remaining acreage. The method for calculating subdivision lot density in an R.C. 2 zone is not analogous to that for calculating residential density in other zones. Instead, R.C. 2 zone subdivisions are created purely on available acreage under the formula previously stated, subject only to other special limitations, such as minimum lot size and set back. The Board erred in reversing the Zoning Commissioner/Hearing Officer's order.

B. VPC's Cross-Appeal

1. Background

"Zoning is the legislative division of a community into areas in each of which only certain designated uses of land are permitted so that the community may develop in an orderly manner in accordance with a comprehensive plan."¹⁰ 1 E.C. Yokley, Zoning Law and Practice § 2-1, at 15-16 (4th ed. 1978) (footnote omitted). Within any given zoning classification, the BCZR prescribes two types of uses: certain uses are permitted as of right and others are conditionally permissible. Golf courses and country clubs are

¹⁰In Baltimore County, "[f]or the purpose of promoting the health, security, comfort, convenience, prosperity, orderly development, and other aspects of the general welfare of the community, zones are intended to provide broad regulation of the use and manner of use of land, in accordance with comprehensive plans." BCZR § 100.1.A.1.

conditionally permissible uses in the County's R.C. 2 zones, BCZR § 1A01.2.C.10, and also in the R.C. 4 zones, BCZR § 1A03.3.B.7.

A use permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed. Schultz, supra, 291 Md. at 21. On the other hand, a conditional use, i.e., a use permitted by special exception, may be developed only under certain circumstances. Id. at 22. In Schultz, the Court of Appeals noted:

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.

Id. at 11; see also Rockville Fuel and Feed Co. v. Board of Appeals, 257 Md. 183, 107-88 (1970); People's Counsel v. Mangione, 85 Md. App. 738, 747-48 (1991); Anderson v. Sawyer, 23 Md. App. 612, 617 (1974). More recently this Court said in Mossburg v. Montgomery County, 107 Md. App. 1 (1995), cert. denied, 341 Md. 649 (1996), that

a special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.

Id. at 7-8 (emphasis added). In the instant case, the standards that must be met are found in BCZR §§ 1A01.2.C and 502.1.

BCZR § 1A01.2.C provides that a petition for special exception use may be granted in an R.C. 2 zone if "the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity." BCZR § 502.1 lists eight factors that negate a special exception's presumption of validity. Only two of the eight factors in BCZR § 502.1 are raised in this appeal. Under BCZR § 502.1:

-Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved; [nor]

* * *

- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations.⁽¹⁹⁾

By definition, each special exception use carries with it a potential to cause adverse effects. If no constraint were placed

¹⁹The remaining factors in BCZR § 502.1 are:

- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations.

on BCZR § 502.1(a), in particular, when evaluating the acceptability of a special exception use, few special exceptions would be granted. Precedent has developed to govern the application of factors, such as those in BCZR § 502.1, in analyzing the propriety of a special exception use in a particular location. As stated in Mossburg, "[b]y reason of the holdings in Schultz, supra, and its progeny, such general conditions as are applied to special exceptions are themselves subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere within the relevant zones in the regional district." Mossburg, supra, 107 Md. App. at 21.

In Mossburg, Judge Cathell for this Court provided an example of how to "overlay" the statutory conditions of a county's special exception law with the restrictions in Schultz. Mossburg, 107 Md. App. at 21-22. Based on the Mossburg example, we have added the limiting language of Schultz to BCZR § 502.1(a). The test becomes:

—Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with such a use would be generally elsewhere in the zone].

(Emphasis added.) We have thus far not discussed the extent or limitation of the term "locality," as used in BCZR § 502.1(a). This issue is addressed in the next subsection.

2. On-Site Impact of Proposed Special Exception Use

The parties disagree on the appropriate method of evaluating Hayfields' proposal under BCZR § 502.1, in light of Schultz. VPC

argues that the adverse impacts analysis must not only consider off-site impact, i.e., impact to the surrounding and neighboring properties, but must include an examination of on-site impact, i.e., adverse impact to the subject property itself. Hayfields counters that Schultz mandates the evaluation of off-site impacts only. The difference in the parties' interpretations is of particular significance in the instant case because of the Farm's unique agricultural and historical character.

In response to Hayfields' petition for special exception, Commissioner Schmidt opined:

Whether the Hayfields property should remain a farm is irrelevant, within the context of this case. It does not matter whether the Hayfields property represents the most significant farm in Baltimore County. . . . The test for approval of the use, and the only test, is whether the special exception criteria within Section 502.1 of the B.C.Z.R. are satisfied.

The Zoning Commissioner concluded that Schultz and its progeny require that he "adjudge the impacts of the use on neighboring properties, only" and that the potential impacts on the subject property itself are not to be considered.²⁰

The Board agreed. VPC disagrees with the Zoning Commissioner's interpretation of Schultz and claims that the Board misunderstood the requirements for approving a special exception use.

In the previous subsection, we have introduced the Schultz holding that

²⁰Commissioner Schmidt opined that testimony regarding the prime and productive soils on Hayfields Farm "miss(ed) the point as far as this special exception is concerned" because Hayfields cannot be forced to farm the property.

the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22-23. In reaching its decision, the Court discussed Deen v. Baltimore Gas & Elec. Co., 240 Md. 317, 330-31 (1965) (concerning construction of high tension transmission wires above ground) and Anderson, *supra*, 23 Md. App. at 617-18 (concerning construction of a funeral home in a residential zone), and explained:

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.

Schultz, 291 Md. at 15 (emphasis added). Deen and Anderson both involved proposed special exception uses in Baltimore County. BCZR § 502.1(a) was at issue in those two cases, as it is here.

Although conceding that the holding in Schultz speaks of off-site effects, VPC stresses that the test articulated by the Schultz Court comparing the "particular location" with the area elsewhere in the zone should not be limited to off-site effects. In an attempt to distinguish the instant case from Schultz and cases that have followed Schultz, VPC postulates:

The only reason that the Court in Schultz spoke at all in terms of adverse effects on adjoining or neighboring properties was because those happened to be the kinds of effects that were relied upon by the protestants in Schultz. The same is true of both the cases cited by the Court in Schultz, and the cases decided subsequent to Schultz. In none of these cases were any "unique" qualities intrinsic to the site alleged to be adversely impacted by the proposed conditional use. However, the fact that the effects cited by the protestants in Schultz and other appellate cases were effects on adjoining properties does not mean that the special exception test should not take into account, where appropriate, adverse impacts which will occur on the property that is the subject of the application.

From VPC's viewpoint, the development of the Farm will result in a loss of unique on-site resources, such as the Farm's prime and productive soils and its value as an historic site, both of which are public resources. VPC observes that the legislature, by creating the R.C. 2 zoning classification, has declared explicitly

that agricultural resources are of value to the general public.²¹
VPC's appraisal continues with the following:

The Board's erroneous exclusion of adverse impacts on the property itself occurred because the Board failed to appreciate the difference between impacts on resources of admitted public importance or significance (which may be found either on or off site) and "private" impacts on the value or use of neighboring properties. . . . The Board erred in only considering the private impacts on adjoining properties, and by failing to consider the loss of important agricultural and historical resources within the four corners of the property itself. When an important public resource is harmed, even

²¹In its brief, VPC cites three regulations that attest to the importance of agriculture in Baltimore County: BCZR §§ 1A01.1.A, 1A01.1.B, and 1A01.2.A.

BCZR § 1A01.1 provides, inter alia:

A. Legislative Statement of Findings [for R.C. 2 zones].

2. Declaration of findings. It is found:

a. that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

* * *

d. that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

* * *

g. that Baltimore County possesses numerous areas which are highly suitable for urban development including residential subdivisions which are not located in areas of productive agricultural land.

BCZR § 1A01.1.B states:

The R.C. 2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

BCZR § 1A01.2.A declares that "[a]gricultural operations . . . shall be afforded preferential treatment over and above all other permitted uses in R.C. 2 zones."

where the resource is located on the special exception site itself, everyone is harmed — including both the general public and the owners of other properties in the locality. Evidence of such harm cannot be ignored by the Board, but must be evaluated as a part of the special exception process.

(Footnote omitted.)

Due to the alleged threat to public resources on the Farm itself, VPC argues that the Schultz test should be applied in a different manner in the instant case.²² VPC's theory furnishes two categories of on-site impacts that the Board needed to consider but did not:

Characteristics of the specific proposal which are unusual or not generic to the type of facility, and which arguably result in unusual detriments, must be considered, and features of the particular sites or areas selected which are not commonly or routinely found throughout the zone and which thus pose unusual detriments specific to the facility or site under review can and must be considered in applying the standards of both Section 502.1 and Section 1A01.2.C.

(Emphasis added.) VPC provides the following as an example of "characteristics of the specific proposal." According to VPC, the projected level of play at the proposed golf course is nearly twice as high as the overall average rounds played at private 18-hole golf courses in the County. Given the fact that the proposed golf course allegedly is atypical in generated activity when compared with a "generic golf course," VPC contends that any potential on-site detriments to the Farm resulting from the golf course's atypical level of activity should be examined. Under the second

²²VPC acknowledges that "the analysis set forth in Schultz v. Britta does not require the Board to consider a potentially adverse impact to a purely private on-site resource when evaluating a proposed special exception."

category, "features of the particular site," VPC states that any detriments to the Farm's uncommonly productive soil and its unusually rich historical significance should be evaluated.

VPC presents an interesting approach to the law of special exceptions, but it cites no case that supports its position. On the contrary, numerous cases support the proposition that the Board was correct in looking only at the off-site effects of the proposed special exception use. For applications of the Schultz test, see Harford County v. Earl E. Preston, Jr., Inc., 322 Md. 493, 505 (1991) (finding that "[t]he Board . . . made no attempt to reconcile the contradictory findings of fact by its hearing examiner in his two reports as to whether the adverse impacts upon the neighborhood of the [applicant's] proposed special exception uses were beyond those inherently associated with such special exception uses irrespective of their location within the AG zone" (emphasis added)); Board of County Comm'rs v. Holbrook, 314 Md. 210, 217-18 (1988) ("[W]here the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the [special exception] application should be denied."); Evans v. Shore Communications, Inc., 112 Md. App. 284, 304 (1996) (holding that "[a]ssuming, arguendo, that appellant has produced evidence that the [antenna] tower will result in an adverse impact on the surrounding properties, the Board was . . . obliged to make a finding that the adverse effects would be greater in the proposed location than they would generally be elsewhere

within the areas of the county where they may be established"); Mossburg, 107 Md. App. at 13 (stating that in reviewing the Board's decision, the Court "look[s] for evidence, if any, in the record of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the I-2 Zones in order to determine whether the environmental and traffic safety impact at the subject site is greater"²³); Moseman v. County Council, 99 Md. App. 258, 264 (citing Schultz for the proposition that the proposed use cannot have "any adverse [e]ffect above and beyond those inherently associated with such a special exception use irrespective of its location in the permitted zone"), cert. denied, 335 Md. 229 (1994); Sharp, 98 Md. App. at 86-87 (holding, inter alia, that "[t]he Board had before it substantial evidence to support its finding that potential dangers from airplane crashes were such a remote possibility as not to constitute an adverse effect to the owners of vicinal properties" (emphasis added)); Mangione, supra, 85 Md. App. at 750 (stating that the Court "shall review facts and circumstances upon which the Board could have found that the special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone").

²³Although our quote from the Mossburg Court speaks in terms of "subject site" rather than "surrounding and neighboring properties," the Court's opinion cited to Schultz and to Sharp v. Board of Appeals, 98 Md. App. 57 (1993) (discussing Schultz's emphasis of Dean and Anderson, the cases upon which Schultz formulated its holding). Mossburg, 107 Md. App. at 8-11. Following these citations, the Court's analysis focused on off-site environmental and traffic safety concerns.

Additionally, as the Schultz Court noted, "The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the [comprehensive] plan." Schultz, 291 Md. at 11. Five of the seven cases we cited above directly quote this portion of Schultz that establishes the Board's duties in its judicial review of the grant or denial of a special exception use. See Preston, 322 Md. at 498; Holbrook, 314 Md. at 216; Evans, 112 Md. App. at 302; Sharp, 98 Md. App. at 76; Mangione, 85 Md. App. at 748. Furthermore, none of the seven cases suggests that, in certain circumstances, an additional duty of the Board may involve the examination of on-site impacts under the Schultz test. We hold that absent a stricter standard clearly expressed in the County's zoning regulations, or until the relevant case law is modified by the Court of Appeals, the current expression of the Schultz test applies.

We agree with Hayfields' contention that "although the adverse impacts considered by the Board vary according to the special exception use requested, the 'adverse effect analysis,' i.e., the Schultz review standard, used by the Board when evaluating adverse impacts, necessarily remains constant." The Board, therefore, correctly limited its adverse impacts analysis under BCZR § 502.1, as modified by the language in Schultz, to off-site effects.

Nothing in the BCZR contradicts our conclusion that off-site impact is the only type of impact for which the Board should scrutinize the proposed special exception use. In fact, BCZR § 1A01.2.C, which lists the uses permitted by special exception in

an R.C. 2 zone, offers additional support for our holding. The regulation permits the grant of a special exception for specified uses in an R.C. 2 zone only if "the use would not be detrimental to the primary agricultural uses in its vicinity."²⁴ (Emphasis added.) We contrast this condition²⁵ with the additional conditions placed on special exception uses listed in Item 24 of BCZR § 1A01.2.C. Uses under Item 24 include the following as principal commercial uses: farm-machinery sales, feed or grain mills, fertilizer sales or storage uses, and others. A special exception may be granted for a use under Item 24 if "the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses." BCZR § 1A01.2.C. Under BCZR § 1A01.2.C., "on-site impact to agricultural use should be considered only for a very limited

²⁴VPC claims that the Board never made an explicit finding regarding BCZR § 1A01.2.C. Rejecting the testimony of VPC's expert, Thomas L. Daniels, on the "impermanence syndrome," a domino-type effect where the development of one farm triggers reduced investment by other farmers in their farms, the Board found that "the effects of development have already been realized in the vicinity." Although a cite to BCZR § 1A01.2.C was lacking in this portion of the Board's opinion, this discussion by the Board fulfills the requirement that the Board must find that the proposed country club would not be detrimental to the agricultural uses in the vicinity.

Again regarding agricultural issues, VPC argues in a footnote in its brief that the Board's finding under BCZR § 502.1(g) is erroneous. Because VPC makes its argument in terms of on-site effects, we could decline to address this issue, given the fact that purely on-site matters are irrelevant. Nevertheless, we note that VPC's argument (before the Board) began from the premise that the country club is an urban use. There was substantial evidence to support the Board's finding that, contrary to VPC's argument, the project is consistent with the purposes of the property's zoning classification and with the spirit and intent of the zoning regulations, as required by BCZR § 502.1(g). The legislative statement of findings for R.C. 2 zones and the legislative purpose in creating R.C. 2 zones stress the problems of intrusion of urban development into agricultural land. BCZR §§ 1A01.1.A.1, 1A01.1.B.1. In its opinion, the Board cited to testimony from Hayfields' expert, George E. Gavrellis, that the "overwhelming majority of the space will remain open" and the "use is a non-intensive, non-urban use."

²⁵"Vicinity" is: "1. the area or region near or about a place; surrounding district; neighborhood: There are no stores in the vicinity of our house. 2. state or fact of being near; proximity; propinquity: He was troubled by the vicinity of the nuclear testing area." Webster's Encyclopedic Unabridged Dictionary 1591 (1909). This definition makes it clear that "vicinity" means "off-site."

number of special exception uses, which are found under Item 24; a country club use is not included among the uses so specified.

3. Board's Application of Schultz v. Pritts
to Off-Site Environmental Effects

VPC also argues that the Board's analysis of the country club's potential adverse impact on the Cockeysville Marble aquifer demonstrates the Board's "misunderstanding and misapplication" of the Schultz test with respect to off-site matters. As we have noted, this aquifer is one of the best sources of groundwater in the locality. Under BCZR § 502.1(a) and Schultz, the special exception use cannot be granted if the proposed country club use is more detrimental to the health, safety, or general welfare of properties adjoining and surrounding the selected site than a country club would be if it were located elsewhere in the R.C. 2 zone.

VPC's expert, Stephen L. Mogilnicki, testified that the Cockeysville Marble weathers irregularly, resulting in "solution cavities" that "tend to carry or allow the passage of contaminants further and at faster velocity" compared with other formations. According to Hayfields' expert, Stephanie N. Hau, however, there is a clay layer that overlays the Cockeysville Marble that acts as a filter to prevent or retard the flow of any contaminants into the aquifer below. Ms. Hau stated that the presence of the clay "slow[s] down the infiltration of rain water, allowing natural microbial processes to break down and essentially eat the nitrate [from fertilizers] that would get into the groundwater system and pesticides."

The Board stated:

The bulk of scientific testimony concerning subsoil effects of the proposed use comes from Ms. Hau,⁽²⁶⁾ Mr. Mogilnicki,⁽²⁷⁾ and Dr. [William P.] Ball.⁽²⁸⁾ Ms. Hau provided information concerning subsurface conditions and proposed well locations, with references to the Environmental Impact Report, construction monitoring plan, and other work to be performed as part of the development process, i.e., mowing plans, integrated pest management plans, etc. A single well is expected to accommodate the entire project, that well being located centrally in the site and to the south of an on-site ridge line, whereas other well/septic systems generally are located to the north of that same ridge line. Ms. Hau opined that there would be no impact on groundwater in wells on or near the property. She also provided an interesting look at the public's perception of golf courses as being a 'toxic waste dump,' pointing out that golf courses are not simply blanketed with chemicals. She described subsurface conditions as including a relatively consistent clay layer between the surface and the underlying Cockeysville marble and other formations, this point being somewhat strongly contested by Dr. Ball. In light of Dr. Ball's testimony, and Mr. Mogilnicki's, concerning the effects of contaminant percolation to the subsurface formations, the Board recognizes that the clay layer is both desirable and universally used to mitigate such concerns. The question for the Board is whether the impacts associated with the proposed use are greater here than elsewhere in the R.C. 2 zone. It is this Board's view that, while it is debatable whether the Cockeysville marble or other

²⁶As Hayfields' expert in environmental sciences, hydrogeology, and the environmental effect of golf courses, Ms. Hau was the principal in the firm Chesapeake Environmental Management, Inc., the company that prepared the Environmental Impact Report for Hayfields on its proposal to locate the golf course on the Farm.

²⁷A geohydrologist advisor for the groundwater management section of Baltimore County's Department of Environmental Protection and Resource Management, Mr. Mogilnicki testified on VPC's behalf as an expert in geology, hydrogeology, and groundwater issues, including issues relating to the impact of golf courses and other development on groundwater quality and quantity.

²⁸Dr. Ball testified for VPC as an expert in environmental engineering, specializing in the nature and transport of chemical substances in the subsurface environment.

formations are more or less susceptible to contaminants than other formations, those same formations are found elsewhere in the R.C. 2 zone. Therefore, the Board finds there was insufficient evidence that the potential effects on the subsurface formations and groundwater would be greater at the instant site than elsewhere in the zone.

In light of the proposed well and septic field locations being leeward of other wells to the north of the on-site ridge, as well as the acknowledgment by (protestants' witnesses that the existence of clay improves the possibility for microbial action to occur in mitigating some of the concerns related to the contaminants, this Board believes that the proposed site is no worse than elsewhere in the R.C. zone. The effects of the well on neighboring properties were not demonstrated as likely to be worse here than at other locations in the R.C. zone. Therefore, this Board finds that there was insufficient evidence that the proposed use would have a greater detrimental impact to the health or safety of the vicinity at this location.

(Emphasis added.)

In regard to the effect of the proposed golf course on the aquifer, the experts disagreed as to the first three of the following four questions, viz:

1. Is the quality of the groundwater protected by a clay layer to such an extent that, by the clay layer alone or in conjunction with implementation of the golf course management plan developed for the property, there would be no adverse impact to the aquifer in the proposed location?²⁹

²⁹Ms. Hau testified that "our analysis at the Hayfields property is that there is a minimal possibility of contamination of streams or groundwater . . . from the golf course if the golf course is managed properly."

Evidence was also presented in the form of an Environmental Impact Report prepared for Hayfields by Chesapeake Environmental Management, Inc. This report represented that "[t]he potential for adverse impacts to the quality of groundwater resulting from the use of chemicals on the golf course is low" and that "[t]he assessment of potential environmental effects of the proposed Hayfields Manor Golf Course indicate[s] that the golf course will not have adverse impacts to the

(continued...)

2. Would the clay layer protect the Cockeysville Marble aquifer to such an extent that components of fertilizers, pesticides, and other chemicals used on the golf course are no more likely to reach the aquifer and pollute the groundwater than if the golf course was underlain by another type of soil layer?³⁰

3. Is the Cockeysville Marble more susceptible to contamination than other rock formations in the R.C. 2 zone?³¹

4. What percentage of the remainder of the R.C. 2 zone is underlain by Cockeysville Marble?

The Board did not resolve the first question. The Board strongly implied that it believed that the clay layer testified to by Ms. Hau at least helped in lessening the danger to water quality caused by possible contaminants from the golf course. The Board noted that even VPC's witnesses acknowledged "that the existence of clay improves the possibility for microbial action to occur in mitigating some of the concerns related to the contaminants."

"(...continued)

groundwater." According to the report, these conclusions were drawn from the fact that implementation of the golf course management plan would offer the "greatest protection to the aquifer from potential contamination associated with chemical use on the golf course" and the clay layer in the soils overlaying the Cockeysville Marble would be a second line of defense.

³⁰The following testimony was presented by Ms. Hau:

Q. With regard to this potential contamination issue that you've just described, are these impacts any greater than you would ordinarily expect regardless of the location of the proposed golf course elsewhere in the RC-2 and RC-4 zones?

A. I think with the presence of the clay layer arrangement that the impact on this property would be less than in other areas. I would also venture to say that certainly the impacts would not be greater on this property.

³¹Ms. Hau testified, "In my professional opinion, the Cockeysville Marble is no more susceptible to contamination than any other fractured rock unit in Baltimore County."

Although the Board recited Ms. Hau's testimony that, in her opinion, "there would be no impact on groundwater in wells on or near the property" caused by the proposed golf course, the Board did not say whether it credited that testimony.³²

The Board made no comparison, such as stated in question two, as to whether the adverse effect on the groundwater from the golf course chemicals would be worse at the proposed site as compared with the area generally in the R.C. 2 zone. In regard to question three, the Board merely said that the issue was debatable (i.e., "it is debatable whether the Cockeysville [M]arble or other formations are more or less susceptible to contaminants than other formations").

Rather than deciding questions one, two, and three, the Board avoided them by saying in effect that, although it is debatable that the Cockeysville Marble formation is more susceptible to contaminants than other subsurface formations, Cockeysville Marble is found in other parts of the R.C. 2 zone, and therefore there was insufficient evidence that the potential adverse effect on the groundwater caused by the golf course would be greater at the proposed site than elsewhere in the R.C. 2 zone. As VPC correctly points out, this finding does not comport with the test set forth in Schultz. Assuming that Cockeysville Marble is more susceptible to contamination, the mere fact that some of the land elsewhere in the R.C. 2 zone is underlain with Cockeysville Marble does not mean

"Our review of the transcript reveals that Ms. Hau testified that, in terms of water quantity, "there is not going to be any adverse impact to the groundwater resources." We do not find an equivalent statement in her testimony regarding groundwater quality. Instead, she stated that there is a "minimal possibility" of groundwater contamination. As we noted above, however, the Environmental Impact Report stated that the golf course "will not have adverse impacts to the groundwater."

that the effect would be no worse at this locality than elsewhere in the zone.

We, therefore, will remand the case to the circuit court with instructions to remand the case to the Board to resolve certain questions. If the Board, in answer to any of the questions that we have numbered one, two, or three, believes that the proposed golf course does not pose a threat to water quality in the aquifer, the Board should say so and the legal problem would be resolved. If, on the other hand, it believes that the proposed golf course does pose a threat to the aquifer's water quality because it is above Cockeysville Marble, then the Board should determine how much of the off-site portion of the comparable R.C. 2 zone is underlain by that subsurface formation.³³ If all or a substantial portion of the off-site R.C. 2 land is underlain by Cockeysville Marble then it is at least possible that the Board could fairly conclude that the golf course, at its proposed site, would cause no more contamination to the aquifer than if it were located elsewhere in the R.C. 2 zone.³⁴ Conversely, if the Board finds that only a

³³VPC cites a portion of Mr. Mogilnicki's testimony to suggest that only 10% of the total acreage in the R.C. 2 zone is underlain by Cockeysville Marble. VPC says that, given this figure, groundwater in 90% of the possible sites in the R.C. 2 zone would be subject to lesser adverse impact because those sites are underlain with different, and less vulnerable, geologic formations.

Mr. Mogilnicki did not testify that only 10% of the R.C. 2 zone is underlain by Cockeysville Marble. Rather, he said that about 10% of the R.C. zones, i.e., R.C. 2 and other R.C. zones, in Baltimore County are underlain by Cockeysville Marble. Mr. Mogilnicki also testified that the "Cockeysville marble area is principally R.C. 2." These observations possibly suggest that whereas the Cockeysville Marble underlies less than 10% of the areas in some of the other R.C. zones, this rock formation is found in the R.C. 2 zone at some percentage greater than 10%.

³⁴There is a possibility that, if a substantial percentage of the R.C. 2 zone is underlain by Cockeysville Marble, the Board's statement might satisfy the Schultz test.

If we assume, *arguendo*, that a substantial percentage of the R.C. 2 zone is underlain by Cockeysville Marble, then placement of the golf course at the proposed site might not adversely affect the groundwater to a greater extent than if the

(continued...)

relatively small portion of the off-site R.C. 2-zoned land is underlain with Cockeysville Marble, and if it also finds that the Cockeysville Marble formation makes the aquifer more susceptible to contamination, then it cannot be said that the golf course at the intended site would pose no greater danger to groundwater than if it were located elsewhere in the R.C. 2 zone.

4. Impact of the Proposed Use on Historic Hayfields Farm and the National Register Historic District

The premise of VPC's next argument is that the Board did not evaluate the potential harm to the historical value of the Farm itself and of the Western Run - Belfast Road National Register Historic District caused by Hayfields' proposed development. VPC's concern is based on the fact that the Farm: (1) contains seven structures listed on the County's "Landmarks List"; (2) is the gateway property of the Western Run - Belfast Road National Register, a district known for its agricultural significance; and (3) is the "premiere agricultural site" in the County because of its agricultural history. VPC states that the Board, instead of considering the on-site or off-site detriments of historical significance, "concluded that Hayfields is only required to follow Baltimore County's Development Regulations calling for review of proposed alterations to historic structures in the subsequent Development Plan process by the Landmarks Preservation Commission and Planning Board."

⁴(...continued)
country club were placed elsewhere in the zone. If a significant percentage of other areas in the zone were also underlain by the same geologic formation, any adverse effect felt at the proposed site would likely be felt at other sites as well.

First, as we already have discussed at length, on-site detriment is not to be considered under the Schultz test. It is the off-site loss potentially sustainable by the Western Run - Belfast Road National Register Historic District that we now consider.

Under BCZR § 502.1(a), a special exception use is prohibited if it is "detrimental to the health, safety, or general welfare of the locality involved." (Emphasis added.) We accept the premise that the preservation of historically significant structures, land, and districts promotes the general welfare. But, as we have stated previously, to warrant the denial of a petition for special exception, the detriment to adjoining or surrounding properties at the instant site must be different from the detriment that would occur elsewhere in the zone. Schultz, 291 Md. at 15. "If the evidence makes the question of harm or disturbance . . . fairly debatable, the matter is one for the Board to decide." Id. at 11; see also Sharp, 98 Md. App. at 82 (quoting Holbrook, 314 Md. at 218).

The "fairly debatable" standard is in accord with the "substantial evidence" standard of review. See Evans, 112 Md. App. at 298 (citing Umerley v. People's Counsel, 108 Md. App. 497, 503, cert. denied, 342 Md. 584 (1996)). These standards ensure that judicial review is limited to "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." Holbrook, 314 Md. at 218 (quoting Supervisor of Assessments v. Ely, 272 Md.

77, 84 (1974)). Under this standard, we afford deference to the Board's findings of fact and applications of law to fact.

The Board said that it recognized

that any proposals such as the country club will have an effect on the surrounding vicinity. The question, once again, is whether those effects will be greater here than elsewhere in the zone. The instant site is at the edge of the urban/rural demarcation line, and is bounded by Interstate 83 to the east, which sees substantial large-scale commercial development at elevations much higher than the existing site. Were this project placed elsewhere in the R.C. zone, the effects of increased traffic, impact on views, other natural opportunities, and so forth, would be far greater as opposed to this location. Concerning the historic nature of the manor house and other structures on the site, the Petitioner proposes to adaptively reuse all such structures in the development of the country club. Nowhere in the zoning regulations is a Petitioner compelled to maintain an historic structure "as is"; a Petitioner is only required to follow the development regulations and work within those regulations as they may pertain to historic structures, and whatever interaction as may be required with the Landmarks Preservation Commission.

The Board held that the country club at the proposed site will not have a greater adverse impact on the general welfare of the surrounding vicinity than if it were located elsewhere in the zone.

Testifying on behalf of VPC were Ruth Mascari, Chair of the Baltimore County Landmarks Preservation Commission, and James T. Wollon, Jr., an architect specializing in historic preservation.³⁵ Ms. Mascari testified that the development of the proposed project

³⁵Mr. Wollon prepared the historic district nomination papers for the Western Run - Belfast Road National Register Historic District.

Once a nomination form nominating a district to the National Register is completed by a local jurisdiction, it is reviewed by the state before being sent to the National Park Service.

on the Farm "will have an extremely adverse impact on the Western District." Mr. Wollon drew a similar conclusion.³⁶ He delineated various changes he believed would result in adverse effects on the historic district, which were:³⁷

- (1) losing the property's open vistas;
- (2) modifying the property's historic structures;
- (3) following development, the Farm "will no longer be a farm" and "will no longer look like a farm"; and
- (4) "remov[ing] the property . . . [will] remove the setting of the historic house."

The Farm's manor house "happens to be the biggest of all the houses in th[e] [historic] district" and the Farm is "the first site seen upon the most common entrance to the district," according to Mr. Wollon. He also testified that the Western Run - Belfast Road and Worthington Valley historical districts³⁸ were "outstanding historic districts" and that "the qualities that make them qualify in the first place are still there, and they are very rare and outstanding for the whole Baltimore region."

³⁶According to Mr. Wollon, the standards for nomination to the National Register of Historic Places for a district require that the district contain a substantial number of historic sites and structures that "have not been altered beyond their point of being significant" and not contain a substantial number of sites and structures that "would detract from the historic quality of that district."

³⁷The amici offer a similar argument. In their brief, they state:

[T]he loss of Hayfields as a farm to a commercial country club complex affects the entire [Western Run - Belfast Road Historic] [D]istrict. It is no longer a district composed solely of rolling hills and farms but now has a commercial country club located at its premier entrance. The idea of the setting or scene applies to the Hayfields buildings as well. Historically, the Hayfields residence and farm buildings were situated in the middle of a farm. Take the setting or scene away from them and you have an obvious effect on the buildings themselves.

³⁸Although not part of the Worthington Valley District, the Farm also serves as this district's "primary entrance."

VPC contends that the Board "cop[ped] out" and "abdicated its responsibility to consider matters of adverse historic impact in passing on special exception applications, by holding that its authority to rule on land use impacts and changes must be entirely jettisoned and replaced solely by the Landmark Commission's more limited authority relative to development plan and building permit details." We disagree. Although the Board did not say explicitly that, in terms of the Western Run - Belfast Road Historic District, the adverse effects of the proposed development of the instant site were no greater than those that would occur in other areas of the zone, it did make findings with regard to each of the factors that Mr. Wollon raised in his testimony.

To satisfy VPC's concerns regarding the third and fourth of Mr. Wollon's factors, the Board would have to have required Hayfields to preserve the agricultural character of the Farm. The only way to accomplish this objective is to require Hayfields to continue farming on the tract or not to permit them to do anything with the property that would preclude farming. But, as the Board recognized, Hayfields cannot be forced to continue its farming operation. To forestall any non-agricultural use, simply to achieve the goal of agricultural preservation, raises the "takings" spectra.

Whether there was significant loss of open vistas was "fairly debatable" because there was substantial evidence in the record to support the Board's finding that

[t]he instant site is at the edge of the urban/rural demarcation line, and is bounded by Interstate 83 to the east, which sees substantial large-scale commercial development at elevations much higher than the existing

site. Were this project placed elsewhere in the R.C. zone, the effects of increased traffic, impact on views, other natural opportunities, and so forth, would be far greater as opposed to this location.

(Emphasis added.)

Finally, the Board did not err in holding that Hayfields' proposal to reuse adaptively the historic structures on the site would preserve, to a satisfactory degree, the historic nature of these structures. The only way to satisfy VPC on this issue would have been to require the property owner to continue farming to keep the buildings in their proper historic setting. Again, the Board does not have the authority to enforce such a requirement.

We conclude that there was sufficient evidence in the record to make the potential impact on general welfare fairly debatable and, therefore, the issue was one for the Board to decide. We hold that the Board adequately reviewed the impact of the proposed development on the relevant vicinity, which includes the National Register Historic District.

5. Burden of Proof

VPC argues that, based on two isolated statements contained in the Board's opinion on the environmental impacts of the proposed development, the Board improperly imposed the burden of proof, under BCZR § 502.1 and Schultz, on VPC rather than on Hayfields. VPC quotes the following excerpts from the Board's opinion: (1) "Therefore, the Board finds there was insufficient evidence that the potential effects on the subsurface formations and groundwater would be greater at the instant site than elsewhere in the zone"; and (2)

The effects of the [golf course] well on neighboring properties were not demonstrated as likely to be worse here than at other locations in the R.C. zone. Therefore, this Board finds that there was insufficient evidence that the proposed use would have a greater detrimental impact to the health or safety of the vicinity at this location.

Because we are remanding the case regarding the environmental impact issue, we note it is clear that the Schultz test does require the applicant (i.e., Hayfields) to show, under BCZR § 502.1(a), that the use for which the special exception is requested will not be "detrimental to the health, safety, or general welfare of the locality involved."³⁹

Additionally, VPC declares that because the Board incorrectly placed the burden of proof on it with respect to the environmental issues "[t]his supports an inference that the Board similarly misplaced the burden of proof throughout its Opinion." VPC provides no support for its assertion. We find none and reject the assertion. A review of the Board's entire decision leads us to believe that the Board was guilty, at most, of merely inartful word usage and was well aware of the burden of proof requirements of BCZR § 502.1(a).

6. Conditions on Practice Facility/Driving Range

³⁹The Court in Schultz explained:

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.

Schultz, 291 Md. at 11.

VPC appeals from the circuit court's reversal of two of the Board's limitations on the use of the practice facility/driving range. The conditions at issue here (1) limit the use of the driving range to people who are using the golf course or who are members, and (2) limit to 15 the number of practice tees that can be in operation at one time.

The Board held that a practice range is "a natural and appropriate facility" in conjunction with a golf course but noted that a driving range is not permitted as a special exception use in an R.C. 2 zone. According to the Board, therefore, the practice facility would have to serve a subordinate use to the country club. Given the subordinate use requirement, the Board restricted the use of the practice facility to those who are preparing to play (or ending a round of play) on the golf course or to those who are members. Following the imposition of this limitation, the Board stated that "[i]n light of the limited use expected on the practice facility, no more than 15 tees shall be available for use at any one time."

The parties have chosen different methods by which to analyze this issue. VPC conducts a mixed "subordinate use" and "intensity of use" analysis, whereas Hayfields solely employs an "intensity of use" analysis.

VPC asserts that the Board

approved the driving range facility here as a subordinate use to the country club, and therefore placed certain conditions upon it. As each of the conditions are supported by evidence in the record and represent a reasonable effort by the Board to insure that the practice range would be subordinate to the golf course, and thus an "appropriate facility," the circuit court erred in striking

the conditions relating to who may use the facility and the number of tees that may be used at one time.

(Citation to the record omitted.) VPC then proceeds with the observation that because the driving range was approved as a subordinate use, "the intensity of use of the driving range must be commensurate with, if not subordinate to, the use of the golf course." A similar conclusion was drawn by VPC in regard to the limitation of the number of tees available for use at one time. Finally, VPC contends that these conditions were imposed by the Board "for the protection of surrounding and neighboring properties."¹⁰

In contrast, Hayfields argued that the Board already recognized the practice range as an "appropriate facility." Given this fact, the only issue before the Board regarding potential conditions it could place on the facility concerned its "intensity of use." This analysis required the Board to find, under BCZR § 502.2, that the conditions it intended to impose were "appropriate or necessary to protect the surrounding properties."¹¹ In Hayfields' view, because the Board failed to make such findings, the circuit court properly struck the conditions.

With respect to the restriction on who can use the practice facility, the proper analysis is one of "subordinate use." Under BCZR § 101, "country club" is defined as "[a] 9 or 18-hole golf

¹⁰This sentence is relevant in the "intensity of use" analysis under BCZR § 502.2.

¹¹BCZR § 502.2 grants the Zoning Commissioner (and the Board, on appeal) the authority to impose conditions in granting a special exception "as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." (Emphasis added.)

course with a clubhouse and other appropriate facilities." (Emphasis added.) Given the fact that a driving range is not permitted as a special exception use in an R.C. 2 zone, the Board reasonably imposed this "use condition" to ensure that the driving range does not become "a free-standing public attraction."

We take a different approach in considering the Board's restriction on the number of practice tees. Once the Board determined that the non-public driving range was an "appropriate facility" in conjunction with the proposed golf course, subsequent conditions placed on the driving range must meet the criteria under BCZR § 502.2. The Board made no finding that the restriction to 15 tees was necessary or appropriate for the protection of surrounding and neighboring properties. Therefore, the circuit court properly struck this condition.

7. Definition of "Country Club"

The Board denied VPC's motion for dismissal, which alleged that Hayfields proposed an "improper" country club.⁴² The Board determined that the Baltimore County Council's use of the word "club" in Council Bill No. 62-78 (1978), which added the definition, of, inter alia, "country club" to the BCZR definitions section, does not require the country club to be open to members only. VPC argues that the term "country club" as used in the BCZR should be construed as meaning a "non-profit facilit[y] operated exclusively for use by members and their guests." Under this definition, VPC contends that the Board's approval of the special exception was improper.

⁴²The Board reserved on this motion until all of the evidence had been presented and rendered its decision prior to deliberating the merits of the case.

BCZR § 101 defines "country club" as "[a] 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A)." (Emphasis added.) The basis for VPC's argument is that because of the cross-reference to BCZR § 406A, which defines "neighborhood tennis club" as a non-profit association for members and guests only, the County Council intended the word "club" to denote a non-profit, exclusive facility. Apparently because (1) both the definitions of "country club" and "neighborhood tennis club" were added to the zoning regulations by the same bill, and (2) the term "club" is common to both "country club" and "neighborhood tennis club," VPC believes that the non-profit, private membership requirements of tennis clubs under BCZR § 406A are applicable to country clubs under BCZR § 101.

We disagree with VPC's analysis. Under the plain language of BCZR § 101, there is no limitation on the term "country club." The County Council, however, did impose a limitation when it adopted the definition of a "neighborhood tennis club." If the drafters of the Baltimore County Zoning Regulations had wanted to define "country club" as being limited to a non-profit and exclusive entity, it is logical to believe that it would have used language similar to that employed in BCZR § 406A. Cf. Foor v. Juvenile Servs. Admin., 78 Md. App. 151, 162-63 (interpreting that the legislature's omission of terminology they used in earlier counterpart provisions was not the "product of inadvertence"), cert. denied, 316 Md. 364 (1989). Because the drafters did not limit the

term "country club" in this fashion, we interpret the term to encompass country clubs open to the general public.

JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY REVERSED IN PART
AND AFFIRMED IN PART;
CASE REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE COUNTY WITH
INSTRUCTIONS TO REMAND THE CASE
TO THE BALTIMORE COUNTY BOARD OF
APPEALS FOR FURTHER ACTION
CONSISTENT
WITH THIS OPINION.

COSTS TO BE PAID 15% BY APPELLANT
AND 85% BY APPELLEES.

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COUNTY BOARD OF APPEALS
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IN THE MATTER OF THE
APPLICATIONS OF HAYFIELDS, INC.:

(1) FOR A SPECIAL EXCEPTION (95-308-
X) and,
(2) FOR APPROVAL OF A
DEVELOPMENT PLAN (VIII-661) AND
FOR A SPECIAL HEARING AND
VARIANCES (96-347-SPHA)

APPEAL FROM THE BALTIMORE
COUNTY BOARD OF APPEALS

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*

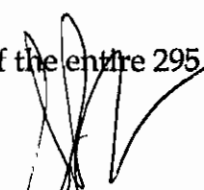
CONSOLIDATED CASES:

* 03-C-96-8878
* 03-C-96-9573

* * * * *

NOTICE OF APPEAL

Appellant, Hayfields, Inc., by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, L.L.P., pursuant to Maryland Rules 8-202, *et seq.*, hereby notes an appeal from that portion of the final Order of the Circuit Court for Baltimore County, entered June 10, 1997, in Case No. 03-C-96-9573 set forth in "Section XVIII" of the final Order in which the Circuit Court affirmed the decision of the Board of Appeals holding that the approximate 273.1 acres of RC-2 land approved for the special exception use cannot be considered for use in determining the number of residential lots which may be subdivided on the remaining 22.8 acre portion of the entire 295.9 acre RC-2 tract.



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Attorney for Appellant,
Hayfields, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 1997, a copy of the foregoing

Notice of Appeal was mailed first class, postage prepaid to:

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G. Scott Barhight

1-21-97
THE CASE OF: IN THE MATTER OF
APPLICATION OF HAYFIELDS, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.:

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NO.: 95-308-X

* 03-C-96-8878
*

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF HAYFIELDS,
INC. FOR APPROVAL OF
DEVELOPMENT PLAN AND FOR A
SPECIAL HEARING AND VARIANCES
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD, AT ITS
INTERSECTION WITH INTERSTATE 83

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.:

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NOS.: CBA-96-142
(VII-661) & 96-347-SPHA

03-C-96-9573

*

* * * * *

**HAYFIELDS, INC.'S RESPONSE TO MEMORANDUM OF VALLEYS PLANNING
COUNCIL, INC., ET AL. IN SUPPORT OF PETITION FOR JUDICIAL REVIEW OF
GRANT OF SPECIAL EXCEPTION IN BOARD OF APPEALS CASE NO. 95-308X**

Respondent, Hayfields, Inc. ("Hayfields"), by its attorneys, G. Scott Barhight,
Julie D. Wright, and Whiteford, Taylor & Preston L.L.P., pursuant to Maryland Rule 7-
207, submits its response to Memorandum of Law of Valley Planning Council, Inc., et al.
("VPC") in Support of Petition for Judicial Review of Grant of Special Exception in
Board of Appeals Case No. 95-308X, and states:

Preliminarily, Hayfields adopts and incorporates, by reference herein, its Response to People's Counsel's Memorandum in Support of Petition for Judicial Review.

ISSUES RAISED BY VPC

The VPC raises five issues in its Memorandum supporting its Petition for Judicial Review of the Approval of Hayfields' Petition for Special Exception in Case No. 95-308X. Hayfields restates those five issues as follows:

- A. Did the Board of Appeals for Baltimore County ("the Board") make the proper findings as required by § 1A01.2.C of the Baltimore County Zoning Regulations ("BCZR")?
- B. Did the Board properly apply the standard set forth in *Schultz v. Pritts*, 291 Md. 1 (1981) when it approved Hayfields' Petition for Special Exception?
- C. Did the Board apply the correct burden of proof when it approved Hayfields' Petition for Special Exception ?
- D. Did the Board correctly apply the holding of *Schultz v. Pritts, supra*, when it made its factual findings?
- E. Did the Board give proper consideration and weight to the testimony that the subject site involves historically significant structures and is located in a National Register Historic District?

DISCUSSION

A. The Board made the proper findings as required by § 1A01.2.C of the BCZR.

The VPC asserts that the Board failed to apply the correct standard of law when it approved Hayfields' Petition for Special Exception. In its statement of the "Applicable Law," the VPC focuses on § 502.1 and § 1A01.1 of the BCZR. The VPC

emphasizes §§ 1A01.1a, 1A01.1.d, and 1A01.1.e, which state that Baltimore County has a variety or very productive agricultural soil types and that “continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area.” BCZR § 1A01.1.d. Additionally, the VPC cites § 1A01.2.C, which provides that a country club “may be permitted by special exception in any RC-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.”

Hayfields agrees with the applicability of the sections of the BCZR cited by the VPC; however, Hayfields asserts that the VPC misinterprets the manner in which the Board must apply the applicable BCZR sections to its review of a Petition for Special Exception. In its memorandum supporting its Petition for Judicial Review of the Board’s Decision in the Special Exception Case and in its Response to People’s Counsel’s Memorandum in Support of Petition for Judicial Review of Civil Actions 03-C-96-9573 and 3-C-96-8878, Hayfields sets forth, in great detail, the proper standard of review for Petitions for Special Exception. Accordingly, Hayfields refers this Court to those Pleadings with respect to this issue.

B. The Board properly applied the standard set forth in *Schultz v. Pritts*, 291 Md. 1 (1981) when it approved Hayfields’ Petition for Special Exception.

Contrary to the VPC’s assertion, the Board properly applied the standard set forth in *Schultz v. Pritts*, 291 Md. 1, (1981) when it approved Hayfields’ Petition for Special Exception. The VPC cites *Schultz v. Pritts*, and argues that the Board, “by

explicitly declining to consider the adverse impacts to the agricultural uses on the site itself, fundamentally misunderstood the applicable special exception requirements[.]” VPC’s Memorandum at 10. The analysis and application of the *Schultz* standard by the Court of Special Appeals of Maryland in *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995), however, demonstrates otherwise.

In *Mossburg*, a case which the VPC neglects to include in its legal analysis, the Court of Special Appeals explained the appropriate review standard for determining whether a requested special exception use should be approved. In *Mossburg*, the Court reviewed Montgomery County Board of Appeals’ denial of a solid waste transfer station. The Court explained that:

The question in the case *sub judice*, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly, it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e.*, *greater here*, than they would generally be elsewhere within the areas of the County where they may be established, *i.e.*, the few I-2 Industrial Zones. In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or “above and beyond,” then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.

Mossburg, at 9.

The VPC failed to recognize during the hearings before the Board, and fails to recognize on Petition for Judicial Review, that when reviewing a request for special

exception, the zoning authority does not make its decision in a vacuum. The VPC correctly asserts that the proposed special exception will have adverse impacts on the subject site; however, the question is not whether the proposed country club will have adverse effects at this proposed location. As stated in *Schultz and Mossburg*, the “proper question is whether those adverse effects are above and beyond, *i.e.*, *greater here*, than they would generally be elsewhere within the areas of the County where they may be established, *i.e.* [the other RC 2 and RC 4 zones].” *Mossburg* 107 Md. App. at 9.

Hayfields called numerous expert witnesses and lay witnesses to testify that the adverse impact associated with the development of the proposed country club would have no greater effect at the proposed site than it would have generally, if located elsewhere in the RC 2 and RC 4 zones. The Board found that testimony persuasive.

As recognized in *Sharp v. Howard County Bd. of Appeals*, 98 Md. App. 57 (1993), there must be facts or valid reasons “to support the conclusion that the grant of the requested special exception would adversely affect **adjoining and surrounding properties** in any way other than result from the location of [the special exception] use in [that zone.]” *Id.* at 79. Neither the VPC nor People’s Counsel supplied the Board with sufficient facts or valid reasons to demonstrate that the proposed country club use would adversely affect adjoining and surrounding properties in any way other than they would generally elsewhere within the RC 2 and RC 4 zones.

In *Mossburg*, the Montgomery County Board of Appeals denied the requested special exception based on environmental concerns and traffic safety issues. When

reviewing the Board's denial of the special exception request, the Court stated that it would "look for evidence, if any, in the record of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the I-2 zones in order to determine whether the environmental and traffic safety impact at the subject site is greater." *Id.* at 13. Applying that standard, the Court held that the Board's findings were not supported by evidence that the proposed solid waste transfer station would have adverse effects above and beyond the adverse effects that could generally be expected if located in other areas where solid waste transfer stations are permitted by special exception. *Id.* at 30.

Similarly, in the instant matter, the Board, after considering the evidence, found that the proposed country club on the subject site would not have an adverse impact above and beyond the impact that could generally be expected as an inherent adverse impact if located elsewhere in the RC 2 and RC 4 zones. Specifically, the Board was not persuaded that the "Cockeysville marble or other formations are more or less susceptible to contaminants than other formations, those same formations are found elsewhere in the R.C. 2 zone," and found that "[w]ere this project placed elsewhere in the R.C. zone, the effects of increased traffic, impact on views, other natural opportunities,, and so forth, would be far greater as opposed to this location." Bd.'s Opinion at 14. The Board also found that, because of the nature of the proposal, there are no impacts on schools, parks, water., sewerage, transportation or other public requirements, conveniences or improvements[.]" Bd.'s Opinion at 15.

As support for its flawed interpretation of the *Schultz* standard, the VPC requests this court to suppose that the Hayfields Farm “contained the only remaining habitat in the State of Maryland of some rare or endangered species[,]” or an “especially unique wetland,” or “a geologic formation containing extraordinarily rare fossils.” None of the VPC’s hypotheticals, however, are relevant to the determination in the instant matter. A site which contains wetlands, artifacts, or endangered species automatically triggers planning and zoning mechanisms which control development thereon regardless of whether the use is permitted by right or by special exception. For example, the seven historic structures on the subject site are listed on the Landmarks Preservation List, and therefore, any alterations or amendments to those structures are overseen by the Baltimore County Landmarks Preservation Commission. If Hayfields wished to develop a public school, a use permitted as of right in a manner that adoptively reused any of the historic structures, the Landmarks Preservation Commission would have the same input and control over the public school development as it would over the country club development. Further, a proposed development plan for a public school would not be denied outright because a wildlife habitat, wetlands, or archaeological sites existed on the development site. The school would, however, need to meet the individual statutory requirements for each of these protected areas.

The VPC also mischaracterizes the Board’s evaluation of Mr. Gavrelis’ testimony that the overwhelming majority of space on the subject site will remain open space. As Hayfields stated in its Response to People’s Counsel’s Memorandum in Support of

Petitions for Judicial Review, the Board did not subvert the legislative purpose of the R.C. 2 Zone. See Hayfields' Response to People's Counsel's Memorandum in Support of Petitions for Judicial Review, at 7-8. Moreover, no evidence exists to support the VPC's histrionic assertion that "[t]he construction of the country club facilities will permanently destroy the farm and replace it with another use, precluding as a practical matter its ever returning to a farm use." There is no credible testimony that the construction of the country club facilities would *permanently destroy* the farm. In fact, Mr. Solomon testified that the golf course could be restored to a farm use.

C. The Board applied the correct burden of proof when it approved Hayfields' Petition for Special Exception.

As stated in *Mossburg*, "[o]nce an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere." *Id.* at 9. Contrary to the VPC's assertion, Hayfields met its burden of proof as articulated in *Mossburg*.

In the instant matter, Hayfields demonstrated, through the testimony of Ms. Hau, that the proposed development would not contaminate groundwater. Hayfields also demonstrated, through Ms. Hau, that the effects of the golf course well on neighboring properties would not be worse at the subject site than they would if the development were located elsewhere in the R.C. 2 and R.C. 4 zone. The Board was persuaded by the testimony of Ms. Hau. Pursuant to *Mossburg* to meet its burden of

proof, Hayfields needed only to show to the satisfaction of the Board that the proposed use would not have any greater adverse groundwater impacts than one would ordinarily expect. Obviously the Board was satisfied with the evidence adduced by Hayfields in the instant matter.

In *Deen v. Baltimore Gas & Electric*, 240 Md. 317 (1965), the Court of Appeals rejected the Protestants' assertion that the Board erred when it failed to consider the future effects which the erection of high tension wires would have on the health, safety, and general welfare of the locality. The Court stated that that factor was irrelevant to the case "because there was no evidence produced at the hearing which would show that the effect of high tension wires . . . [in] this area would be in any respect different than its effect on any other rural area."

In the instant matter, Hayfields adduced testimony demonstrating that the proposed country club complied with the standards of § 502.1 of the BCZR, that the proposed country club would be developed with no real detriment to the neighborhood, and that the proposed development would not adversely affect the public interest. Hayfields, therefore, met its burden of proof. The Board properly found that insufficient evidence existed to show that the potential effects on the subsurface formations in groundwater would be greater at the instant site than elsewhere in the zone. Additionally, the Board properly found that there was insufficient evidence that the proposed use would have a greater detrimental impact to the health or safety of the vicinity at this location.

D. The Board Correctly Applied The Standard Set Forth In *Schultz v. Pritts, supra,* And *Mosburg v. Montgomery County, supra.*

Hayfields has explained, at length, in its Memorandum Supporting its Petition for Judicial Review, and in its Response to People's Counsel's Memorandum in Support of Petitions for Judicial Review, the correct standard of review as set forth in *Schultz v. Pritts, supra*, and *Mosburg v. Montgomery County, supra*. Accordingly, Hayfields refers this Court to those pleadings.

E. The Board Gave Proper Consideration And Weight To The Testimony That The Subject Site Involves Historically Significant Structures And Is Located In A National Register Historic District.

The Board found that the general welfare of the vicinity was "no greater impacted by this proposed [use] than were it located elsewhere in the zone." The Board based its findings, in part, on John Mangione's testimony that the proposed development will adaptively reuse all seven structures on the site and that he would continue to work with the Landmarks Preservation Commission in the development of the site.

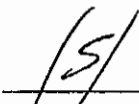
The VPC cites the testimony of Ruth Mascari and James Woolon to support its assertion that the Board should have denied Hayfields' Petition for Special Exception because the subject site is an historically significant site. Although Ms. Mascari and Mr. Woolon did testify that the proposed development would have an adverse impact on the site, neither of them sufficiently demonstrated that the proposed development at the subject site would have an impact on the general welfare of the community which would be above and beyond the impact generally expected at locations elsewhere in the

R.C. 2 and R.C. 4 zones. Finally, the VPC fails to recognize in its analysis that on-site impacts are not properly part of the special exception tests as set forth in *Mossberg* and *Schultz*.

CONCLUSION

The VPC sets forth an incorrect analysis of the standard of review to be used by the zoning authority when determining whether to approve a Petition for Special Exception. Accordingly, its analysis of the other issues it raises regarding the Board's approval of Hayfields' Petition for Special Exception is inaccurate. For the foregoing reasons, therefore, Hayfields respectfully requests that this Court deny the VPC's Petition for Judicial Review of the Board's approval of Hayfields' Petition for Special Exception.

Respectfully Submitted,



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Attorneys for Respondent,
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Certificate of Service

I HEREBY CERTIFY that on this 21 day of January, 1997, a copy of the foregoing Response to Memorandum Valley Planning Council, Inc., Et Al. In Support Of Petition For Judicial Review of Grant Of Special Exception In Board Of Appeals Case No. 95-308X was mailed, first-class, postage prepaid to:

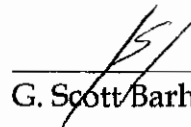
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G. Scott Barhight

IN THE CASE OF: IN THE MATTER OF
APPLICATION OF HAYFIELDS, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.:

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NO.: 95-308-X

* 03-C-96-8878
*

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF HAYFIELDS,
INC. FOR APPROVAL OF
DEVELOPMENT PLAN AND FOR A
SPECIAL HEARING AND VARIANCES
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD, AT ITS
INTERSECTION WITH INTERSTATE 83

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.:

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NOS.: CBA-96-142
(VII-661) & 96-347-SPHA

03-C-96-9573
*

* * * * *

**HAYFIELDS, INC.'S RESPONSE TO PEOPLE'S COUNSEL'S MEMORANDUM IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW IN CIVIL ACTIONS 03-C-96-
9573 AND 03-C-96-8878**

Respondent, Hayfields, Inc., by its attorneys, G. Scott Barhight, Julie D. Wright,
and Whiteford, Taylor & Preston L.L.P., pursuant to Maryland Rule 7-207, submits its
response to "People's Counsel's Memorandum in Support of Petition for Judicial
Review," and states:

Preliminary Matter

Respondent, Hayfields, Inc. ("Hayfields"), notes that People's Counsel has submitted one Memorandum supporting both Case No: 03-C-96-8878 and Case No: 03-C-96-9573. Pursuant to the Court's order consolidating Case No: 03-C-96-8878 and Case No: 03-C-96-9573, the Petitioners in the above-referenced matters have been instructed to file separate memorandum for each case. Because People's Counsel has filed one memorandum, Hayfields shall respond accordingly; *i.e.*, Hayfields shall address all the issues raised in People's Counsel's supporting memorandum in a single response memorandum.

Factual Clarifications

Hayfields agrees, generally, with People's Counsel's "Statement of the Case;" however, many of the characterizations and accounts set forth in People's Counsel's "Statement of Facts" require clarification. These clarifications include the following.

1. People's Counsel's assertion that the Hayfields Farm "is by any qualitative and quantitative measure among the most important and productive farms in Baltimore County, if not the most important," is not a "fact" but an "opinion." See People's Counsel's Memorandum at 4.

2. Contrary to People's Counsel's characterization, Hayfields does not propose to develop the subject site with a "public/private (member/non-member) entertainment and sports complex." *Id.* Hayfields seeks to develop a country club with a clubhouse

and an 18-hole golf course on the subject site; a use which the Baltimore County Zoning Regulations ("BCZR") permits by special exception.

3. Paul Solomon, an expert witness for those opposing the Hayfields' country club, did not testify **without contradiction** that "the destruction of Hayfields farm itself worked a tragic loss of the jewel of County agriculture, and that it would have an unusual detrimental impact on farming in the surrounding limestone valley, the Shawan valley extending west into Worthington valley." *Id.* at 7. Mr. Solomon did **not** testify that the farmland would be destroyed by the golf course development. In fact, Mr. Solomon testified that the golf course development, most likely, would have no effect on the "farmland" on the site: "I would think it would be feasible to return it to farmland. It would be more or less in the same condition it was in prior if you got a contractor that had a plan, if you got a contractor that knew what he was doing" T. 2/15/96 at 69. Mr. Solomon also testified that the BCZR does not require an owner of property zoned R.C. 2 to use the property for agricultural purposes.

Additionally, George E. Gavrelis, an expert in land use planning and planning and zoning, described the proposed country club as an unintensive land use and indicated that the proposed development would have no impact on the surrounding community. T. 1/24/96 at 81 & 83.

4. Hayfields did nothing illicit when it filed a Petition for Special Hearing and Petition for Variances after the approval of the Special Exception; the approval of the Petition for Special Exception was not dependent on the approval of the requested

variances. The Board could have denied the requested variances without affecting its approval of Hayfields' Petition for Special Exception.

5. The Board of Appeals' decision did not pronounce "a death sentence for all prime soils in RC-2 special exceptions" Memorandum at 9.

Standard of Review

People's Counsel misstates the review standard for a Petition for Special Exception in an R.C. 2 zone, thereby warping its analysis of the Board's approval of Hayfields' Petition for Special Exception.

Correct Review Standard

A special exception use "in a zoning ordinance recognizes that the legislative body of representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met." *Mossburg v. Montgomery Co.*, 107 Md. App. 1, 7-8 (1995). When reviewing a Petition for Special Exception, the zoning authority must determine, with respect to the requirements listed in § 502.1 of the BCZR, whether the "grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981) (emphasis added).

Contrary to People's Counsel's assertion, the applicable standard of review does not require a determination of whether the proposed special exception use adversely impacts the subject site. People's Counsel cites various definitions of the term "vicinity" to demonstrate that the Board must consider the development's impact on the subject site as well as its impact on the surrounding properties; however, the definitions of the term "vicinity," cited in People's Counsel's supporting memorandum, contradict its position. According to People's Counsel, Webster's Third International Dictionary defines the term "vicinity" as "nearness" and "the quality or state of being near." In the instant matter, the Board indicated in its Opinion and Order, in accordance with the standard set forth in *Schultz v. Pritts, supra*, and *Mossburg, supra*, that, upon reviewing a special exception use, it had to consider the adverse impacts on the **surrounding locality and neighboring properties**.

Additionally, People's Counsel incorrectly analyzes *People's Counsel v. Mangione*, 85 Md. App. 738 (1991), a case which it uses as support for its assertion that, when reviewing a Petition for Special Exception, the reviewing zoning authority must consider the development's adverse impacts to the subject site. In *Mangione*, the Court of Special Appeals affirmed the Board's denial of a Petition for Special Exception for a convalescent home because the development of the convalescent home at the proposed site would have had an adverse impact on the surrounding locale; an adverse impact which would have been above and beyond the adverse impact the same development would have on its surrounding locale if it were located elsewhere in the same zone. The

size and scope of the development in *Mangione*, was relevant only because of the unique adverse impact the development had on its surrounding locale at that particular site.

Regarding the Board's ruling in *Meadowcliff*, CBA No. 85-132-X, July 14, 1987, People's Counsel cites the *Meadowcliff*, decision as precedent for its interpretation of the standard of review for a Petition for Special Exception. In light of the review standard set forth in *Schultz v. Pritts*, 291 Md. 1 (1981) and *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995), however, the Board's contrary decision in *Meadowcliff* is irrelevant and lacks any precedential value.

The R.C. 2 Zone

In addition to its misstatement of the applicable standard of review, People's Counsel also misinterprets the applicable sections of the BCZR.

Contrary to People's Counsel's assertions, the preservation of prime and productive soils is not the focus of whether the zoning authority should approve a special exception use in an R.C. 2 zone. According to People's Counsel, Hayfields' Petition for Special Exception should be denied on the basis that the proposed country club development is not an agricultural use and, therefore, will be detrimental to the prime and productive soils on the site.

The County Council created the resource conservation zones "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." BCZR § 1A01.1B. The County Council, however, also adopted a list of non-agricultural

uses, some of which it permitted by right in R.C. 2 zones and some of which it permitted by special exception in the R.C. 2 zones. Some of the non-agricultural uses permitted by right in the R.C. 2 zones include public schools, dwellings, transit facilities and offices of physicians, dentists, lawyers, architects, engineers, artists, musicians, and other professional persons. BCZR § 1A01.2.B. Certainly, the County Council envisioned that non-agricultural uses would exist by right in the R.C. 2 zones.

People's Counsel also incorrectly implies that the BCZR requires owners of R.C. 2-zoned property to farm their land. As Zoning Commissioner Lawrence Schmidt, the zoning commissioner who initially approved Hayfields' Petition for Special Exception, succinctly stated, the test is not

whether the Hayfields farm should be used as a Country Club or a farm. The present owners of the property are under no obligation to continue farming operations. They may use their property for any of the permitted purposes in the B.C.Z.R. Despite what some today believe to be the over-reaching regulations of government, a property owner is still empowered to use his land as he desires. The Mangione family could no doubt stop farming operations on this property altogether. They could do nothing on the site, in which case the loss of agricultural productivity from this site would be the same as if the property were developed as a golf course.

Zoning Commissioner's Opinion at 11.

I. The Board Did Not Subvert the Legislative Purpose of the R.C. 2 Zone

People's Counsel incorrectly suggests that the Board's approval of Hayfields' Petition for Special Exception was based solely on its finding that a golf course is not an urban use. As the Board's Opinion and Order reveals, the Board considered all of the criteria set forth in § 502.1 of the BCZR and properly applied the test set forth in *Schultz*

v. Pritts, when it analyzed the proposed country club development. In light of the provisions set forth in § 1A01.1.A.1 of the BCZR, the Board used its factual determination that the proposed use is a non-urban land use as a foundation for its conclusion that the proposed development agreed with the purpose of the property's zoning classification and with the spirit and intent of the R.C. 2 zoning regulations. Bd.'s Opinion at 15. Specifically, the Board concluded: "The use is a non-intensive, non-urban use, and therefore is not counter to the purposes of the zoning regulations, and is also therefore consistent with the spirit and intent of the zoning regulations." *Id.*

People's Counsel also incorrectly states that the country club development will destroy the farmland on the site. Mr. Gavrelis testified that the proposed development was an un-intensive land use, and Mr. Solomon testified that the subject site could be returned from a country club land use to its original "farmland" condition, with no destruction of the soils on the site. The Board, in formulating its decision, weighed all of the evidence adduced, assigning to each piece of evidence what it felt was the appropriate significance. As the Board's Opinion and Order demonstrates, the Board properly based its factual determination that the proposed country club agreed with the legislative purpose of the R.C. 2 zones on the testimony presented at the appeal *de novo*. Bd.'s Opinion at 15.

In addition to its mischaracterization of the Board's findings, People's Counsel also misrepresents that a country club is listed as a special exception land use in R.C. 2 zones because it is not an agricultural land use. That statement is patently false. As

stated above, there are numerous non-agricultural land uses which are permitted by right. Nothing in the R.C. 2 zoning legislature indicates that the non-agricultural uses listed in the R.C. 2 zoning legislature are less-favored by the County Council for development in the R.C. 2 zone. Notably, People' Counsel provides no legal support for this assertion.

People's Counsel also makes the illogical statement that the Board tries "to excuse or rationalize this loss, conversion, or destruction by saying that a 275-acre public/private golf course adjoining a 200-acre residential development is not 'urban.'" People's Counsel knows (1) that residential dwellings are permitted by right in an R.C. 2 zone and (2) that the residential development was not open for consideration by the Board when it analyzed Hayfields' Petition for Special Exception for a country club in an R.C. 2 zone.

II. The Board Is Not Required To Consider On-Site Impacts

As stated above, the review standard for a Petition for Special Exception is whether the "grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981) (emphasis added). The Board properly concluded from the evidence presented that the proposed country club development did not have an adverse impact upon surrounding and neighboring properties unique and different from the adverse impact that would

otherwise result from the development of such a special exception use located elsewhere within the zone.

Additionally, People's Counsel's suggestion that "prized farmland" is being destroyed by the proposed development is unsupported by the evidence. As stated *supra*, Paul Solomon, People's Counsel's own expert, testified that the development of the golf course would not harm the land, and that the golf course could be converted back to a farm with no impact to the prime and productive soils on the site. See Paul Solomon's Testimony, T. 2/15/96 at 69.

III. The Board Did Not Disregard the Presence of the Cockeysville Marble When It Made It Approved Hayfields' Petition for Special Exception

People's Counsel's mischaracterizes the Board's finding that the country club development on the subject site would not adversely affect groundwater above and beyond its effect if it were located elsewhere in the R.C. 2 zone. The Board did not ignore the presence of the Cockeysville Marble on the subject site; rather, as it indicates in its Opinion and Order, the Board did not give much weight to the testimony of Mr. Mogilnicki and Mr. Ball: "[I]t is debatable whether the Cockeysville marble or other formations are more or less susceptible to contaminants than other formations, those same formations are found elsewhere in the R.C. 2 zone. Therefore, the Board finds there was insufficient evidence that the potential effects on the subsurface formations and groundwater would be greater at the instant site than elsewhere in the zone." Bd.'s Opinion at 10.

Additionally, People's Counsel put on evidence that the proposed country club use would effect the subject site because of the location of the Cockeysville Marble; however, none of the witnesses for the Protestants testified that the proposed country club use would have a greater impact if located on the subject site than it would were it located elsewhere within the zone. Based on the evidence adduced, the Board found that the zoning regulations require that the proposed development "not be inconsistent with the impermeable surface provisions, and this Board recognizes that a certain degree of impermeable surface effects will be felt with any such proposal; however, this proposal has no greater effect here than elsewhere in the R.C. zone." Bd.'s Opinion at 16. The Board's findings and legal conclusions adhere to the standards set forth in *Schultz, supra*, and *Mossburg, supra*, and are supported by the evidence.

Contrary to People's Counsel's assertions, the Board did not address the issue of groundwater contamination with a "cavalier" attitude. The Board imposed an intensive "groundwater" condition on its approval of Hayfields' Petition for Special Exception:

9. The Petitioner shall submit subsurface cross-section details to DEPRM to enable DEPRM to make a finding that a continuous clay layer will be provided under the fairways. Further, there shall be no relaxation of tee box and greens design criteria and predevelopment engineering.

Bd.'s Opinion at 25. Hayfields challenges the validity of this condition in its Petition for Judicial Review in Case No. 03-C-96-8878.

IV. The Board Considered Historical Impacts When It Approved Hayfield's Petition for Special Exception

People's Counsel misrepresents the Board's analysis of the proposed development's impact to the historic structures on the subject site. Regarding the issue of impact of the historic nature of the site, the Board found:

Concerning the historic nature of the manor house and other structures on the site, the Petitioner proposes to adaptively reuse all such structures in the development of the country club. Nowhere in the zoning regulations is a Petitioner compelled to maintain an historic structure "as is"; a Petitioner is only required to follow the development regulations and work within those regulations as they may pertain to historic structures, and whatever interaction as may be required with the Landmarks Preservation Commission. This Petitioner has demonstrated an ongoing dialogue and responsiveness to such concerns, and has indicated his desire to continue such open exchange. Therefore this Board finds that the general welfare of the vicinity is no greater impacted by this proposed [use] than were it located elsewhere in the zone.

Bd.'s Opinion at 12-13.

Section 26-530, Article X of the Baltimore County Code ("BCC") provides that the purpose of the historic preservation regulations is to provide for the protection, enhancement, and perpetuation of historic structures and districts. Specifically, § 26-532 states that the historic preservation legislation seeks (1) [t]o safeguard the heritage of the county as embodied and reflected in such structures and districts; (2) [t]o stabilize and improve property values in such districts; (3) [t]o foster civic pride in the beauty and noble accomplishments of the past; (4) [t]o strengthen the economy of the County; and (5) [t]o promote the use of historic districts and landmarks for the education, pleasure and welfare of the residents of the County." BCC § 26-532.

In the instant matter, nothing in the BCZR or the BCC requires Hayfields' to preserve its acreage for farm use. The farmland on the site is not listed on the Landmarks Preservation list. Additionally, whether this land remains a farm is not relevant to the Board's approval of Hayfields' Petition for Special Exception. The issue before the Board was whether the proposed country club development at the subject site has a greater negative impact on the health, safety, and general welfare of the surrounding locale than it would were it located elsewhere within the R.C. 2 zone. The Board found from the evidence that the proposed country club development at that site would not have a greater adverse impact on the health, safety, and general welfare of the surrounding locale than it would were it located elsewhere in the R.C. 2 zone. The Board was not required to consider how the proposed development would impact the farmland on the subject site because such a consideration is irrelevant in reviewing a Petition for Special Exception pursuant to the standard set forth in *Schultz, supra*, and *Mossburg, supra*.

V. The Proposed Hayfields' Country Club Meets the Definition of "Club" As Used in the BCZR.

People's Counsel argues that the proposed Hayfields' Country Club Development does not meet the definition of "country club" set forth in the BCZR. That argument lacks merit.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Oak v. Connors*, 339 Md. 24, 35 (1995). "When the meaning

of the statute . . . is at issue, the court's inquiry begins with the words of the statute, and ordinarily, also ends there." *Tidewater/Havre de Grace, Inc. v. Mayor and City Council*, 337 Md. 338, 344 (1995). Similarly, when the meaning of a BCZR provision is at issue, the reviewing authority's inquiry should begin with the words of the statute. "The first step in determining legislative intent is to look at the statutory language and 'if the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, [the courts] will give effect to the statute as written.'" *Oaks* 339 Md. at 35 (quoting *Jones v. State*, 36 Md. 255, 261 (1994)). Where a statute is susceptible of more than one meaning and therefore contains an ambiguity, however, "courts consider not only the literal or usual meaning of the words, but their meaning and effect of the setting, the objectives, and purpose of the enactment." *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 75 (1986). When ambiguity exists, the court, "in seeking to ascertain legislative intent, may consider the consequences resulting from one meaning rather than another, and **adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.**" *Id.* (Emphasis added). "Moreover, no portion of the statutory scheme should be read 'so as to render the other, or any portion of it meaningless, surplusage, or nugatory.'" *Id.* Application of these rules of statutory construction and interpretation to the pertinent sections of the Baltimore County Zoning Regulations demonstrates that the term "country club" cannot, by definition, exclude semi-private country clubs.

In 1978, the Baltimore County Council enacted Bill No. 62-78 which, among other things, added the definition of "country club:" to "Section 101, Section 406A and subsections 406A.1, 406A.2, 406A.4, 406A.5, and 406A.6 thereto [of the BCZR]."

Pursuant to § 101 of the BCZR, the term "country club" means a "9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A)." (Section 406A.2 governs "Tennis Facilities" established in conjunction with eighteen-hole golf courses). Both country clubs and golf courses are permitted by special exception in R.C. 2 and R.C. 4 zones and nowhere in the BCZR does the County Council specify that a country club facility must be private. The BCZR only requires that to constitute a land use permitted by special exception, a country club must have a 9-hole or 18- hole golf course and a clubhouse. When construing the meaning of the words of a statute, "the reviewing authority may consider a related statute that fairly bears on the fundamental issue of legislative purpose or goal." *Mayor and City Council of Baltimore v. Cassidy*, 38 Md. 88, 94 (1995).

Under §§ 8-212 through -218 of the Tax-Property article of the Annotated Code of Maryland, qualified country clubs may receive favorable assessment of their lands for property tax purposes. For the purposes of Title 8, subtitle 2, a country club is eligible to receive a beneficial tax assessment only if it "has a least 100 members, who pay dues averaging \$50 or more annually for each member; (2) restricts use of its facilities primarily to members, families,, and guests; and (3) is located on at least 50 acres of land, on which is maintained: (I) a regular or championship golf course of at least 9

holes; and (ii) a clubhouse.” Md. Tax-Prop. Code Ann., § 8-212 (1994 Repl. Vol.) The statute does not define the term “country club.” Rather, the statutes contemplates the existence of different types of country clubs and differentiates among those types for the purposes of use assessment; only country clubs that meet § 8-212 standards may benefit from the use assessment set forth in § 8-213 through -218. Because no portion of the statutory scheme should be interpreted in such a manner as to render any portion surplusage, the term country club cannot, by definition, exclude public and semi-private clubs. To qualify for the beneficial tax assessment, a country club must have, *inter alia*, a policy restricting the use of its facilities primarily to members, families and guests. If, by definition, the term country club meant a private facility, then the General Assembly would not have felt compelled to define, in § 8-212, the type of country club which may benefit from the tax assessment method set forth in §§ 8-213 through -218. The restrictions set forth on § 8-212 necessarily imply that there are country clubs (1) which have less than 100 members, (2) who pay dues averaging \$50 or less annually for each member, (3) which do not restrict the use of their facilities primarily to members, families, and guests, and/or (4) which are not located on at least 50 acres of land, on which are maintained a regular or championship golf course of at least nine holes and a clubhouse.

The BCZR states that country clubs which have clubhouses and a 9-hole or 18-hole golf course are permitted by special exception in R.C.2 and R.C. 4 zones. Unlike §

8-212 of the Tax-Property article, the County Council does not apply only to country clubs which restrict the use of their facilities primarily to members, families, and guests.

Additionally, a recent decision from the Zoning Commissioner demonstrates that the term "country club," as used in the BCZR, does not exclude semi-private facilities. In the matters of the Caves Valley Country Club, the Zoning Commissioner's decision conditioned approval of the Petition for Special Exception upon the club's operation as a private facility. This condition demonstrates that the term "country club" incorporates semi-private and public facilities. If the term "country club" excluded semi-private or public facilities, then conditioning approval of the Caves Valley Petition for Special Exception upon the club's operation as a completely exclusive facility would have been redundant, and without meaning. Certainly, the Zoning Commissioner would not have imposed a condition which was without meaning or purpose.

VI., VII., & VIII. The Approval of Hayfields' Petition for Special Exception Was Not Dependent On the Approval of Its Petition for Variances

People's Counsel relies on *Chester Haven Beach Partnership v. Board of Appeals*, 103 Md. App. 324 (1995) and *Umerley v. People's Counsel*, 108 Md. App. 497 (1996) for the legal proposition that "a special exception use must satisfy all pertinent listed statutory height, area and other requirements" and "failure to satisfy these requirements is grounds for disqualification." People's Counsel's analysis of these cases, however, misstates the law.

In *Umerley*, the Court of Special Appeals plainly states that it has not decided the issue of "'Does the legislative intent that the [conditional use] be permitted remain if the

conditions are not met but are eliminated by an administrative body granting a variance?" *Umerley*, 108 Md. App. at 510. In its holding in *Umerley*, the Court of Special Appeals notes that "[i]n *Chester Haven*, . . . we did not reach that question because the petitioner was unable to acquire the requested variances. . . . In the case *sub judice*, the Umerleys have failed in their attempt to acquire variances from the restrictions that must be met in order to operate a Class II trucking facility. Accordingly, their petition for a special exception to operate such a facility must also fail." *Umerley*, 108 Md. App. at 511. The Court of Special Appeals, in *Umerley*, never reached the issue of whether a zoning Board may approve a Petition for a Special Exception which requires variances because the Court found that the Board properly denied the variances requested by the Umerleys. The Court's statement in *Chester Haven* that, if the application of a conditional use becomes dependent upon the granting of variances, the presumption that a conditional use is permitted may well fall by the wayside[,] is dicta. Additionally, the Court's iteration of that statement in *Umerley* is also dicta.

Nevertheless, even if *Umerley* and *Chester Haven* did support the legal proposition set forth by People's Counsel, that legal proposition would not apply to Hayfields' Petition for Special Exception. Approval of Hayfields' Petition for Special Exception does not depend on the granting of the requested variances. The BCZR defines a country club as a "9 or 18 hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A)." BCZR § 101. In reviewing Hayfields' Petition for Special Exception, the Board

used the criteria set forth in BCZR § 502.1 and applied the standard set forth in *Schultz* and *Mossburg*. Hayfields did not request a variance from any of the criteria set forth in BCZR § 502.1. Hayfields' Petition for Variances requests variances from the height and area requirements for the existing historic structures on the site so that the structures may be adaptively re-used for the Hayfields Country Club. Had the Board denied the Petition for Variances, its approval of Hayfields' Petition for Special Exception for a Country Club in an R.C. 2 zone would still be valid; however, Hayfields would not be able to use the existing historic structures in its development.

IX., X., & XI. The Board Applied the Proper Review Standard When It Approved Hayfields' Petition for Variances

Hayfields requests height variances for the two existing silos and the mansion, and variances from minimum separation requirements for several other existing structures. In order to grant a variance, the law requires a finding that there exists a special circumstance or condition which is peculiar to the land or structure which is the subject of the variance request, and that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship. BCZR § 307.1.

The Board determined that:

[a]s a factual matter, the existing structures cannot be destroyed without the specific permission of the Baltimore County Landmarks Preservation Commission; and, again, the Developer is required to abide by the Planning Board's decision concerning the historic issues relative to the development plan approval.

Obviously, each of the structures for which variances are being requested have been in existence for many years. In connection therewith, based on factual findings and testimony, it would be a considerable and

severe practical difficulty to require that the Developer demolish the structures and, again as a matter of fact, the Developer cannot destroy any of the landmarks-listed structures without the specific approval of the Landmarks Preservation Commission.

Bd.'s Opinion at 19.

Contrary to People's Counsel's assertion, the Board did not approve Hayfields' Petition for Variances in order to preserve "unique" historic buildings. *See* People's Counsel's Memorandum at 24. Rather, the Board approved Hayfields' Petition for Variances because (1) the Board found that Hayfields met its burden of demonstrating that the buildings on the subject site were unusual compared to buildings on other properties in the neighborhood because they were on the Landmarks Preservation list, and (2) that strictly adhering to the height and area regulations would result in a practical difficulty.

The Board's decision in the instant matter follows the Court of Appeals' holding in *McLean v. Sorley*, 270 Md. 208 (1973) (cited in *Cromwell v. Ward*, 102 Md. App. 691 (1995)). In *McLean*, the applicant requested an area variance for an apartment house-office building project in order to preserve "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." *Id.* at 210. Absent a variance a number of trees along the property's western boundary would have to be destroyed.

The Court held that:

Given the unique facts of this case, we think [the criteria of § 307] are met by the evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that preservation of trees in the construction of

the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that the greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner.

Id. at 215.

Similarly, in the instant matter, the Board recognized that if Hayfields were not granted the variances, then the existing buildings would be non-conforming and would be unavailable for reuse or re-adaptation. Hayfields, however, cannot remove the structures because the structures are listed on the Landmarks Preservation List. Accordingly, without the variances, Hayfields would have to build its clubhouse somewhere else on the subject site.

The Board found that the presence of the historic structures on the site created a practical difficulty for Hayfields in its development efforts (as opposed to its Petition for Special Exception). The Board concluded that regarding "the re-adaptation of the structures, and the future availability for the general public to enjoy, . . . the spirit and intent of the height and setback restrictions have been satisfied and that the structures clearly will have no adverse impact on neighboring properties if allowed to stand." Bd.'s Opinion at 19. The Board's decision to grant the variances permits the historic structures to be restored and does "substantial justice to the applicant as well as to other property owners in the district" *McLean*, 270 Md. at 214-15. The construction of additional clubhouse facilities on the subject site would detract from the historic value

of the existing historic structures on the subject site and the restoration of the existing historic structures benefits the property owners in the district.

Additionally, Hayfields did not create the practical difficulty on the subject site as People's Counsel suggests. Hayfields did not seek variances "to change [the farm] to a country club." People's Counsel's Memorandum at 25. Hayfields filed a Petition for Special Exception for a country club development, which the Board granted. The Petition for Variances were requested afterward so that the historic structures on the site could be restored and reused in the development of the Country Club on the site. Pursuant to the standard set forth in BCZR § 307, the Board properly found, based on the evidence presented, that it should grant Hayfields' Petition for Variances because of the unique circumstances underlying the historic structures on the site and because strict adherence to the BCZR would result in a practical difficulty affecting the subject site.

XII. Subdivision Lot Density

People's Counsel incorrectly asserts that Hayfields attempts to subvert the RC-2 density law. People's Counsel argues that the entire 295.9 acre parcel cannot be subdivided into five lots because one of those lots is going to be used as a golf course. The R.C. 2 zoning regulations do not indicate that, when subdividing a parcel, the developer must total the acreage assigned to each proposed land use and proceed from there in calculating the subdivision lot density. Nothing in the BCZR precludes Hayfields from subdividing its 295.9-acre parcel into five lots prior to revealing its plans

to develop one of the lots with a golf course, and the remaining lots with residential dwellings. If the County Council actually intended for subdivision lot density to be calculated according to the method advanced by People's Counsel, then surely the County Council would have enacted legislation to prevent property owners from easily being able to avoid that calculation process.

Additionally, the only reference to "residential density" in § 1A01.3.B is in subsection (4) which provides that "[n]o more than 1 principal dwellings permitted on any lot in an R.C. 2 zone." In accordance with that "residential density" regulation, Hayfields proposes to develop four of the five subdivided lots with one residential dwelling.

Conclusion

People's Counsel raises several issues concerning the Board's approval of Hayfields' Petition for Special Exception, the Board's Approval of Hayfields' Petition for Variances, and the Board's calculation of Subdivision Lot Density. To support its contentions regarding these issues, People's Counsel makes many reckless and melodramatic assertions, but supplies little legal authority or analysis.

As People's Counsel correctly asserts, an administrative agency's order must be upheld on judicial review if the order is not based on a legal error and if the agency's conclusion may be based on the facts proven. People's Counsel's Memorandum at 12. As stated in *Cromwell v. Ward*, 102 Md. App. 691 (1995), "[i]n reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative

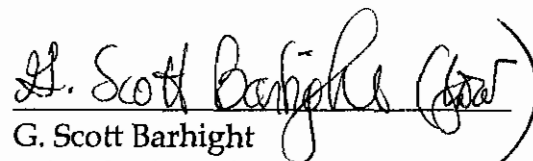
record. The reviewing court's role however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority." *Id.* at 709.

In the instant matter, Hayfields' adduced sufficient testimony to demonstrate, pursuant to the standard set forth in *Schultz, supra*, and *Mossburg, supra*, that the proposed country club will have no greater impact on the surrounding locale if located at the subject site than it would were it located elsewhere in the R.C. 2 zone. The Protestants offered no testimony or evidence that the proposed country club would have a greater adverse impact on the surrounding locale if located at the subject site, than it would if located elsewhere in the R.C. 2 zone.

Additionally, People's Counsel attempts to thwart approval of Hayfields' Petition for Special Exception by arguing that Hayfields' requested variances are vital to the proposed special exception country club use. As demonstrated, *supra*, that claim is without merit. The Board's approval of Hayfields' Petition for Variances has no bearing on Hayfields' Petition for Special Exception. Also, as explained, *supra*, the Board founded its approval of Hayfields' requested variances on sound legal principles and sufficient factual findings.

Finally, People's Counsel's calculation of subdivision lot density distorts the provisions of BCZR § 1A01.3. The subject site's 295-9-acre parcel may be divided into five lots of record whether or not one of those lots will be developed with a country club.

Therefore, for the above-stated reasons, this Court should affirm the Board's approval of Hayfields' Petition for Special Exception, to the extent not inconsistent with Hayfields' Petition for Judicial Review in Case No.: 03-C-96-8878, and the Board's approval of Hayfields' Petition for Special Hearing to amend the approved special exception site plan, Hayfields' Petition for Variances, and Hayfields' Development Plan, to the extent not inconsistent with Hayfields' Petition for Judicial Review in Case No.: 03-C-96-9573.


G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 832-2000

96642

Certificate of Service

I HEREBY CERTIFY that on this 13th day of January, 1997, a copy of the foregoing Hayfields, Inc.'s' Response to People's Counsel's Memorandum in Support of Petition for Judicial Review in Civil Actions 03-C-96-9573 and 03-C-96-8878 was mailed, first-class, postage prepaid to:

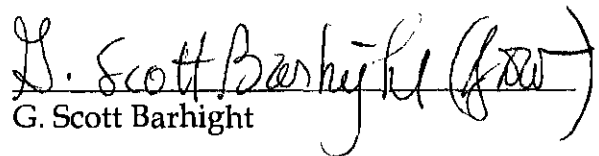
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

George A. Nilson, Esquire
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Peter M. Zimmerman, Esquire
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January 13, 1997

Suzanne Mensh
Clerk of Circuit Court for
Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

Re: Civil No. 03-C-96-8878
Civil No. 03-C-96-9573

Dear Ms. Mensh:

Please accept for filing the enclosed Response People's Counsel's
Memorandum in Support of Petition for Judicial Review on behalf of Hayfields, Inc.,
the Petitioner.

Thank you for your assistance in this matter and if you have any
questions, please do not hesitate to contact me.

Sincerely,


G. Scott Barhight

GSB:lgs
Enclosures

Suzanne Mensh
January 13, 1997
Page 2

ccs: County Board of Appeals of Baltimore County
George A. Nilson, Esquire
Peter M. Zimmerman, Esquire
Mr. Kenneth T. Bosley
J. Carroll Holzer, Esquire

86749

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

N O T I C E O F R E C O R D

Case Number: 03-C-96-008878
Old Case number:
C I V I L

In The Case Of Appeal No. 95-308-X

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 30th day of October, 1996.

Suzanne Mensh



Suzanne Mensh
Clerk of the Circuit Court, per D.F.

Date issued: 10/31/96

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse/Room 49
400 Washington Avenue
Baltimore, MD 21204

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE VALLEYS PLANNING
COUNCIL, INC.

212 Washington Avenue
Towson, Maryland 21204

AND

LYNN HASTINGS

818 Western Run Road
Cockeysville, Maryland 21030

AND

DAN AND JOANNE TIMMEL

918 Western Run Road
Cockeysville, Maryland 21030

AND

THEODORE AND INGRID BARAMKI

806 Western Run Road
Cockeysville, Maryland 21030

AND

ROBERT AND SHIRLEY MAND

718 Western Run Road
Cockeysville, Maryland 21030

AND

MARGUERITE HASTINGS

812 Western Run Road
Cockeysville, Maryland 21030

AND

DR. CONSTANTINE AND NANCY CHILIMINDRIS

1003 Shawan Road
Hunt Valley, Maryland 21030

AND

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

400 Washington Avenue, Room 47
Towson, Maryland 21204

AND

PETITION OF DR. RICHARD MCQUAID, MARY
BEE GAINES, NORTH COUNTY COALITION,
INC., and PINEY RUN PRESERVATION
ASSOCIATION, INC.

at 305 Washington Avenue, Suite 502
Towson, Maryland 21204

AND

PETITION OF HAYFIELDS, INC.
1205 York Road

Lutherville, MD 21093 (See 3-C-96-9081)

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Room 49, Old Courthouse

400 Washington Avenue
Towson, Maryland 21204

CIVIL
ACTION

No. 3-C-96-008878

IN THE CASE OF: IN THE MATTER OF
TOLL HOUSE, INC.- PETITIONER /HAYFIELDS

FOR A SPECIAL EXCEPTION ON PROPERTY

LOCATED ON THE NORTHWEST SIDE WESTERN
RUN AND SHAWAN RDS @ ITS INTERSECTION

WITH I-83 (301 WESTERN RUN ROAD)

8TH ELECTION DISTRICT

3RD COUNCILMANIC DISTRICT

CASE NO. 95-308-X

* * * * *

RECEIVED AND FILED
96 OCT 30 PM 2:00

PROCEEDINGS BEFORE THE
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Robert O. Schuetz, Kristine K. Howanski, and Lawrence M. Stahl, constituting the County Board of Appeals of Baltimore County, and in answer to the Petitions for Judicial Review 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 Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 95-308-X

	Petition for Special Exception filed by G. Scott Barhight, Esquire, on behalf of Toll House, Inc., to use 301 Western Run Road as a country club.
April 7, 1995	Certificate of Posting of property.
March 23	Publication in newspapers.
May 8	ZAC Comments.
May 9	Hearing held on Petition by the Zoning Commissioner (Day 1).
May 10	Hearing held on Petition by the Zoning Commissioner (Day 2).
May 11	Hearing held on Petition by the Zoning Commissioner (Day 3).
June 30	Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED with restrictions.
July 10	Notice of Appeal filed by G. Macy Nelson, Esquire, on behalf of the Valleys Planning Council, Inc., Lynn Hastings, Dan and Joanne Timmel, Theodore and Ingrid Baramki, Robert and Shirley Mand, Marguerite Hastings and Dr. Constantine and Nancy Chilimindris.

July 10	Second Notice of Appeal filed by People's Counsel for Baltimore County.
October 26	Letter requesting Board to enter of the appearance of George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al., and to withdraw the appearance of Macy Nelson, Esquire.
January 11, 1996	Hearing held before the Board (Day #1).
January 18	Hearing held before the Board (Day #2).
January 24	Hearing held before the Board (Day #3).
January 25	Hearing held before the Board (Day #4).
February 9	Hearing held before the Board (Day #5). Protestants' Memorandum in support of previously made oral motion to dismiss the Petition for Special Exception submitted by George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al. Memorandum of Law RE "Country Club" submitted by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc. People's Counsel's Memorandum on the Issue of Country Club filed by Peter Max Zimmerman and Carole S. Demilio.
February 15	Hearing held before the Board (Day #6).
April 16	Hearing held before the Board (Day #7).
April 25	Memoranda filed by counsel as requested by the Board to be reviewed before final hearing day on April 30, 1996: Protestants' final Memorandum filed by George A. Nilson, Esquire on behalf of the Valleys Planning Council, Inc., et al; (also filed Rule 8 materials for Greencroft Community Association). People's Counsel's Hearing Memorandum filed by Peter Max Zimmerman and Carole S. Demilio. Hearing Memorandum in Support of Petition for Special Exception filed by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc.
April 30	Hearing concluded before the Board of Appeals (Day 8).

May 9	Deliberation conducted and completed by the Board.
August 6	Opinion and Order of the Board in which the Petition for Special Exception was GRANTED with restrictions.
August 30	Petition for Judicial Review filed in the Circuit Court for Baltimore Co. by George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al (Copy of Petition received by CBA from CCT on 9/4/96).
September 3	Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County. (Copy of Petition received by CBA from CCT on 9/16/96).
	Third Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Dr. Richard McQuaid, et al. (Copy of Petition received by CBA from CCT on 9/16/96).
September 5	Certificate of Notice sent to interested parties (for first Petition)
September 5	Fourth Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc. (inadvertently docketed as a separate Civil Action No. 3-C-96-9081.)
September 18	Second Certificate of Notice (for second and third Petitions) sent to interested parties.
September 18, 1996	Certificate of Notice (for fourth Petition under 3-C-96-9081) sent to interested parties.
September 20	Motion to Transfer Case No. 03-C-96-9081 to Case No. 03-C-96-8878, filed by G. Scott Barhight, Esquire, in order that only one Record of proceedings before the County Board of Appeals including the transcript shall be required to be transmitted.
October 18	Response to Petition for Judicial Review filed by the Valleys Planning Council, People's Counsel for Baltimore County, and Dr. Richard McQuaid, et al received from G. Scott Barhight, Esquire for Hayfields, Inc.

Petitioner's Exhibit No. 1-Aerial photo of site and area
(1 below) 2-93 (in CCt under Civil
Action No. 95 CV 08791)
2-Site Constraints map (2 below)
2-15/93 (in CCt under Civil Action
No. 95 CV 08791)
3-Hayfields Manor Golf Club (3 below)
2-24/95 (in CBA closet)
4-Site plan w/ current revisions 5/95
(4 below) (in CBA closet)
5-Clubhouse Complex (5 below) (in CBA
closet)
6A-6B-Clubhouse and Mansion (6 below)
(in CBA closet)
7A-7C-Mess Hall (Pro Shop) (7 below)
(in CBA closet)
8-Master Plan for golf course (8
below)
9-Traffic impact analysis by Wes
Guckert (9 below)
10-Recreation and Parks A Plan for
the 1990's (10 below)
11-Hau Resume (11 below)
12A-12O- Hau Maps (12 below)
13-Environmental Impact Report (13
below)
14-Golf Course Management Plan (14
below)
15-Letter of 3-13-79 by J. Rodney
Little to Property Owner (15
below)
16-Secretary of the Interior's
Standards (16 below)
18-Description (revised) of zoning
(new) 2-28-95
19-Minutes-Landmarks Preservation
Commission -1-17-96 (draft) (new)
P. 1 of 2
20-Curriculum Vitae of Brian T. Ault
21-Eagle Golf Guide to Courses in
Washington Metro and Region (new)

- 22-Inter-Office Correspondence from John Weber to Arnold Jablon 5-5-95 (new)
- 23-Survey Memorandum to Arnold Jablon 3-10-95 (new)
- 24-Inter-Office Correspondence from Robert Bowling to Arnold Jablon 3-20-95 (new)
- 25-Correspondence from Ronald Burns to Joyce Watson 4-25-95 (new)
- 26-Correspondence from Catherine Milton to Scott Barhight 5-3-95 (new)
- 27-Report of the Special Subcommittee of the Balto Co. LPC 1-17-96 (new)
- 27A-Minutes of Landmarks Preservation Commission 1-17-96 (new)
- 28-Correspondence from Stephen Mogilnicki to Stephanie Hau -9-12-95 (new)
- 29-Correspondence from Stephen Mogilnicki to Stephanie Hau -11-29-95 (new)
- 30-Environmental Guidelines for the Design and Maintenance of Golf Courses
- 31-Correspondence from Paul J. Solomon to George Gavrellis 3-26-90 (new)
- 32-County Council of Baltimore County, Maryland Bill No. 134-89
- 33A&B-Baltimore County Growth Management Program -Existing and Proposed Land Use
- 34-Subpoena of John McGrain
- 35-Folder of Mr. McGrain in response to subpoena
- **36-"A Wind Swept Dream "pp. 24-27
Tee Time Golf
- **37-Picture of Wincoat Golf Course
- ** (EXHIBITS MISSING FROM RECORD SINCE THE DATE OF HEARING)

- Protestants' Exhibit No.
- 1-Entry of Appearance -Kenneth T. Bosley -5-8-95 (1 below)
 - 2-Motion to Dismiss by Bosley to Lawrence E. Schmidt -5-10-95 (2 below)
 - 3-Recommended Areas of Critical State Concern Map (3 below)
 - 4-Petitions in Opposition to Proposed Rezoning & Golf Course at Hayfields (4 below)
 - 5-Hoblitzell's statement (5 below)
(MISSING SINCE THE DATE OF

HEARING)

- 6-Inventory Form for State Historical Site Survey (6 below)
- 7-Inter-Office Memorandum to William T. Hackett of 3-6-95 (7 below)
- 8-Map Historical Register (8 below) (on back of Petitioner's Ex. 15)
- 9-Nomination form for National Register of Historic Places (9 below) (see Protestant's #15)
- 10-Curriculum Vitae of William Parks Ball (10 below)
- 11-Land Use Plan (11 below)
- 12-Supplement to the Plan for the Valleys (new)
- 13-Resume of James Thomas Wollon, Jr. (new)
- 14-Balto. County Landmarks Preservation Commission Inventory Form (new) (see Protestant's #6)
- 15-Md. Historical Trust Worksheet Nomination Form (new)
- 16-History Trails -Baltimore County Historical Society (new)
- 17-Borings Sample Report by Robert B. Balto Co. (new)
- 18-Md. Dept. of Environment Guidelines's for Onsite Sewage Treatment (new)
- 19-Curriculum Vitae of Thomas L. Daniels
- 20-Area Tax Map
- 21-Agricultural Preservation Map
- 22-Letter reported by Dr. Ball to Valleys Planning Council dated 2-7-96
- 23-31-A through I -exhibits of Memorandum
- 32-Nomination form for Worthington Valley (MISSING SINCE THE DATE OF HEARING)
- 33-Stipulation of the Parties
- 34-Curriculum Vitae of Patrick B. Ford
- 35-Map -Hayfields Property -Cockeysville Marble Aquifer (chart) (in CBA closet)
- 36-Hayfields Property Viewshed Analysis (chart) (in CBA closet)
- 37A-1990 Census Tracts (chart) (in CBA closet)
- 37B-Gateway Demographics - Total Number of Housing Units (chart) (in CBA closet)
- 37C-Gateway Demographics -Total Population (in CBA closet)

People's Counsel's
Exhibit No.

37D-Gateway Demographics -Total
Number of Rental Units (chart) (in
CBA closet)
38-Advance Tentative Agenda for the
Thursday, March 21, 1996 meeting

- 1-ADC Map Index for Baltimore &
Baltimore County
- 2-Inter-Office Correspondence from
Pat Keller to Arnold Jablon on
5-4-95
- 3-Inter-Office Correspondence from
Lawrence Pilson to Arnold Jablon
5-5-95
- 4-Inter-Office Correspondence from
Lawrence Pilson to Arnold Jablon on
5-10-95
- 5-Rule 8 Compliance from Piney Run
Preservation Association
- 6-National Agricultural Lands Study
excerpt (1981)
- 7-Baltimore County Zoning Information
(1987)
- 8-ADC Map Index for Baltimore &
Baltimore County (enlarged portion)
- 9-Soil Survey Baltimore County
Maryland excerpt (1976) (11pp.)
- 10-Chart -Shawan Valley -Baltimore
County, Maryland -Soils (in CBA
closet)
- 11-Inter-Office Correspondence to
Robt. Haines from Robt. Sheesley
of 6-11-90
- 12-for ID Petition for Special
Hearing (not admitted into
evidence)
- 13-Letter from People's Counsel to
Schuetz and Schmidt

October 30, 1996

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

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

and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Charlotte E. Radcliffe

Charlotte E. Radcliffe

Legal Secretary

County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: G. Scott Barhight, Esquire
Hayfields, Inc.
George A. Nilson, Esquire
Valleys Planning Council, Inc., et al
J. Carroll Holzer, Esquire
Dr. Richard McQuaid, et al
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

IN THE CASE OF: IN THE MATTER OF
APPLICATION OF HAYFIELDS, INC.
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NOS.: 95-308-X

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Civil Action No.:
* 03-C-96-8878

* * * * *

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF HAYFIELDS,
INC. FOR APPROVAL OF
DEVELOPMENT PLAN AND FOR A
SPECIAL HEARING AND VARIANCES
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD, AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION
3RD COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
* Civil Action No.: 03-C-96-9573

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NOS.: CBA-96-142
(VIII-661) & 96-347-SPHA

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* * * * *

* * * * *

MOTION TO CONSOLIDATE

Hayfields, Inc., by and through its attorneys, G. Scott Barhight and Whiteford,
Taylor & Preston L.L.P., and in accordance with Maryland Rule 2-503, files its Motion to
Consolidate Civil Action No.: 03-C-96-8878 and Civil Action No.: 03-C-96-9573. The
grounds for the Motion are as follows:

1. On August 6, 1996, the County Board of Appeals for Baltimore County ("Board") issued an Order approving, with conditions, the Application of Hayfields, Inc. ("Hayfields") for a special exception for a country club.

2. Hayfields filed a Petition for Judicial Review of the conditions limiting the Board's approval of Hayfields' special exception application; Hayfields' Petition for Judicial Review was docketed as Case No.: 03-C-96-9081. The Valleys Planning Counsel, People's Counsel for Baltimore County, and Richard McQuaid, et al., filed Petitions for Judicial Review of the Board's approval of Hayfields' special exception application; their Petitions for Judicial Review were docketed as Case No.: 03-C-96-8878.

3. Hayfields filed a motion to transfer and this Court transferred Case No.: 03-C-96-9081 to Case No.: 03-C-96-8878. Accordingly, the Petitions for Judicial Review filed with regard to the Board's approval of Hayfields' special exception application are currently docketed as Case No.: 03-C-96-8878.

4. On September 12, 1996, the Board issued an Order approving, with restrictions and conditions, Hayfields' Development Plan for the Proposed Country Club and Petitions for Special Hearing and Variances.

5. Hayfields filed a Petition for Judicial Review of the restrictions and conditions imposed by the Board on its decision to approve the Hayfields' Development Plan and Petitions for Special Hearing and Variances. The Valleys Planning Council, People's Counsel for Baltimore County, and Richard McQuaid, et al., filed Petitions for Judicial Review of the Board's decision to approve Hayfields' Development Plan and grant the

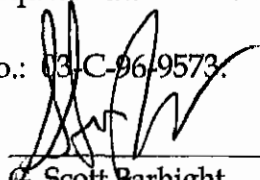
Special Hearing and Variance requests. This Court docketed the Petitions for Judicial Review concerning the Development Plan and the Petitions for Special Hearing and Variances as Case No.: 03-C-96-9573.

6. Maryland Rule 2-503 permits consolidation of actions which involve "a common question of law or fact or a common subject matter."

7. Both Case No.: 03-C-96-8878 and Case No.: 03-C-96-9578 involve a common subject matter, namely the development of Hayfields' proposed country club on the above-referenced property. Additionally, the same persons and entities who filed responses indicating their intentions to participate in the review proceedings for Case No.: 03-C-96-8878 have filed responses indicating their intentions to participate in the review proceedings for Case No.: 03-C-96-9573.

8. Consolidating Case No.: 03-C-96-8878 and Case No.: 03-C-96-9573 promotes judicial economy and prejudices no one claiming to have an interest in the above-referenced matters.

WHEREFORE, Hayfields, Inc. respectfully requests that this Court grant its Motion to Consolidate Case No.: 03-C-96-8878 and Case No.: 03-C-96-9573.



G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorney for Hayfields, Inc.,

CERTIFICATE OF SERVICE

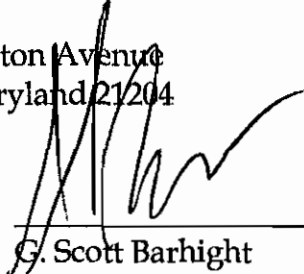
I HEREBY CERTIFY that on this 23rd day of October, 1996, a copy of the foregoing Motion to Consolidate was mailed first class, postage prepaid to:

✓ County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

George A. Nilson, Esq.
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue, Room 47
Towson, Maryland 21204

J. Carroll Holzer, Esq.
Holzer & Lee
Suite 502
305 Washington Avenue
Towson, Maryland 21204



G. Scott Barhight

IN THE CASE OF: IN THE MATTER OF
APPLICATION OF HAYFIELDS, INC.
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NOS.: 95-308-X

* * * * *
IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF HAYFIELDS, INC.
FOR APPROVAL OF DEVELOPMENT
PLAN AND FOR A SPECIAL HEARING
AND VARIANCES ON PROPERTY
LOCATED ON THE NORTHWEST SIDE
WESTERN RUN ROAD AND SHAWAN
ROAD, AT ITS INTERSECTION WITH
INTERSTATE 83
8TH ELECTION
3RD COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NOS.: CBA-96-142
(VIII-661) & 96-347-SPHA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Civil Action No.:
* 03-C-96-8878

* * * * *
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
* Civil Action No.: 03-C-96-9573

* * * * *
ORDER

Upon consideration of Petitioner Hayfields, Inc.'s Motion to Consolidate Case No.: 03-C-96-8878 and Case No.: 03-C-96-9081, and any response filed thereto, it is this ____ day of _____, 1996,

ORDERED that Petitioner Hayfields, Inc.'s Motion to Consolidate be and the same is hereby granted and that Case No.: 03-C-96-8878 and Case No.: 03-C-96-9081 be consolidated.

Judge

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

950370 111 15 9

PETITION OF HAYFIELDS, INC. *

FOR THE JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY *

IN THE CASE OF APPEAL NO. 95-308-X * CIVIL ACTION NO. 03-C-96-9081

In the Matter of the Application of *
Hayfields, Inc./Petitioner/ For A Special *
Exception on Property Located On the *
Northwest Side Western Run Road and *
Shawan Road at its Intersection with I-83 *
(301 Western Run Road) 8th Election *
District 3rd Councilmanic District *

* * * * *

PETITION OF VALLEYS PLANNING
COUNCIL *

FOR THE JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY *

IN THE CASE OF APPEAL NO. 95-308-X * CIVIL ACTION NO. 03-C-96-8878

In the Matter of the Application of *
Hayfields, Inc./Petitioner/ For A Special *
Exception on Property Located On the *
Northwest Side Western Run Road and *
Shawan Road at its Intersection with I-83 *
(301 Western Run Road) 8th Election *
District 3rd Councilmanic District *

* * * * *

ORDER

After consideration of Petitioner Hayfields, Inc.'s, Motion to Transfer, and
any response filed thereto, it is this 21st day of OCTOBER, 1996,

FILED 11 OCT 25 1996

ORDERED that Petitioner Hayfields, Inc.'s Motion to Transfer, be and the same as hereby granted.

Lawrence R. Daniel
JUDGE

True Copy Test

SUZANNE MENSCH, Clerk

For Suzanne Mensch
Assistant Clerk

IN THE CASE OF: IN THE MATTER OF
APPLICATION OF HAYFIELDS, INC.
FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH INTERSTATE 83
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NOS.: 95-308-X

* Civil Action No.:
* 03-C-96-8878

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Hayfields, Inc., by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, L.L.P., and in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by the Valleys Planning Council, People's Counsel for Baltimore County, and Dr. Richard McQuaid, et al., in the above-captioned matter, and states that it intends to participate in this action for judicial review.

On September 6, 1996, Hayfields, Inc., filed a Response to Petitions for Judicial Review, with respect to this matter; however, in light of the numerous responses and petitions, and the Motion to Transfer, filed with respect to this matter, Hayfields, Inc., wishes to clarify its intention to defend against all of the Petitions for Judicial Review filed

FILED 10-100 96

by the aforementioned Petitioners. The undersigned appeared before the proceeding before the County Board of Appeals.

A handwritten signature in black ink, appearing to read 'G. Scott Barhight', is written over a horizontal line.

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Hayfields, Inc.,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18TH day of October, 1996, a copy of the foregoing Response was mailed first class, postage prepaid to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

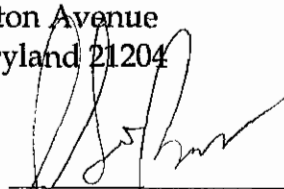
George A. Nilson, Esq.
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue, Room 47
Towson, Maryland 21204

Mr. Kenneth T. Bosley
P.O. Box 585
Sparks, Maryland 21152

Leslie M. Pittler, Esq.
8415 Bellona Lane
Towson,, Maryland 21204-2055

J. Carroll Holzer, Esq.
Holzer & Lee
Suite 502
305 Washington Avenue
Towson, Maryland 21204



G. Scott Barhight

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF HAYFIELDS, INC. *

FOR THE JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY *

IN THE CASE OF APPEAL NO. 95-308-X * CIVIL ACTION NO. 03-C-96-9081
In the Matter of the Application of *
Hayfields, Inc./Petitioner/ For A Special *
Exception on Property Located On the *
Northwest Side Western Run Road and *
Shawan Road at its Intersection with I-83 *
(301 Western Run Road) 8th Election *
District 3rd Councilmanic District *

* * * * *
PETITION OF VALLEYS PLANNING *
COUNCIL *
FOR THE JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY *

IN THE CASE OF APPEAL NO. 95-308-X * CIVIL ACTION NO. 03-C-96-8878
In the Matter of the Application of *
Hayfields, Inc./Petitioner/ For A Special *
Exception on Property Located On the *
Northwest Side Western Run Road and *
Shawan Road at its Intersection with I-83 *
(301 Western Run Road) 8th Election *
District 3rd Councilmanic District *

* * * * *

MOTION TO TRANSFER

Petitioner, Hayfields, Inc., by its attorneys, Whiteford, Taylor & Preston L.L.P., and
G. Scott Barhight, Esquire, hereby moves to transfer the Petition for Judicial Review filed
in Case No. 03-C-96-9081. The grounds for the Motion are as follows:

1. An Order of the County Board of Appeals In The Matter of Hayfields, Inc. was issued on August 6, 1996, approving, with conditions, the Application of Hayfields, Inc. for a special exception for a country club, and states:

2. Pursuant to Maryland Rule 7-203(a), Valleys Planning Counsel, on August 30, 1996, filed a timely Petition for Judicial Review of said Order; and said Petition for Judicial Review was docketed as Case No. 03-C-96-8878.

3. Pursuant to Maryland Rule 7-203(b), Hayfields, Inc., on September 5, 1996, also filed a timely Petition for Judicial of the aforesaid Order of the County Board of Appeals in the matter of Hayfields, Inc.; said Petition for Judicial Review was inadvertently docketed as a separate Case No. 03-C-96-9081.

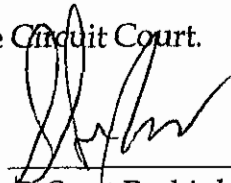
4. A Petition for Judicial Review of an Administrative Order may be filed by more than one party as provided in Maryland Rule 7-203(b); the Rule does not direct nor indicate that each said Petition for Judicial Review shall be treated as a separate case.

5. Maryland Rule 7-206(a) provides that the Record of the agency proceeding, (in this case the Baltimore County Board of Appeals), including exhibits, papers filed and the transcript of the testimony, shall be transmitted to the Circuit Court; said Rule further states that the first Petitioner to file for Judicial Review shall bear the cost of transcribing the testimony unless otherwise ordered by the Court; thus only one complete Record must be transmitted to the Circuit Court regardless of the number of Petitions for Judicial Review filed.

6. In the cases at hand, if the two Petitions for Judicial Review were maintained as separate cases, a copy of the record of the proceedings before the County Board of Appeals, including all exhibits, papers and a transcript of the testimony, must be filed in each case, creating an unnecessary expense for the parties and a hardship for the County Board of Appeals which would be required to provide an extra set of all exhibits filed.

7. That as provided in Maryland Rule 7-208, one date for a hearing on the merits would be set for all Petitions for Judicial Review filed in the matter, and all parties and counsel would be heard in a single hearing; a duplicate of the Record and proceedings of the County Board of Appeals would not be required, nor assist the Circuit Court in reaching a decision in this matter.

8. That Whiteford, Taylor & Preston, LLP, counsel for Hayfields, Inc. consulted with George A. Nilson, counsel for the Valleys Planning Council, who has consented to the relief requested in this Motion to Transfer Case No. 03-C-96-9081 to Case No. 03-C-96-8878; that said counsel is in accord with the request that only one Record of the proceedings before the County Board of Appeals, including the transcript of testimony, shall be required to be transmitted to the Circuit Court.



G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
Attorney for Hayfields, Inc.,
Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 1996, a copy of the foregoing Motion to Transfer was mailed first class, postage prepaid to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

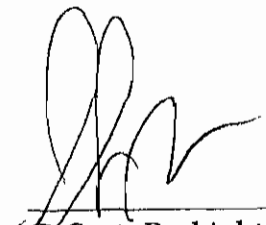
George A. Nilson, Esquire
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue, Room 47
Towson, Maryland 21204

Mr. Kenneth T. Bosley
P.O. Box 585
Sparks, Maryland 21152

Leslie M. Pittler, Esquire
Apartment 605
8415 Bellona Lane
Towson, Maryland 21204-2055

J. Carroll Holzer, Esquire
Holzer & Lee
Suite 502
305 Washington Avenue
Towson, MD 21204



G. Scott Barhight

0 13 96
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF HAYFIELDS, INC.
1205 York Road
Lutherville, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
TOLL HOUSE, INC.- PETITIONER /HAYFIELDS
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE NORTHWEST SIDE WESTERN
RUN ROAD AND SHAWAN ROAD @ ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-308-X

CIVIL
ACTION
No. 3-C-96-009081

RECEIVED AND FILED
JUL 18 1996
3:15 PM
(4th Petition filed in
Hayfields; see
Civil Action No.
3-C-96-008878)

* * * * *
CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, Kristine K. Howanski, and Lawrence M. Stahl, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515; Counsel for Petitioner, Toll House, Inc., c/o John M. Mangione, 1205 York Road, Lutherville, Maryland 21093, Petitioner; George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for The Valleys Planning Council, Inc., et al; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road,

95-308-X, Hayfields
File No. 3-C-96-009081

Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road, Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030; J. Carroll Holzer, Esquire, HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Counsel for Dr. Richard McQuaid, et al; Dr. Richard McQuaid, Mary Bee Gaines, North County Coalition, Inc. and Piney Run Preservation Association, Inc. at 305 Washington Avenue, Suite 502, Towson, Maryland 21204; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515; Counsel for Petitioner, Toll House, Inc., c/o John M. Mangione, 1205 York Road, Lutherville, Maryland 21093, Petitioner; George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for The Valleys Planning Council, Inc., et al; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road, Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road,

95-308-X, Hayfields
File No. 3-C-96-009081

Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030; J. Carroll Holzer, Esquire, HOLZER AND LEE, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Counsel for Dr. Richard McQuaid, et al; Dr. Richard McQuaid, Mary Bee Gaines, North County Coalition, Inc. and Piney Run Preservation Association, Inc. at 305 Washington Avenue, Suite 502, Towson, Maryland 21204; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, this 18th day of September, 1996.

Charlotte E. Radcliffe

Charlotte E. Radcliffe

Legal Secretary

County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 18, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Civil Action No. 3-C-96-009081
TOLL HOUSE, INC. /HAYFIELDS

Dear Mr. Barhight:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript, in addition to all costs incurred for certified copies of documents, must be paid prior to transmittal of record to the Circuit Court within sixty days.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Hayfields, Inc.
c/o John M. Mangione
Joseph LaVerghetta, Esquire





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 18, 1996

George A. Nilson, Esquire
PIPER & MARBURY
1100 Charles Center South
36 S. Charles Street
Baltimore, Maryland 21201

RE: Civil Action No. 03-C-96-009081
TOLL HOUSE, INC. /HAYFIELDS

Dear Mr. Nilson:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on September 5, 1996, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that prior Petitions were filed by other parties to this matter under Civil Action No. 3-C-96-008878.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: People's Counsel for Baltimore County
The Valleys Planning Council, Inc., et al
J. Carroll Holzer, Esquire
Dr. Richard McQuaid, et al
Leslie M. Pittler, Esquire
George Gavrelis
Lawrence E. Schmidt
Arnold Jablon /PDM
Virginia W. Barnhart, County Attorney

Kenneth T. Bosley, Esq.
Ruth Mascari
Virginia Woodward



9 16 46
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
400 Washington Avenue, Room 47,
Towson, Maryland 21204

AND

PETITION OF DR. RICHARD MCQUAID,
MARY BEE GAINES, NORTH COUNTY
COALITION, INC., and PINEY RUN
PRESERVATION ASSOCIATION, INC. at
305 Washington Avenue, Suite 502,
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
TOLL HOUSE, INC.- PETITIONER /HAYFIELDS
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE NORTHWEST SIDE WESTERN
RUN ROAD AND SHAWAN ROAD @ ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-308-X

* * * * *

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland
Rules of Procedure, Robert O. Schuetz, Kristine K. Howanski,
and Lawrence M. Stahl, constituting the County Board of Appeals of
Baltimore County, have given notice by mail of the filing of the
Petitions for Judicial Review to the representative of every party
to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400
Washington Avenue, Towson, Maryland 21204, Petitioner; J. Carroll
Holzer, Esquire, HOLZER & LEE, 305 Washington Avenue, Suite 502,
Towson, Maryland 21204, Counsel for Dr. Richard Mcquaid, et al

CIVIL
ACTION
No. 3-C-96-008878

RECEIVED AND FILED
56 SEP 18 PM 3:15
BALTIMORE COUNTY

/Petitioners; Dr. Richard McQuaid, Mary Bee Gaines, North County Coalition, Inc. and Piney Run Preservation Association, Inc., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Petitioners; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515; Counsel for Toll House, Inc.; Toll House, Inc., c/o John M. Mangione, 1205 York Road, Lutherville, Maryland 21093; George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for The Valleys Planning Council, Inc., et al; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road, Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road, Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, and Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030, a copy of which Second Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Second Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, Petitioner; J. Carroll

Holzer, Esquire, HOLZER & LEE, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Counsel for Dr. Richard McQuaid, et al /Petitioners; Dr. Richard McQuaid, Mary Bee Gaines, North County Coalition, Inc. and Piney Run Preservation Association, Inc., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Petitioners; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515; Counsel for Toll House, Inc.; Toll House, Inc., c/o John M. Mangione, 1205 York Road, Lutherville, Maryland 21093; George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for The Valleys Planning Council, Inc., et al; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road, Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road, Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, and Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030, this 18th day of September, 1996.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 18, 1996

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Civil Action No. 3-C-96-008878
TOLL HOUSE, INC. /HAYFIELDS

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petitions for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript, in addition to all costs incurred for certified copies of documents, must be paid prior to transmittal of the record to the Circuit Court for Baltimore County within sixty days.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Dr. Richard McQuaid, et al





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 18, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

✓ RE: Civil Action No. 03-C-96-008878
TOLL HOUSE, INC. /HAYFIELDS

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that Petitions for Judicial Review were filed on September 3, 1996, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-96-008878.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Toll House, Inc., c/o John M. Mangione
Joseph LaVerghetta, Esquire
George A. Nilson, Esquire
The Valleys Planning Council, Inc., et al
Leslie M. Pittler, Esquire
George Gavrelis
Lawrence E. Schmidt
Arnold Jablon /PDM
Virginia W. Barnhart, County Attorney

Kenneth T. Bosley, Esq.
Ruth Mascari
Virginia Woodward



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE VALLEYS PLANNING
COUNCIL, INC.
212 Washington Avenue
Towson, Maryland 21204

AND

LYNN HASTINGS
818 Western Run Road
Cockeysville, Maryland 21030

AND

DAN AND JOANNE TIMMEL
918 Western Run Road
Cockeysville, Maryland 21030

AND

THEODORE AND INGRID BARAMKI
806 Western Run Road
Cockeysville, Maryland 21030

AND

ROBERT AND SHIRLEY MAND
718 Western Run Road
Cockeysville, Maryland 21030

AND

MARGUERITE HASTINGS
812 Western Run Road
Cockeysville, Maryland 21030

AND

DR. CONSTANTINE AND NANCY CHILIMINDRIS
1003 Shawan Road
Hunt Valley, Maryland 21030

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

CIVIL
ACTION
No. 3-C-96-008878

IN THE CASE OF: IN THE MATTER OF
TOLL HOUSE, INC.- PETITIONER /HAYFIELDS
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE NORTHWEST SIDE WESTERN
RUN ROAD AND SHAWAN ROAD @ ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-308-X

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland
Rules of Procedure, Robert O. Schuetz, Kristine K. Howanski,

96 SEP -5 PM 3:02

and Lawrence M. Stahl, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for Petitioners; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road, Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road, Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030, Petitioners; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Toll House, Inc.; Toll House, Inc. c/o John M. Mangione, Executive Director, 1205 York Road, Lutherville, Maryland 21093, Petitioner; Joseph LaVerghetta, Esquire, 1205 York Road, Lutherville, Maryland 21093; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to George A. Nilson, Esquire, PIPER & MARBURY, L.L.P., Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Counsel for Petitioners; The Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204, Lynn Hastings, 818 Western Run Road, Cockeysville, Maryland 21030, Dan and Joanne Timmel, 918 Western Run Road, Cockeysville, Maryland 21030, Theodore and Ingrid Baramki, 806 Western Run Road, Cockeysville, Maryland 21030, Robert and Shirley Mand, 718 Western Run Road, Cockeysville, Maryland 21030, Marguerite Hastings, 812 Western Run Road, Cockeysville, Maryland 21030, Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road, Hunt Valley, Maryland 21030, Petitioners; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Toll House, Inc.; Toll House, Inc. c/o John M. Mangione, Executive Director, 1205 York Road, Lutherville, Maryland 21093, Petitioner; Joseph LaVerghetta, Esquire, 1205 York Road, Lutherville, Maryland 21093; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, this 5th day of September, 1996.

Charlotte E. Radcliffe

Charlotte E. Radcliffe

Legal Secretary

County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 5, 1996

George A. Nilson, Esquire
PIPER & MARBURY, L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

RE: Civil Action No. 3-C-96-008878
TOLL HOUSE, INC. /HAYFIELDS

Dear Mr. Nilson:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs 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 within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: The Valley Planning Council, Inc.
Lynn Hastings
Dan and Joanne Timmel
Theodore and Ingrid Baramki

Robert and Shirley Mand
Marguerite Hastings
Dr. Constantine and
Nancy Chilimindris





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 5, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Civil Action No. 03-C-96-008878
TOLL HOUSE, INC. /HAYFIELDS

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on August 30, 1996, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-96-008878.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Toll House, Inc.
c/o John M. Mangione
Joseph LaVerghetta, Esquire
People's Counsel for Baltimore Co.
Leslie M. Pittler, Esquire
Lawrence E. Schmidt
Arnold Jablon /PDM
Virginia W. Barnhart, County Attorney

George Gavrelis
Kenneth T. Bosley, Esq.
Ruth Mascari
Virginia Woodward
Dr. Richard W. McQuaid



7. 1. 96.

* IN THE
* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

*

96-2081

TRANSFER
1 RECORDED TO
THE OTHER

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioner, Hayfields, Inc., by its attorneys, Whiteford, Taylor & Preston L.L.P., and G. Scott Barhight, Esquire, hereby requests, pursuant to Maryland Rules 7-202, and 7-203, judicial review of portions of the decision of the County Board of Appeals of Baltimore County ("the Board") dated August 6, 1996, approving, with conditions, the Application of Hayfields, Inc. for a special exception for a country club, and states:

1. Petitioner was a party to the proceedings before the Board in this matter.
2. The Board's Order, issued August 6, 1996, granted the Petitioner's request for special exception subject to 10 restrictions. Petitioner does not challenge the Board's decision to grant the Petition for Special Exception; however, Petitioner does object to some of the restrictions which the Board imposed.

decision to grant the Petition for Special Exception; however, Petitioner does object to some of the restrictions which the Board imposed.

3. Specifically, Petitioner requests judicial review of the following restrictions:

a. Restriction # 2: the Board's decision to restrict the use of the proposed swimming pool to club members and guests and to make the swimming pool unavailable as a separate membership opportunity exclusive of other country club facilities, is arbitrary, unreasonable, and capricious, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence.

b. Restriction # 3: the Board's decision to restrict the use of the proposed tennis facilities to club members and guests and to make the tennis facilities unavailable as a separate membership opportunity exclusive of other country club facilities, is arbitrary, unreasonable, and capricious, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence.

c. Restriction # 4: the Board's decision to restrict the use of the golf practice range to those individuals preparing for play on the golf course, after completion of a round of play on the golf course, and to members only for use outside the intention to play on the golf course is arbitrary, unreasonable, and capricious, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence. In addition, the Board's decision to prohibit

public access to the practice facility without play on the golf course itself, and to restrict the number of practice tees which may be in operation at any one time to fifteen is arbitrary, capricious, and unreasonable, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence.

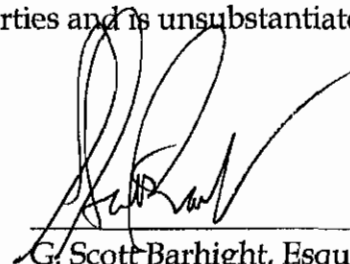
d. Restriction # 6: the Board's decision to restrict the use of the proposed banquet facility to club members and guests, and to make the proposed banquet facility unavailable for hire by the general public is arbitrary, capricious, and unreasonable, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence.

e. Restriction # 7: the Board's decision to limit overnight accommodations to the provision for one caretaker facility is arbitrary, capricious and unreasonable, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence.

f. Restriction # 9: the Board's decision to require submission of subsurface cross-section details to DEPRM to enable DEPRM to make a finding that a continuous clay layer will be provided under the fairways is arbitrary, capricious, and unreasonable, is not necessary or advisable for the protection of surrounding and neighboring properties, and is unsubstantiated by the record evidence. Additionally, the Board's decision to prohibit relaxation of the tee box and greens design criteria and predevelopment engineering is arbitrary, capricious, and unreasonable, is not necessary

or advisable for the protection of the surrounding or neighboring properties, and is unsubstantiated by the record evidence.

g. Restriction # 10: the Board's decision to restrict the placement of any structures on the site to the north and west of the existing manor house is vague and confusing, is arbitrary, capricious, and unreasonable, is not necessary or advisable for the protection of surrounding and neighboring properties and is unsubstantiated by the record evidence.

A handwritten signature in black ink, appearing to read 'G. Scott Barhight', is written over a horizontal line.

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Hayfields, Inc.,
Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5TH day of September, 1996, a copy of the foregoing Petition for Judicial Review was mailed first class, postage prepaid to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

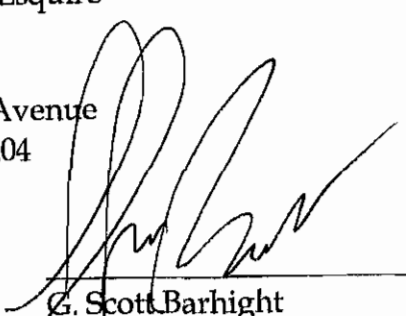
George A. Nilson, Esquire
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue, Room 47
Towson, Maryland 21204

Mr. Kenneth T. Bosley
P.O. Box 585
Sparks, Maryland 21152

Leslie M. Pittler, Esquire
Apartment 605
8415 Bellona Lane
Towson, Maryland 21204-2055

J. Carroll Holzer, Esquire
Holzer & Lee
Suite 502
305 Washington Avenue
Towson, MD 21204



G. Scott Barhight

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, 400 Washington Avenue,
Room 47, Towson, Maryland 21204

*

IN THE

*

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

*

CIRCUIT COURT

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF TOLL HOUSE, INC. (aka
HAYFIELDS) FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE NORTHWEST SIDE
WESTERN RUN ROAD AND SHAWAN ROAD, AT
ITS INTERSECTION WITH INTERSTATE 83
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

*

FOR

*

*

BALTIMORE COUNTY

*

*

Civil Action No.

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO.: 95-308-X

*

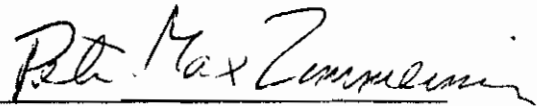
03-C-96-8878

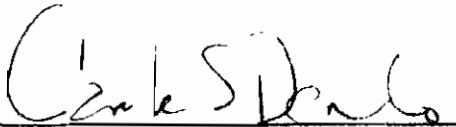
* * * * *

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial
review of the decision of the County Board of Appeals dated August 6,
1996 in the above case, CBA Case No. 95-308-X. PEOPLE'S COUNSEL was a
party to the proceeding before the County Board of Appeals of Baltimore
County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland
Rules of Procedure.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

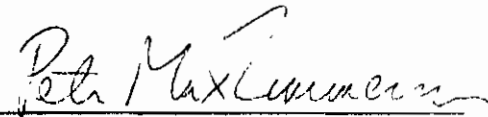

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED AND FILED
96 SEP -3 PM 4:05
BALTIMORE COUNTY

SEP 11 1996

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 1996, a copy of the foregoing Petition for Judicial Review was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, to George Nilson, Esq., Piper and Marbury, 36 S. Charles Street, Suite 1100, Baltimore, MD 21201, to Kenneth T. Bosley, Box 334, Cockeysville, MD 21030, and to Leslie M. Pittler, Esq., 29 W. Susquehanna Avenue, Suite 610, Towson, MD 21204.


PETER MAX ZIMMERMAN

PETITION OF Dr. Richard McQuaid, Mary Bee Gaines
North County Coalition, Inc., and Piney Run
Preservation Association, Inc. at
305 Washington Avenue, Suite 502, Towson,
Maryland 21204

FOR JUDICIAL REVIEW OF THE
APPLICATION OF *TOLL HOUSE, INC. (AKA
HAYFIELDS)* FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE NORTHWEST
SIDE WESTERN RUN ROAD AND SHAWAN ROAD,
AT ITS INTERSECTION WITH INTERSTATE 83
8th ELECTION DISTRICT 3rd COUNCILMANIC
DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO. : 95-308-X

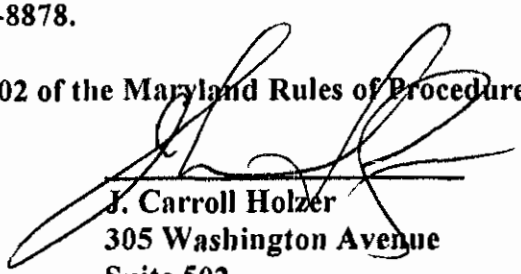
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* C-96-8878

* * * * *

PETITION FOR JUDICIAL REVIEW

Dr. Richard McQuaid et al. by J. Carroll Holzer and Holzer and Lee their attorney,
hereby requests the judicial review of the decision of the County Board of Appeals dated
August 6, 1996 in the above case, CBA Case No. 95-308-X. Petitioners were all parties to the
proceeding before the County Board of Appeals of Baltimore County in this matter. The
Valleys Planning Council, et al. and People's Counsel of Baltimore County have previously
petitioned for Judicial Review in Case No. C-96-8878.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.


J. Carroll Holzer
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Petitioners

RECEIVED AND FILED

96 SEP -3 PM 4:20

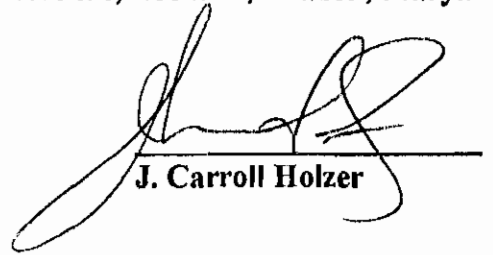
BALTIMORE COUNTY

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825 6961
FAX (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 1996 a copy of the foregoing Petition for Judicial Review was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, Maryland 21204; George Nilson, Esq., Piper and Marbury, 36 S. Charles Street, Suite 1100, Baltimore, Maryland 21201; Kenneth T. Bosley, Box 334, Cockeysville, Maryland 21030; Leslie M. Pittler, Esq., 29 W. Susquehanna Avenue, Suite 610, Towson, Maryland 21204; and Peter M. Zimmerman, People's Counsel for Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204.


J. Carroll Holzer

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF THE VALLEYS PLANNING COUNCIL, INC.

212 Washington Avenue
Towson, Maryland 21204

LYNN HASTINGS

818 Western Run Road

Cockeysville, Maryland 21030

DAN AND JOANNE TIMMEL

918 Western Run Road

Cockeysville, Maryland 21030

THEODORE AND INGRID BARAMKI

806 Western Run Road

Cockeysville, Maryland 21030

ROBERT AND SHIRLEY MAND

718 Western Run Road

Cockeysville, Maryland 21030

MARGUERITE HASTINGS

812 Western Run Road

Cockeysville, Maryland 21030

DR. CONSTANTINE AND NANCY CHILIMINDRIS

1003 Shawan Road

Hunt Valley, Maryland 21030

FOR THE JUDICIAL REVIEW OF THE DECISION OF THE
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Old Courthouse, Room 49

400 Washington Avenue

Towson, Maryland 21204

IN THE CASE OF APPEAL NO. 95-308-X

In the Matter of the Application

of Toll House, Inc./Petitioner/Hayfields

For a Special Exception on Property Located

On the Northwest Side Western Run Road and

Shawan Road at its Intersection with I-83

(301 Western Run Road) 8th Election District

3rd Councilmanic District

* * * * *

*Shawan
this is new
copy from
Lynn Hastings
K.*

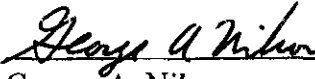
CIVIL

ACTION

No. _____

PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rule 7-202, Petitioners, The Valleys Planning Council, Inc., Lynn Hastings, Dan and Joanne Timmel, Theodore and Ingrid Baramki, Robert and Shirley Mand, Marguerite Hastings, and Dr. Constantine and Nancy Chilimindris, by their attorney, hereby request judicial review of a decision of the County Board of Appeals of Baltimore County (the "County Board") dated August 6, 1996, approving the application of Toll House, Inc./Hayfields for a special exception for a country club in an RC-2 and RC-4 zone. Petitioners were parties to the proceedings before the County Board in this matter.


George A. Nilson

Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201
(410) 539-2530

Attorney for The Valleys Planning Council, Inc.
Lynn Hastings
Dan and Joanne Timmel
Theodore and Ingrid Baramki
Robert and Shirley Mand
Marguerite Hastings
Dr. Constantine and Nancy Chilimindris

Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 30th day of August, 1996, a copy of the foregoing Petition was mailed, first class, postage prepaid, to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

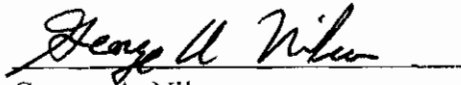
G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue
Room 47
Towson, Maryland 21204

Mr. Kenneth T. Bosley
P. O. Box 585
Sparks, Maryland 21152

and

Leslie M. Pittler, Esquire
Apartment 605
8415 Bellona Lane
Towson, Maryland 21204-2055


George A. Nilson

IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF		
TOLL HOUSE, INC. /PETITIONER	*	
/ HAYFIELDS FOR A SPECIAL		COUNTY BOARD OF APPEALS
EXCEPTION ON PROPERTY LOCATED	*	
ON THE NORTHWEST SIDE WESTERN		
RUN ROAD AND SHAWAN ROAD @ ITS*		OF
INTERSECTION WITH I-83		
(301 WESTERN RUN ROAD)	*	BALTIMORE COUNTY
8TH ELECTION DISTRICT		
3RD COUNCILMANIC DISTRICT	*	CASE NO. 95-308-X

* * * * *

O P I N I O N

This case comes to the Board as an appeal of the Zoning Commissioner's Order dated June 30, 1995, in which Petition for Special Exception for a country club in the R.C. 2 and R.C. 4 zones was granted with restrictions. This case was heard de novo over 7 days of testimony, and publicly deliberated in accordance with Maryland's open meetings law. Representing the Petitioner was G. Scott Barhight, Esquire, WHITEFORD, TAYLOR, & PRESTON, and Joseph P. LaVerghetta, Esquire. Counsel for Protestants was George A. Nilson, Esquire, PIPER & MARBURY, representing The Valleys Planning Council, et al. Leslie Pittler, Esquire, appeared for John Invernessy, Protestant; Kenneth T. Bosley, Esquire, appeared as a Protestant; and People's Counsel participated in the proceedings.

Hayfields, Inc., Petitioner and Appellee, was successful before the Zoning Commissioner in its Petition for Special Exception to permit a country club on 228 acres +/- on R.C. 2 and R.C. 4-zoned property of the instant site. Petitioner seeks a country club which would include an 18-hole golf course; a golf driving range consisting of 30 practice tees, three target greens and lighting to permit nighttime use; a club house; a swimming

pool; a tennis facility; a restaurant; banquet facilities; and overnight accommodations as part of the proposed development. Additional residential development was proposed for R.C. 4-zoned property in the northern part of the site, which is not part of the instant case.

Regarding the 18-hole golf course, the majority of the course routing is proposed to be across R.C. 2-zoned property, with some of the course traversing R.C. 4 property; intensity of play is expected to reach 45,000 rounds per year, and will be accessible to the general public as well as a core membership of roughly 200 households. The driving range is proposed to be lit for nighttime use outside of golf course operation hours, and available for use by the general public regardless of play on course. The pool and tennis facilities are not expected to be accessible to the public, and it is proposed to possibly exist with separate membership from the country club membership which utilizes the golf course. The banquet facilities are proposed to be for hire to members, as well as those in the general public, and are expected to generate 275 functions annually with an average participation of 150 per function. The restaurant is proposed to accommodate up to 90 people, although it has not been made clear whether a separation of member and non-member dining would be available in the restaurant, only that the restaurant would serve the general public as well as the membership.

Overnight accommodations are proposed for three buildings and are proposed to be available on a "very limited basis." The

Petitioner plans to adaptively re-use the existing manor house, stone fence, and other buildings which are on the National Register for Historical Places, all of which is more particularly described on Petitioner's Exhibit 5 and other exhibits.

Of the 228 acres which are part of this special exception petition, approximately 210 acres are zoned R.C. 2 with the remaining roughly 18 acres being zoned R.C. 4. Following the project description by Petitioner's representative, John Mangione, Protestants brought a Motion to Dismiss, alleging that the Petition does not meet the definition of "country club" as found in the Baltimore County Zoning Regulations (BCZR), Section 101.

The instant site is located adjacent to the intersection of Interstate 83 and Shawan Road, as well as Western Run Road, in the Shawan Valley. The site is specifically mentioned in the Master Plan as the gateway to the rural part of the County. The entire site consists of roughly 476 acres traversed only by a portion of the routing of Western Run Road, is split-zoned R.C. 2 and R.C. 4, and is noted for its extensive history as a productive farm for over 200 years.

Turning to the Protestants' Motion for Dismissal on the allegation of an improper country club, the Board reserved on that Motion until the conclusion of the evidentiary portion of the proceeding for the entire case, choosing to deliberate the Motion as a threshold issue, as it was raised by Protestants, prior to deliberating the merits of the case. Protestants argue that the Petition before the Board is materially different from that which

was proposed before the Zoning Commissioner as a question of degree or intensity of use; i.e., the practice range was proposed below and a lit practice range is considered by the Board. Protestants allege that the word "club" is understood by the County Council to be a private entity, that various entities distinguish between public and private play, and that by virtue of the proposed banquet facilities, public restaurant, public driving range, and overnight accommodations, the proposed country club does not fit the definition found in the BCZR.

Petitioner first responds that changes made to the Petition are a response to the proceeding and Zoning Commissioner's Order. Petitioner also responds that a semi-private club can be qualified as a country club. Petitioner asserts that the clear reading of the country club definition is met by what is proposed in that Petitioner proposes a golf course, club house and other recreational facilities. Petitioner further asserts that the words "not for profit" and "exclusive" should not be an issue in the reading of the definition of country club. Further, Protestants point out that Council Bill No. 62-78, a bill which required tennis clubs to be non-profit and exclusive, is the same Bill that created the definition of country club, and, the Board notes, the Council opted for varying degrees of specificity in the definitions.

The term "country club" is defined in the BCZR and reads:

A 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A).

BCZR Section 406A concerns tennis facilities.

The Board finds that the proposed country club includes an 18-hole golf course, a clubhouse, and other appropriate facilities, which are proposed to include other recreational facilities such as the pool and tennis courts. The Board finds also that the Council's use of the word "club" connotes a membership component but does not require exclusivity in the use and enjoyment of the proposed country club only by members. The question of the intensity of use and whether the Board may consider the country club proposed is an issue which the Board has the authority to address under its broad authority described in the special exception procedures found in the BCZR, Section 502. The proposed country club has a membership component, as well as the aforementioned appurtenances; therefore, the Board finds that the Petition for the proposed country club is properly brought and includes all possible uses which appear in the definition of country club. Therefore, the Motion for Dismissal is denied.

Turning to the special exception, the Board is bound by BCZR Section 502, specifically Sections 502.1 and 502.2, which read:

502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;

- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

502.2--In granting any special exception, the zoning commissioner or the board of zoning appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the zoning commissioner, or board of zoning appeals, upon appeal, shall enter into an agreement in writing with said zoning commissioner and/or the county commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

Further, per BCZR Section 1A01.2C, the Board must find 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 situation on land more appropriately used for primary agricultural uses....

The Board notes with interest that the preamble to BCZR Section 502 indicates that uses permitted by special exception are deemed to be proper uses of land as determined by the County Council; yet, Section 1A01.2C makes special note of those uses

found in that subsection under Item 24, the effect being the manner in which the Board is to view impact of the proposed use on the vicinity, and whether the vicinity includes the land on which the proposed use will rest. The proposed country club falls as Item 10 under BCZR Section 1A01.2C; therefore, when considering the special exception petition, the Board is guided to consider the impact to agricultural uses exclusive of the site itself, but within its surrounding locale. For the purposes of analysis of the criteria under 502.1a through 502.1h, "vicinity" and "locale" will be used interchangeably.

BCZR Section 502.1a requires that the Board find that the proposed use for which the special exception is requested will not "be detrimental to the health, safety, or general welfare of the locality involved." The majority of the issues contested in this case fall under this particular criterion in the zoning regulations. Some of the testimony brought by experts in this case overlaps in different criteria under 502.1. Testifying for the Petitioners were Wes Guckert, President of The Traffic Group, Inc., traffic and transportation expert; Stephanie N. Hau, Chesapeake Environmental Management, an expert in environmental science, hydrogeology, and environmental effects of golf courses; Brian J. Ault, an accepted golf course architecture expert; and George E. Gavrelis of Daft-McCune-Walker, a land use planning and zoning expert.

Providing testimony for the Protestants in these matters were Robert Hastings, neighbor to the north of the instant site; Thomas

C. Whedbee, a neighbor nearby to the west; Dan Timmel and Marguerite Hastings, neighbors and parties to the case; James T. Wollon, an historical architectural expert; Stephen L. Mogilnicki, a geohydrologist with the Baltimore County Department of Environmental Protection and Resource Management (DEPRM); Thomas L. Daniels, a rural planner, agricultural business expert and expert on the impacts of development and approvals on agriculture; William P. Ball, an expert in environmental engineering and in the fate and transport of subsurface materials; Paul Solomon, an expert in planning and agricultural planning; Ruth Mascari, an expert in landmarks preservation and in relation to land use; and Patrick Ford, an expert in planning, zoning and land use controls.

Appearing in rebuttal for Petitioners was James S. Pepple, an expert in farming and golf course operations.

The majority of the testimony and evidence brought in this case concerns health, safety and general welfare in the locality involved; specifically, the effects on the ground water from the construction and use of the country club and its appurtenances. Of major concern on the part of the Protestants and DEPRM are the effects of chemical applications to the golf course and septic field for the clubhouse complex; those effects which will be felt in the underlying Cockeysville marble aquifer, said marble underlying a substantial portion of the golf course. The testimony of nearby residents in this particular issue concerns primarily the effects of well depletion as a result of underground water usage in the maintenance of the golf course and clubhouse complex, not to

mention similar concerns of water quality for those same residents. Also at issue under the heading of health, safety and general welfare is the question of the use of this site and its prime and productive soils in the predominantly R.C. 2-zoned portion of the site, as well as the effects on general welfare in light of the historicity of the manor house on the Hayfields site. Addressing the issue of the prime and productive soils in the R.C. 2-zoned property, this Board finds that the Council already had determined in its separation of uses permitted by special exception under BCZR Section 1A01.2C that this Board is not to consider the natural result in the use of the instant site's soils as opposed to the balance of the vicinity. This Petitioner is not, and cannot be, forced to continue a farming operation on the instant site; use of the soils on the instant site is a natural result of what the Council has already determined to be a proper use on this R.C. 2-zoned property. The question is whether the health, safety, or general welfare of the surrounding community is more adversely affected by the proposed use on this site than anywhere else in the R.C. 2 zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981)

The bulk of scientific testimony concerning subsoil effects of the proposed use comes from Ms. Hau, Mr. Mogilnicki, and Dr. Ball. Ms. Hau provided information concerning subsurface conditions and proposed well locations, with references to the Environmental Impact Report, construction monitoring plan, and other work to be performed as part of the development process, i.e., mowing plans, integrated pest management plans, etc. A single well is expected

to accommodate the entire project, that well being located centrally in the site and to the south of an on-site ridge line, whereas other well /septic systems generally are located to the north of that same ridge line. Ms. Hau opined that there would be no impact on groundwater in wells on or near the property. She also provided an interesting look at the public's perception of golf courses as being a "toxic waste dump," pointing out that golf courses are not simply blanketed with chemicals. She described subsurface conditions as including a relatively consistent clay layer between the surface and the underlying Cockeysville marble and other formations, this point being somewhat strongly contested by Dr. Ball. In light of Dr. Ball's testimony, and Mr. Mogilnicki's, concerning the effects of contaminant percolation to the subsurface formations, the Board recognizes that the clay layer is both desirable and universally used to mitigate such concerns. The question for the Board is whether the impacts associated with the proposed use are greater here than elsewhere in the R.C. 2 zone. It is this Board's view that, while it is debatable whether the Cockeysville marble or other formations are more or less susceptible to contaminants than other formations, those same formations are found elsewhere in the R.C. 2 zone. Therefore, the Board finds there was insufficient evidence that the potential effects on the subsurface formations and groundwater would be greater at the instant site than elsewhere in the zone.

In light of the proposed well and septic field locations being leeward of other wells to the north of the on-site ridge, as well

as the acknowledgement by Protestants' witnesses that the existence of clay improves the possibility for microbial action to occur in mitigating some of the concerns related to the contaminants, this Board believes that the proposed site is no worse than elsewhere in the R.C. zone. The effects of the well on neighboring properties were not demonstrated as likely to be worse here than at other locations in the R.C zone. Therefore, this Board finds that there was insufficient evidence that the proposed use would have a greater detrimental impact to the health or safety of the vicinity at this location.

Concerning general welfare, substantial testimony was brought concerning vistas around the site, opportunities for bicyclists, cultural opportunities related to the historical nature of the property, as well as alleged impacts to neighboring farms in what has come to be termed in these proceedings as the "impermanence syndrome." Mr. Daniels brought the issue of impermanence syndrome, which he defined as a reduced investment by farmers in their soils and farming infrastructure due to the perceived inevitability of development. Mr. Daniels opined that the golf course and other facilities would probably trigger the impermanence syndrome on nearby farms. On cross-examination, Mr. Daniels revealed that there is some question in his profession as to the degree of impermanence syndrome, and that the view of younger versus older farmers, the type of operations surrounding development and infrastructure, and so forth, all have an effect on the impermanence syndrome; Mr. Daniels also revealed that he did no detailed analysis on any of the criteria he enumerated, and the

limited knowledge he does have of the instant proposal is that of the existence of water and sewer at the edge of the instant site and the knowledge he gained from a 45-minute drive in his automobile in the surrounding area. We find that the effects of development have already been realized in the vicinity, and, therefore, find Mr. Daniels' testimony somewhat lacking in substance.

The Board recognizes, and it also believes the Council recognizes, that any proposals such as the country club will have an effect on the surrounding vicinity. The question, once again, is whether those effects will be greater here than elsewhere in the zone. The instant site is at the edge of the urban /rural demarcation line, and is bounded by Interstate 83 to the east, which sees substantial large-scale commercial development at elevations much higher than the existing site. Were this project placed elsewhere in the R.C. zone, the effects of increased traffic, impact on views, other natural opportunities, and so forth, would be far greater as opposed to this location. Concerning the historic nature of the manor house and other structures on the site, the Petitioner proposes to adaptively re-use all such structures in the development of the country club. Nowhere in the zoning regulations is a Petitioner compelled to maintain an historic structure "as is"; a Petitioner is only required to follow the development regulations and work within those regulations as they may pertain to historic structures, and whatever interaction as may be required with the Landmarks Preservation Commission. This Petitioner has demonstrated an

ongoing dialogue and responsiveness to such concerns, and has indicated his desire to continue such open exchange. Therefore, this Board finds that the general welfare of the vicinity is no greater impacted by this proposed than were it located elsewhere in the zone.

Concerning Item b to BCZR Section 502.1, Wes Guckert provided thorough analysis and study for the proposed project, and he points out certain assumptions made in the analysis. Taking into consideration all activities proposed for the site exclusive of those for the residences proposed on the R.C. 4 portion of the site, Mr. Guckert calculated 241,250 trips, excluding the pool and tennis facility. Despite this seemingly large number, as an expert in traffic, he opined that the additional traffic will not result in the need for a traffic signal at the intersection of Western Run and Shawan Roads, and that the Shawan Road and Western Run Road intersection will be expected to remain at service level A. He pointed out that the traffic generated at the proposed location would be the same were the proposal for another location in the R.C. zone; he opined that if this project were proposed further west along Shawan Road, the narrow part of Shawan Road would have to be used by the overwhelming majority of traffic, thereby causing other proposed locations to be more detrimental in the creation of additional congestion in roads in the vicinity. Due to the proximity to Interstate 83, Mr. Guckert opined that ample opportunity for quick dispersion of traffic exists at the proposed location. The Board is persuaded by Mr. Guckert's testimony;

therefore, this Board finds that the proposed use will not tend to create congestion in roads, streets, or alleys to any extent which would be greater at this location than in other locations within the zone.

Concerning BCZR Section 502.1c, this Board recognizes that the construction of any facility creates a potential for fire or other hazard. This proposal includes the construction of one or more ponds which can serve to supplement any firefighting efforts on the site and, possibly, off the site. Therefore, this Board finds that any potential hazard from fire, panic or other dangers is no greater here than elsewhere in the R.C. zone.

Mr. Gavrelis opined that the proposed use is an unintensified use of land, and therefore does not tend to overcrowd the land and cause undue concentration of population. Assumptions made by Mr. Guckert included eight golfers per hole, as well as certain numbers of individuals for other activities in the clubhouse complex. Such numbers represent an increase over the few that may exist on the site today, but represents a number which would be similar anywhere else in the R.C. zone. Because the project exists at the edge of existing commercial and residential development to the south and east, this Board finds that any other residential development would occur naturally in the area, not as the result of this development. In this finding, the Board looks to the fact that water and sewer connections exist at the edge of the site but are not yet made available to this Petitioner.

Because of the nature of this proposal, the Board finds no

impact on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, this project being self-supporting for water and sewer, parking, and with substantial transportation opportunities with Interstate 83.

Since this project is to adaptively re-use existing structures supplemented by other structures of similar scale, the Board finds that the proposed project will not interfere with adequate light and air in the vicinity.

Regarding BCZR Section 502.1g, that the project be consistent with the purposes of the property's zoning classification and with the spirit and intent of the zoning regulations, the Board finds Mr. Gavrelis' testimony to be persuasive. Protestants argued that golf course and other recreational uses on the site constitute an urban use. Mr. Gavrelis pointed out that the overwhelming majority of the space will remain open space, and that one of the uses permitted by right in the R.C. 2 zone is common open space. The use is a non-intensive, non-urban use, and therefore is not counter to the purposes of the zoning regulations, and is also therefore consistent with the spirit and intent of the zoning regulations.

Regarding BCZR Section 502.1h, the Board notes that the existing site has been farmed in varying degrees and with various crops and dairy products for generations. This Board is persuaded by Mr. Gavrelis' testimony that crops grown are not natural vegetative cover. Nonetheless, Petitioner plans to maintain as much existing natural vegetation as possible, and provide afforestation as part of the proposed country club. Concerning the

impermeable surface provisions of the zoning regulations, this proposal has no greater impact here than in other locations in the R.C zone. The regulation requires that it not be inconsistent with the impermeable surface provisions, and this Board recognizes that a certain degree of impermeable surface effects will be felt with any such proposal; however, this proposal has no greater effect here than elsewhere in the R.C. zone.

BCZR Section 502.2 provides that the Board, in granting a special exception, may impose such restrictions as may be deemed appropriate or necessary for the protection of surrounding and neighboring properties. The Petitioner seeks several components to be a part of the country club. The Board, in approving the special exception for the country club, turns its attention to the intensity of use and those issues raised above, and how they might impact the vicinity, as well as their applicability under the Council's use of the word "club." Central to its existence as a country club is the membership component already addressed by the Board. In a reading of country club as defined in the Baltimore County Zoning Regulations, the terms "other appropriate facilities" and "recreational facilities" must be addressed. This Board has determined that a country club need not be exclusively for the use of its members and guests; however, references to tennis facilities, as well as other definitions and findings in the Baltimore County Zoning Regulations are instructive in viewing each of the proposed uses as accessory or primary in meeting the needs of the country club and its membership.

First, swimming pools may be built in the R.C. 2 zone as of right under BCZR Section 1A01.2B.7.h, wherein tennis courts are similarly mentioned. The mere fact that swimming pools are listed solely as an accessory structure indicates that the pool is subordinate to the primary country club use; therefore, the Board finds that the swimming pool may be constructed but may not be offered as a separate membership opportunity exclusive of the country club membership. Concerning the tennis courts, BCZR Section 406A.2 reads:

No tennis facility established in conjunction with a 9-hole country club shall comprise more than 8 courts, and no tennis facility established in conjunction with an 18-hole country club shall comprise more than 12 courts....

Since the proposed country club shall consist of an 18-hole golf course and other facilities, and the Petitioner shows two tennis courts on the plat, the Petitioner shall be limited to no more than the two tennis courts requested as part of the country club complex. Section 406A.1 indicates that a tennis facility may be established as a principal use in an R.C. or D.R. zone only if it is owned by a homeowners' or residents' association, by a neighborhood improvement association, or by a neighborhood tennis club. It is also instructive to note that a neighborhood tennis club is for the exclusive use of its members and nonpaying guests, and having a majority of the club's members residing or employed within the neighborhood. In reviewing the testimony of Mr. Mangione, the Board finds that the tennis facility proposed is not anticipated to be a neighborhood tennis club; therefore, the tennis facility is to be viewed as subordinate to the principal country

club use. As such, the tennis facility shall be offered as one of those other recreational facilities under the term "country club" and shall not be offered as a separate membership opportunity exclusive of the country club. The Petitioner, however, may offer country club memberships to include golf, as well as other additional membership opportunities, such as swimming or tennis, but not only swimming or tennis.

Turning to the issue of the golf practice range, the Board recognizes that practice ranges are a natural and appropriate facility in conjunction with a 9 or 18-hole golf course. The question before the Board is whether the facility should be available exclusive to the primary use as a country club and whether its operation should exist outside of the hours of the golf facility. Section 406 of the Baltimore County Zoning Regulations provides for the existence of golf driving ranges, miniature golf and baseball batting ranges, with Section 406.1 addressing lighting installations associated with those uses. Again, the Board notes that the practice range associated with the golf course is a subordinate use to the golf course facility offered through country club membership. Those who expect to play a round of golf require warm-up and practice facilities to prepare for the day's play. However, driving ranges as contemplated under Section 406 are only permitted by special exception in the R.C. 3 zone as enumerated in BCZR Section 1A02.2B.13, not in the R.C. 2 zone. Therefore, the Board finds that a lit golf driving range which would be accessible to the general public would not serve as a subordinate use to the

country club. Nonetheless, restating the Board's recognition that a practice range is appropriate, the Board shall restrict the practice facility to be available for use by those preparing for play at the golf course, ending a round of play on the course, or available for non-course play by members only, and shall not provide lighting to enable practice after golf course hours of operation. The Petitioner proposes 30 tee boxes as part of its proposed country club. Given the restriction placed in the use of the range of the warm-up and practice facility, the Board shall limit the number of tee boxes to 30. In light of the limited use expected on the practice facility, no more than 15 tees shall be available for use at any one time.

The Petitioner seeks to include a restaurant among the other appropriate facilities in the country club. The Board recognizes that restaurants are frequently a part of a country club setting, be it a grill room or other type of dining facility in an intimate setting. BCZR Section 1A01.2C.16 stipulates that restaurants or tea rooms converted from dwellings are allowed in the R.C. 2 zone by special exception. The existing manor house is proposed to be adaptively re-used, along with a substantial addition, as the country club clubhouse. In keeping with the plain language of the zoning regulations subsection regarding standard restaurants, the Board recognizes that the restaurants are intended to exist in those converted dwellings. Therefore, the restaurant proposed as part of the country club facility shall be entirely contained within the footprint of the existing manor house. The Board also

recognizes that by virtue of the fact that restaurants or tea rooms are permitted as a principal use by special exception in the R.C. 2 zone, the Board shall allow the restaurant and its status as an accessory use in the country club setting to be accessible to the general public. The Board finds that the architectural and structural limitations placed on the Petitioner are sufficient to limit utilization of the restaurant as a separate entity. Nonetheless, the Board recognizes that traffic and parking issues are of concern to the neighbors in the vicinity. Therefore, parking shall accommodate the restaurant in such numbers that they be calculated in addition to parking requirements of the country club and the other facilities. Furthermore, because the restaurant shall be made accessible to the general public, well and sewerage disposal shall be engineered in such a fashion that the requirements of the dining facility and the country club facility be additive and not merely included as one factor under criteria based on country club membership.

Turning to the proposed banquet facilities, the Board recognizes the need for occasional large group gatherings of the membership and its guests. However, ongoing catering halls are neither permitted by right or by special exception in the R.C. 2 zone. For guidance, the Board looks for instances where catering halls are allowed either by right or by special exception. Catering halls such as that which is proposed on the instant site is first found in the B.M. or Business Major zone, found under BCZR Section 233. Therefore, in keeping with the Board's findings that

the catering hall would be subordinate to the principal use as a country club, the banquet facilities would be restricted to the use of the membership and its guests, and not available for general public hire.

Finally, Petitioner requests overnight accommodations, albeit at a very small scale. Nonetheless, the Board finds no probative evidence or testimony to support a finding that overnight accommodations are a necessary ingredient of a country club facility other than possible facilities provided for a country club facility caretaker. Therefore, the Board finds as a fact that no such requirement exists other than for a caretaker and will allow overnight accommodations only for such a caretaker.

Other design criteria as the Petitioner proceeds in the development process must be given a reasonable weight in response to the concerns raised in these proceedings. First, as this facility is expected to provide public access to the golf facility and, with that, coming additional time on the country club grounds for use of other facilities, the Board recognizes that water consumption and sewerage disposal design criteria must be viewed in a fashion which accounts for a potential load which exceeds members-only type country clubs. Therefore, the Board shall place a restriction which requires the Petitioner to satisfy the engineering concerns expressed by the Department of Environmental Protection and Resource Management in the strictest sense that DEPRM may require for water consumption and effluent disposal. Water consumption and effluent disposal design criteria shall take

into account the findings made herein and aforementioned: That the golf course has a public use component; that the restaurant may be considered an allowed principal use; and, that the "other appropriate facilities" are subordinate to the country club use. In this restriction, the Petitioner shall engineer the water and septic facilities to account for the intensity of use expected as a result of the findings made for each of the proposed ingredients of the proposed country club.

Furthermore, the concerns expressed by Protestants' witnesses regarding chemical applications to fairways, tee boxes and greens are to be addressed with special consideration to subsurface conditions. Petitioner's witness, Ms. Hau, indicated that tee boxes and greens already have stringent design criteria which they are to follow. The Board also recognizes the Protestants' position which supports requiring clay in sufficient quantities below fairway surfaces to enable microbial action to sufficiently act on surface chemical application leachate. Therefore, the Petitioner shall also be required to submit a design criteria proposal in subsurface cross-section details to DEPRM to enable DEPRM to make a finding that a continuous clay layer would be provided under the fairways only, with no relaxation of tee box and greens design criteria.

Further, the Board recognizes that the proposed maintenance facility may present potential for problems with chemicals on the subsurface formations' fault line. While the Board recognizes this issue, the Board also recognizes that the Petitioner, through Ms.

Hau, is bound to extraordinary engineering considerations to prevent any possible toxic chemical spills in the maintenance facility. As such is the case, while the Board is not in a position to restrict the Petitioner in this matter, it strongly urges the Petitioner to work exceptionally closely with DEPRM to a satisfactory conclusion that such engineering concerns are thoroughly addressed.

The Baltimore County Master Plan designates the instant site as a gateway between the rural, bucolic areas generally to the north and west of the site and the urban and industrial areas to the south and east. The Board recognizes that the Master Plan is a document to be used as guidance in coming to conclusions in such matters. The mere fact that such a project is so hotly contested, and for the reasons stated relative to the existence of the site as a gateway, points to the Board's requirement to give the Master Plan due consideration. What is proposed for the instant site has been recognized by the Council as a proper use in the R.C. zone. However, Petitioner seeks a use in the zone on a site which allows some special consideration for its specific mention in the Master Plan as well as its historicity in Baltimore County agriculture. The Board will not engage in a value judgement of whether a golf course is more visually appealing than rows of corn or brown fields over the winter seasons, but will note only that the Council has decided that both are appropriate in a similar setting. The Board has reviewed the site plan and finds that the Petitioner has made a good effort to avoid placement of structures in the R.C.-zoned

areas south of the aforementioned ridge. Still, Petitioner proposes an addition and other structures and facilities necessary for the operation of a country club. In recognition of the mention of the site as a gateway, the Board shall require that any structures to be placed on the instant site shall not be visible from the crest of the hill of Interstate 83 adjacent to the site looking southbound. This restriction shall not be unreasonable in preventing the Petitioner to construct the facilities necessary to meet the requirements of the other restrictions in this Opinion, but shall serve as guidance in the development process to maintain the vistas available to travelers through the area, in keeping with the mention of the site as a gateway in Baltimore County.

O R D E R

IT IS THEREFORE, this 6th day of August, 1996 by the County Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception for a country club in the R.C. 2 and R.C. 4 zones

be and the same is hereby GRANTED, subject to the following restrictions:

1. The country club need not be exclusively for the use of its members and guests. However, certain facilities mentioned herein shall be available exclusively by club members and their guests as hereinafter described.
2. The proposed swimming pool shall be available for use by club members and guests. The swimming pool shall not be available as a separate membership opportunity exclusive of other country club facilities.
3. The tennis courts are recognized as a subordinate use to the country club complex.

The use of the tennis facilities shall be limited to use by country club members and guests. Further, the tennis facilities shall not be available as a separate membership opportunity exclusive of other country club facilities.

4. The golf practice range shall be available for use by those individuals preparing for play on the golf course, after completion of a round of play on the golf course, or available for use outside of the intention to play on the golf course by members only. Lighting shall not be provided to enable practice after golf course hours of operation. Further, this restriction specifically prohibits public access to the practice facility without play on the golf course itself. The practice range shall be limited to 30 practice tees, of which no more than 15 may be in operation at any one time.
5. The restaurant shall be allowed in the existing manor home structure. The entire restaurant facility shall be completely contained within the footprint of the existing manor home. The restaurant shall be available for dining of the general public, as well as members and their guests. Parking requirements for the restaurant shall be calculated separate from the parking requirements of the rest of the country club facility.
6. A banquet facility shall be permitted for use by members and guests and shall not be made available for hire by the general public.
7. Overnight accommodations shall be allowed but not required; said overnight accommodations shall be limited to provision for one caretaker facility.
8. Petitioner shall engineer the water and septic facilities to account for the intensity of use expected as a result of the findings made for each of the proposed ingredients of the proposed country club. The Board makes special note that the country club requirements of water and septic shall be viewed as separate and distinct from water and septic requirements of the proposed restaurant. Further, the water and septic facilities design criteria for the country club portion shall be viewed in such

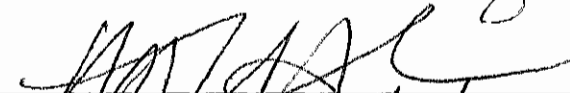
light as to impose strictest design criteria possible as either a country club or the criteria which may be used in the design of public golf courses. The stricter of those criteria shall apply.

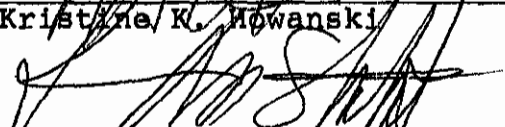
9. The Petitioner shall submit subsurface cross-section details to DEPRM to enable DEPRM to make a finding that a continuous clay layer will be provided under the fairways. Further, there shall be no relaxation of tee box and greens design criteria and predevelopment engineering.
10. Proposed structures for the clubhouse and other facilities shall be placed on the site so as to be sensitive to the gateway specifically mentioned on page 134 of the Master Plan. Crossing the ridge southbound on Interstate 83 to Shawan Road, the visual transition shall be essentially unchanged. Any structures shall be placed to the north and west of the existing manor house.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Robert O. Schuetz, Chairman


Kristine K. Howanski


Lawrence M. Stahl



County Board of Appeals of Baltimore County

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August 6, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 95-308-X
Toll House, Inc. /Hayfields

Dear Mr. Barhight:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Legal Administrator

Enclosure

cc: Toll House, Inc.
c/o John M. Mangione
Joseph LaVerghetta, Esquire
George Gavrelis
People's Counsel for Baltimore County
George A. Nilson, Esquire
John Bernstein, Exec. Director
Valleys Planning Counsel (VPC)
Dr. Richard W. McQuaid
Kenneth T. Bosley, Esquire
Leslie M. Pittler, Esquire
Ruth Mascari
Virginia Woodward
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM



RE: PETITION FOR SPECIAL EXCEPTION
301 Western Run Road, c/l Showman
Road, 1780' NWly of c/l I-83
8th Election District,
3rd Councilmanic

TOLL HOUSE, INC. (aka Hayfields)
Petitioners

* * * * *

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY

* CASE NO.: 95-308-X

PEOPLE'S COUNSEL'S HEARING MEMORANDUM

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY outlines its concerns as follows:

1. The proposed country club special exception does not satisfy relevant height and area standards; and the requisite variances have not been indicated or proven. This disqualifies the special exception. See P.C. Exhibit 13 (and 12).

2. The proposal utilizes property which is already accounted for and exhausted by residential density proposed in the pending special hearing/development plan proceeding, 96-347-A/VIII-661. In other words, the planned residential development of 40 lots uses up the maximum density potentially available to the entire site; and it is impermissible to double-count, overlay, or piggyback a special exception on top of the maximum density. See John Lewis' memo, P.C. Exhibit 13.

3. The proposed special exception, in any event, is detrimental to primary agricultural uses in the vicinity, including the site itself and neighborhood properties.

4. The proposal adversely affects the Belfast-Western Run Historic District and the landmark buildings on site.

5. The proposal is unsatisfactory because of anticipated adverse effects to groundwater, particularly in the Cockeysville marble aquifer.

6. The proposal does not appear to meet the traditional definition of a country club.

Relevant Statutes

1. BCZR 1A01 - R.C.-2 zones generally
1A01.3 - Height and area requirements;
Subdivision lot density
2. BCZR 1A03 - R.C.-4 zones generally
1A03.4 - Height and area;
Subdivision lot density
3. BCZR 307.1 - Variances
102.2 - Pertinent to separate yard areas
4. BCZR 1A01.2 - Special exceptions in R.C.-2 zones
502.1 - Special exceptions generally

- I. The Problem with Combination of Special Exception and Variances.

It is undisputed that the proposed site plan deviates from relevant area standards. The public record now shows seven (7) variances necessary for building heights and distances between buildings. BCZR 1A01.3, 102.2. The public record of related cases is important and relevant evidence. Aspen Hill Joint Venture v. Montgomery County, 265 Md. 303 (1972).

These variances were not articulated on the site plan originally filed. Rather, there was a vague reference to potential variances, and this reference remained vague even upon cross-examination of Petitioner's witnesses. It was not until March, 1996 that these came to light specifically, when Petitioner sought to "amend" its "approved" special exception at the Zoning Commissioner level in Case No. 96-347-A.

A careful review of note 16 on the site plan reveals:

1. The note purports to indicate compliance with the maximum height limit of 35 feet. BCZR 1A01.3A. It now turns out that three (3) of the buildings are in excess of that.

2. The note refers to possible variance issues regarding distances between buildings, but inexcusably fails to specify the pertinent distances. It turns out that there are four (4) building distances (of which we are now aware) which fail to meet the minimum setback of 70 feet. 1A01.3B3, 102.2.

These are not trivial discrepancies. A special exception is a conditional use. Schultz v. Pritts, 291 Md. 1, 21 (1981). This means that it is particularly important that it satisfy relevant area standards, which comprise part of the "conditions". In Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md.App. 324 (1995), the Court reviewed this subject and suggested, moreover, that the usual "presumption" in favor of special exception uses "may well fall by the wayside." 103 Md.App. at 336. As Judge Cathell said:

"Conditions the legislative body attaches to the granting of a conditional use normally must be met - not avoided."
Ibid.

In Chester Haven, the conditions included "...the setbacks of the underlying zoning district." 103 Md.App. at 335.

A special exception which requires variances is arguably disqualified for failure to meet the statutory conditions. Indeed, BCZR 502.1g requires compliance with the spirit and intent of the zoning ordinance. At the very least, the presumption in favor of the special exception is gone. It is to be remembered that there are other permitted uses by right, so the rejection of the "special exception/

variance" does not prevent reasonable use of the property.

As a practical matter, the appellate courts have also approached the combination issue from the point of view of the basic variance requirements. Chester Haven, Umerley v. People's Counsel, ___ Md.App. ___ (1996). If the variances fail, then the special exception ordinarily is precluded.

In the present case, either way one looks at it, the case is flawed. The special exception, being conditional, fails to satisfy the relevant conditions. For the variances, even were we to assume an argument of historical "uniqueness", we see no resulting "practical difficulty" because permitted uses by right are available. In this context, we have not yet begun to address the question of adverse effect on the historical district and landmarks, but rather focused strictly on the baseline variance requirements.

Anyway, the Petitioner has a combination of special exception and variances. The law requires their review together, not separately. This has not happened. The failure to present or prove the variances disqualifies the intertwined special exception.

The County Board of Appeals has itself reviewed such combinations. The various group child care center cases - Harrison, Case No. 95-280-XA; and Falahi, Case No. 94-271-XA, for example, illustrate the integral relationship between the two types of zoning approvals.

II. The Problem with Maximum Density and the Special Exception.

The property includes 300 acres zoned R.C.-2 and 174 acres zoned R.C.-4. This results in a maximum lot density of 40 (6 for R.C.-2 and 34 for R.C.-4). That is the number of lots proposed in the concurrent

development plan case.

Having used up the maximum density, the Petitioner is not entitled to allocate the same property to a special exception. This undermines the maximum density requirement.

It is also inconsistent with the reasonable policy and practice established by the zoning office.

III. Agricultural Use.

Paul Solomon testified in detail as to the history and evolution of the Resource Conservation zones, the unique character of Hayfields (its size and excellent soils), the Shawan/Worthington Valleys, and the importance to the County's agricultural area as a whole. He found the proposed country club/golf course uniquely inappropriate and noted other, less prime, rural areas as potential country club/golf course sites. He also considered the location atop the Cockeysville Marble to reinforce the problematic character of the location. See P.C. Exhibits 6 - 10.

Solomon focused on the site itself as well as the surroundings. The relevance of the site, as part of the "vicinity", should be obvious, but in any event was substantiated in detail by the attached People's Counsel's outline submitted at opening statement.

Other witnesses - Messrs. Daniels and Ford - focused more on the impact to the future agricultural viability of the valley, and its location as a visual gateway to the County's beautiful rural area.

Under all the circumstances, there is no avoiding the unique adverse effect to this prime and sensitive location. Moreover, it is unacceptable to reply that the developer refuses to farm the property. The public interest in the agricultural preservation zone may not be

held hostage or subjected to the decree of private ownership. It would be dangerous to the entire zoning map to appease this tactic.

IV. History

The testimony mounted, without contradiction, to the unique historical value of the district and site. The only question is the impact of the proposal upon this history. The legitimate expert testimony was uniformly negative.

Here, it should be noted that the Landmarks Preservation Commission minutes are of limited value. These were recorded mainly during the development process, upon the hypothetical assumption that the development would be approved in some form. They do not address the essential appropriateness of the proposal.

V. The Environment.

Review of the DEPRM report and the testimony of Stephen Mogilnicki demonstrates that the Petitioner has not satisfactorily addressed legitimate concerns about adverse effect upon the significant and unique aquifer. According to the County's geologist, the Petitioner's subsurface investigation to date is seriously incomplete and, in places, questionable. See P.C. Exhibit 3.

The evidence reveals that approval of the proposal at this time poses an undue environmental risk. Reports about elevated levels of some chemicals in the monitoring wells at the Caves Valley Golf Course reinforce this concern. Any problems there should not be compounded by further problems at a site which entirely overlies the aquifer.

Moreover, it is unsatisfactory to suggest that the environmental studies will be performed later. By then, it would be too late to prevent a hazard to the groundwater. Rather, we would be facing

remediation and damage control. The special exception decision has a purpose to avoid this eventuality.

VI. Country Club.

The subject of the proposal's qualification for country club status has already been briefed.

Conclusion

For all of the above reasons, the proposed special exception is not acceptable.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 1996, a copy of the foregoing People's Counsel's Hearing Memorandum was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, to George Nilson, Esq., Piper and Marbury, 36 S. Charles Street, Suite 1100, Baltimore, MD 21201, to Kenneth T. Bosley, Box 334, Cockeysville, MD 21030, and to Leslie M. Pittler, Esq., 29 W. Susquehanna Avenue, Suite 610, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Hayfields Special Exception

1. Administrative law and Statutory Interpretation

A court in reviewing an administrative decision must review in depth "...whether the decision was based on a consideration of the relevant factors." Citizens to Preserve Overton Park v. Volpe 402 U.S. 401, 416 (1971).

A court reviewing a conservation law must take into account the "comprehensive" statutory purpose "to extend protection" to "ecosystems" in making it unlawful to "harm" wildlife, (in the case of the Endangered Species Act, prohibition of habitat modification in order "...to halt and reverse the trend toward species extinction"). Babbitt v. Sweet Home Chapter of Communities for a Great Oregon ___ U.S. ___, 63 LW 4665, 4666-69 (1995)

2. Understanding Zoning

"The term 'zoning' has come to have a technical and artificial meaning, which is different from its literary and etymological significance. And while in its literary sense it signifies a belt or girdle more or less symmetrical in outline; it is also used to describe the process of setting aside disconnected tracts of land varying in shape and dimensions, and dedicating them to particular uses designed in some degree to serve the interests of the whole plan." Applestein v. Baltimore 156 Md. 40, 51 (1928)

3. Baltimore County Special Exceptions Generally (BCZR 502)

Note to Section 502 (excerpt)

"Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to appeal to the Board of Zoning Appeals (now CBA)."

4. The Special Exception Standards (BCZR 502.1a-h) excerpts

The requested use will not:

"a. Be detrimental to the health, safety, or general welfare of the locality involved."

...

"d. Tend to overcrowd land and cause undue concentration of population."

"e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements."

...

"g. "Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;"... (Emphasis supplied).

...

"The duties given to the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and *whether the use in the particular case is in harmony with the general purpose and intent of the plan.* Schultz v. Pritts 291 Md. 1 (1981) underlining in original, italics supplied, quoted also in People's Counsel v. Mangione 85 Md. App. 738 (1991)

5. Baltimore County Special Exceptions in the Agricultural Zone (BCZR 1A01.2C)

"The following uses, only, may be permitted by special exception in any RC 2 zone, provided that in each the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in the vicinity;" (Bill 178-79)

6. The Locality, The Vicinity

Supreme Court of the United States

"But all the court did there was to define the word 'locality' as meaning 'place,' 'near the place,' 'vicinity,' or 'neighborhood.' Accepting this correct, *as of course we do*, the result is not to remove the obscurity, but rather to offer a choice of uncertainties. The word 'neighborhood' is quite as susceptible of variation as the word 'locality.' Both terms *are elastic and, dependent upon circumstances, may be equally be satisfied by areas measured by rods or miles.*" Connally v. General Construction Co. 269 U.S. 385, 394-95 (1926), italics supplied; quoted also in Conley v. Valley Motor Transit Co. 139 F.2d 692, 693 (6th Cir. 1943).

"vicinity sometimes chiefly Brit...(MF *vicinite*, fr. L. *vicinitat-*, *vicinitas*, fr. *vicinus* neighboring (fr. *vicus* row of houses, village + *inus* -ine) + *itat*, *itas* ity; akin to Goth *weihs* village, Gk *oikos* house, dwelling, Skt *vis* settlement, dwelling, house] 1: the quality or state of being near : NEARNESS, PROPINQUITY PROXIMITY (might well dread the immediate --- of a monarch so great, so ambitious, and so unscrupulous -- T.B. Macaulay)so near --- to her mother...was not desirable --- Jane Austen) 2 *obs*: close relationship or resemblance 3 a surrounding area or district : LOCALITY, NEIGHBORHOOD (in the --- of his home) (old residents of the --- John DeMeyer) 4: NEIGHBORHOOD 3b (invitations which he receives average in the --- of 300 a month --- Philip Hamburger)." Webster's Third International Dictionary

7. The Legislative Purpose of the RC-2 Zone

BCZR 1A01.1A.1 Legislative Statement of Findings

"a. that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development."

"b. that the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry."

..."d. that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area." (Bill 98-75) Emphasis supplied.

BCZR 1A01.2 - Use Regulations

"A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in RC 2 zones." (Bill 98-75) Emphasis supplied

8. The Function and Purpose of the Agricultural Zone Special Exception Standard

The "vicinity" standard is elastic and contemplates a comprehensive, ecosystem, integral, holistic approach to save productive soils, protect the industry, and preserve both "the area upon which development occurs" as well as the "surrounding area". It is comparable to the Endangered Species Act protection of species in conjunction with the habitat of the species. The property itself and the surroundings are inextricably intertwined in the vicinity. Prime soils should not be "lost unnecessarily." The character, quality, and size of Hayfields Farm, and the project's impact upon it and nearby properties are all relevant.

It fits with the broad purpose of special exception law and standards under BCZR 502 and 502.1 to protect the public welfare, to prevent detriment to the general welfare of the locality, to avoid undue concentration of population, to prohibit inconsistency with the purposes of the property's zoning classification and the spirit and intent of the BCZR.

In Mangione, the petitioner suggested that the only issue was the convalescent home, not the construction of a 240-bed facility, so that the size and scope of the project on-site were irrelevant. The Court of Special Appeals rejected this claim, citing BCZR 502.1 b,d, and e and stating in footnote 6,

"The size and scope of the project are thus relevant considerations. To contend otherwise, as appellee does, is to engage in specious and sophistic reasoning."

9. Consideration of Relevant Factors: Soils and Agriculture - The Core

In this context, the location and size of the property and the characteristics of the uniquely productive Hagerstown and Glenelg soils are critical factors, in conjunction with the limestone valley agricultural setting.

The destruction of the prime farmland is a relevant factor.

The size, scope, and impact of the proposed golf course are relevant factors. Cf. People's Counsel v. Mangione, supra.

10. Another relevant factor: Historical Preservation in the Locality

Historical preservation is a relevant factor in a zoning case. It is not limited to review of the quality of exterior renovations. Faulkner v. City of Chestertown 290 Md. 214 (1981).

11. The Meadowcliff decision, No. 85-132-X, July 14, 1987, CBA. A proposal for a church special exception at Belfast Road, northwest corner of I-83.

"Section 502, BCZR, which designated the conditions for the granting of a special exception, states in 502.1g that 'the use for which the special exception is requested will not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations.'"

"Based upon the evidence received, it is the opinion of this Board that the proposed use as set forth in the Petition for Special Exception is not consistent with the spirit and intent of the BCZR as stated in the above sections (1A01.2.A. and 1A01.2.C.). Rather, we find that the use as proposed would be detrimental to the agricultural pursuits currently existing on-site and within the vicinity. Therefore, this Board must deny the Petition for Special Exception and will so order."

The Meadowcliff ruling is correct and effectuates the broad legislative purpose.

12. The Police Power

Zoning is an exercise of the police power, "asserted for the public welfare." Village of Euclid v. Ambler Realty Co. 272 U.S 365 (1926).

"It is to be remembered that we are dealing with one of the most essential powers of government, - one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. A vested interest cannot be asserted against it because of conditions once obtaining." Hadacheck v. Sebastian 239 U.S. 394, 410 (1915).

IN THE MATTER OF
THE APPLICATION OF
HAYFIELDS, INC.
NORTHWEST SIDE WESTERN RUN
ROAD AND SHAWAN ROAD AT ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 95-308-X

PROTESTANTS' MEMORANDUM IN OPPOSITION TO
PETITION FOR SPECIAL EXCEPTION

INTRODUCTION - SUMMARY OF ARGUMENT

The Petitioner, Hayfields, Inc., seeks approval of a Special Exception to build and operate a "country club," including an 18 hole golf course, a lit driving range, overnight accommodations, a public restaurant, and public banquet facilities (the "Country Club") on approximately 226 acres of the 475 acre Hayfields Farm. The Country Club tract lies at the northwest corner of the intersection of Interstate 83 and Shawan Road, and on the edge of the County-designated Agricultural Preservation Area; it lies almost entirely in an RC-2 zone, Baltimore County's most protective and restrictive rural/agricultural zone. There was uncontradicted evidence as to the extremely high productivity of the soils of the farm and of surrounding properties, the historic importance of both the farm and its buildings (the farm is the cornerstone of a National Historic Register District which encompasses an entire farming valley and adjoins another National Historic Register District), and the location of the farm in close proximity to areas of intense development and development pressure immediately to the east.

Protestants oppose the Petition for Special Exception to construct the Country Club on the Hayfields Farm. As discussed fully in Protestants' Motion to Dismiss, BCZR 1A01.2.C.10 does not permit the kind of "country club" proposed here as a Special Exception in an RC-2

zone.¹ Even if the Board should conclude that the Zoning Regulations permit in some circumstances and in some zones a "country club" of the nature requested by Petitioner, including the various component commercial facilities proposed here, Petitioner has failed to meet its burden of proof during the hearing with regard to this particular facility and this particular site.

The County Council created the RC-2 zone to preserve productive farmland. The County Council also decided to permit golf courses and country clubs and certain other uses in this zone (and other zones), in limited circumstances, by special exception. Unlike many other special exception uses (e.g., kennels, churches, day camps, etc.), golf courses and country clubs "consume" relatively large amounts of land - generally between 150 and 200 acres. As a consequence, golf courses potentially threaten greater harm to prime and productive soils when the property involved happens to contain such soils. The Board can reconcile the purpose of the RC-2 zone - preservation of productive farmland - with the intent of the special exception provision for golf courses/country clubs by only considering permitting the construction of golf courses and country clubs on RC-2 land which does not contain significant prime and productive soils. Moreover, such approvals should only be granted on the far larger portion of RC-2 land in the County not underlain by the highly sensitive and valuable Cockeysville Marble aquifer and not comprising and containing farms and buildings of unique historical importance. This analysis permits a balance to be struck between the purposes of the RC-2 zone and the provisions of the Zoning Regulations that permit a country club by special exception. As an alternative to categorically barring country clubs on prime and productive soils (such as those so much in evidence at Hayfields), the Board should find that the combination of the loss of prime and

¹As noted above, virtually all of the proposed country club, including its lit Driving Range, Overnight Accommodations, Restaurant, and Banquet Hall is in the RC-2 zone; only a small portion of the golf course is in the RC-4 zone. BCZR 1A03.3 (RC-4), like BCZR 1A01.2.C.10 (RC-2), does not permit the kinds of individual facilities proposed here, either of right or by special exception; Petitioner seeks to gain approval of a collection of impermissible facilities by adding them all up and packaging them as a public access "country club".

productive soils to country club use and the threat to the stability and viability of other agricultural uses in the area is plainly inconsistent with the purposes of the property's RC-2 zoning classification. The Board should deny the petition for this reason, as well as for the Petitioner's failure to establish that there will be no adverse historical and environmental impact or adverse agricultural impact resulting from the proposed development.

ARGUMENT

I. THE TEST FOR A SPECIAL EXCEPTION: THE PETITIONER MUST PROVE THAT THE PROPOSED COUNTRY CLUB: (A) WOULD HAVE NO ADVERSE EFFECTS ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION IRRESPECTIVE OF ITS LOCATION WITHIN THE ZONE; AND (B) WOULD NOT BE INCONSISTENT WITH EITHER THE PROPERTY'S RC-2 ZONING CLASSIFICATION OR THE SPIRIT AND INTENT OF THE ZONING REGULATIONS.

The Petitioner has the burden of proving that the proposed Country Club (1) will not be inconsistent with the purposes of the property's zoning classification, (2) will not be inconsistent with the spirit and intent of the zoning regulations, and (3) will not be detrimental to the health, safety, or general welfare of the locality involved. BCZR Section 502.1; See People's Counsel v. Mangione, 85 Md. App.738, 743 (1991). Under the third prong of the test, the Petitioner must prove that there are no facts and circumstances about the particular use proposed at the particular location that would lead to "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 22-23 (1981). The Board should deny the Petition because the Petitioner has failed to meet this burden.

The spirit and intent of the RC zones in general and the RC-2 zone in particular are unequivocal. The County Council has recognized "that Baltimore County is . . . endowed with a variety of very productive agricultural soils which should not be lost . . . to development" and "that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the

surrounding area." BCZR 1A01.1A. "It is the purpose of the Resource Conservation Zones to . . . protect both natural and man-made resources from the compromising effects of specific forms and densities of development." BCZR 1A00.2. The purpose of the RC-2 zone specifically is ". . . to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County." BCZR 1A01.1B.

The general welfare of the locality involved is a broad category which includes the fertility of the soil, the historical significance of the farm, the potential adverse effect on other farming operations in the area and in the County, the potential for harmful contamination of the groundwater found in the important and sensitive Cockeysville Marble aquifer that underlies most of the site, and the importance of Hayfields Farm as a firm bulwark against westward expansion of the intense development that now exists immediately to the east of the Farm.

II. THE CONSTRUCTION OF THE PROPOSED COUNTRY CLUB AT HAYFIELDS WILL HAVE ESPECIALLY ADVERSE EFFECTS RELATED TO THE PROPERTY ITSELF ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION.

Both the BCZR and Schultz v. Pritts, 291 Md. 1 (1981) require the Board to consider the quality and unique characteristics of the land itself (and the buildings on it) that might be converted to the Special Exception use. At the beginning of the hearings before the Board on this Petition, People's Counsel submitted a Memorandum and supporting materials on this specific point. The County Council has significantly recognized "that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area." (emphasis added.) BCZR 1A01.1A. Similarly, the Schultz court stated:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22-23. The Schultz "adverse effects rule" applies to adverse effects on the property itself and to adverse effects on other properties in the vicinity or neighborhood.² Courts have applied the rule to neighboring properties, but have never limited it to just those properties. Both the Deputy Zoning Commissioner and the Baltimore County Board of Appeals (William T. Hackett, Lawrence E. Schmidt, and Patricia Phipps) applied the Schultz rule to the property itself in In the Matter of Meadowcliff, a New Covenant Church Petition for a Special Exception to Permit a Church and Accessory Parsonage, Case No. 85-132-X. Meadowcliff concerned a proposed church at Belfast Road and Interstate 83 on RC-2 prime and productive land. The land was located within the same historical district as Hayfields Farm and, like Hayfields, was at the edge of the Agricultural Preservation Area. Deputy Commissioner Jung denied the Petition for Special Exception for the church in an RC-2 zoned area designated as "a historical district with no structures larger in scale than residences or farm buildings and no parking lots . . .". On appeal, the Board of Appeals also denied the Special Exception because the petitioner planned to build the church and parsonage on prime agricultural land in the RC-2 zone. The Board reasoned:

There was significant testimony that this parcel of RC-2 land is in fact prime agricultural land and, as such, the Board believes that it should be protected from the inroads of development and therefore maintained in an agricultural manner consistent with the spirit and intent of RC-2 zoning. A legislative history of BCZR 1A01.2 . . . mandates that uses proposed within an RC zone should support agricultural purposes. From the testimony and evidence received, we find as a fact that, if the proposed special exception were granted the proposed use would not support agriculture both on-site and in the vicinity . .

²While the Court in Schultz, like other courts applying the special exception legal test, spoke later in its opinion about adverse effects on nearby properties, it was at that point simply applying the above-cited general principle to the specific harm alleged - which in that particular case happened to relate to neighboring properties, and not the property that itself was the subject of the petition.

The Board of Appeals employed similar reasoning in In the Matter of the Application of Hilbert F. Criste for a Special Exception, Case No. 90-477-SPHX. In that case, the Board of Appeals approved a Special Exception for a church on RC-2 land where the development plan "provided for the protection of prime and productive agricultural soils . . .". Opinion of Board at 10. The development plan placed "church building and parking lot in the least desirable soils . . ." and provided that the "remaining site would be assigned to agricultural or [undeveloped] open space uses by way of legally enforceable documents." Id. at 8, 7. The rulings explicitly relied upon the intrinsic qualities of the property itself for which the Special Exceptions were sought. These rulings were also consistent with the Schultz v. Pritts rule that a Special Exception should be denied if the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone.

The Petitioner presented absolutely no evidence that Hayfields Farm was a normal farm just like most other farms in the RC-2 zone in Baltimore County. In fact, there was uncontradicted evidence that Hayfields Farm itself is unique because of the extraordinary fertility of its soil, its large size, the paramount historical significance of the farm, and its location at the highly critical gateway corner of the Agricultural Preservation Area. Virtually no other farm in Baltimore County can match the fertility of Hayfields' land. Few other farms in the County, if any, are as historically significant as Hayfields, with or without its historic buildings. Finally, no farm in Baltimore County serves the special role that Hayfields does as a bulwark against intense development pressure. The proposed conversion of Hayfields Farm to a country club will have adverse effects above and beyond those inherently associated with this type of use elsewhere in the RC-2 zone. The Hayfields Farm is not an ordinary piece of agricultural or RC-2 zoned land; the location of the subject property is strategically important and far from ordinary; and the commercial public use character of the collection of facilities proposed is hardly ordinary. Protestants do not argue that the Petitioner cannot build a golf course or a country club anywhere in the RC-2 zone. Rather, Protestants correctly take the position that the Petitioner can only

obtain a special exception for land which is not as fertile and historic as Hayfields, which is not characterized by the environmental sensitivity associated with the Cockeysville Marble aquifer, and which is not such an important barrier to development in the Agricultural Preservation Area.

Protestants respectfully request that the Board deny the Request for Special Exception because it will have a significant detrimental effect arising from the conversion of this unique land to a country club in this unique and special location. The extent of the detrimental effect is exacerbated by the unprecedented extent of the proposed facility, including its full public use and commercial character and the inclusion of numerous associated uses which could not be permitted in an RC-2 zone by themselves either of right or by special exception.

Finally, on the issue of impact on the property itself (as opposed to neighboring properties), it is clear that the requirement that Petitioner show the absence of any inconsistency "with the purposes of the property's zoning classification" requires that the Board focus on the Hayfields property itself, and not just on neighboring properties.

III. THE PETITIONER HAS FAILED TO MEET ITS BURDEN OF PROVING THAT
THE APPROVAL AND CONSTRUCTION OF THE PROPOSED COUNTRY CLUB:
(A) WILL NOT HAVE ADVERSE EFFECTS ON THE LOCALITY AFFECTED AND ON
THE GENERAL WELFARE ABOVE AND BEYOND THOSE
INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION
IRRESPECTIVE OF ITS LOCATION WITHIN THE ZONE; AND (B) WOULD NOT BE
INCONSISTENT WITH THE PROPERTY'S RC-2 ZONING CLASSIFICATION AND THE
SPIRIT AND INTENT OF THE ZONING REGULATIONS .

Section 502 of the Zoning Regulations of Baltimore County governs the grant or denial of special exceptions. The introductory note to Section 502 cautions that "under certain conditions [special exception uses] . . . could be detrimental to the health, safety, or general welfare of the public . . .". For this reason, Section 502.1 requires that before any Special Exception may be granted, the Petitioner must demonstrate "that the use for which the Special Exception is requested will not . . . a. Be detrimental to the health, safety or general welfare of the locality involved; [nor] g. Be inconsistent with the purposes of the property's zoning

classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations; . . .". Section 502.2 provides that in granting any special exception, the Board "shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." Thus, the Petitioner must prove that the proposed Country Club will not have an adverse effect on property in the affected locality, or on the "general welfare," which is different from that inherently associated with such a use irrespective of its location within the zone. The Petitioner must also prove that the proposed facility will not "be inconsistent with the purposes of the property's [RC-2 and RC-4] zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations . . .". Notwithstanding the "presumption" that a "generic" country club may be permitted in RC-2 and other zones (which the Petitioner repeatedly cites as if it were somehow dispositive of this petition), Section 502 of the Zoning Regulations clearly places the burden of proof and persuasion on the Petitioner to prove the required elements of "no harm" and "no inconsistency" with respect to this particular facility at this particular site. Petitioner has not met this burden.

A. PETITIONER HAS FAILED TO DEMONSTRATE THAT ITS PROPOSED COUNTRY CLUB WILL NOT BE ESPECIALLY DETRIMENTAL TO THE HEALTH, SAFETY OR GENERAL WELFARE

The adverse effects of the proposed facility on agricultural preservation are discussed in part B below in the context of inconsistency with the property's RC-2 zoning classification and with the spirit and intent of the Zoning Regulations, although those adverse affects could and should also be considered under the rubric of detrimental impact on the health, safety and general welfare. Apart from those adverse agricultural preservation impacts, the "detrimental effects" evidence presented to the Board has focused on adverse environmental effects (primarily groundwater contamination) and adverse effects on significant and irreplaceable historic

resources. In addition to these primary areas, Protestants submit that Petitioner has failed to meet its burden of proof with regard to water quantity impact and traffic impact.

1. Environmental Effects - Groundwater Contamination

While there are a host of environmental concerns and potential adverse environmental effects which need to be carefully evaluated in connection with this proposed country club facility, the evidence before the Board has focused on the very real potential for groundwater contamination resulting from the construction of the proposed golf course and the necessarily substantial use on it of pesticides, insecticides and fertilizers. While it is true that any golf course constructed at any location will inevitably require the use of pesticides, insecticides and fertilizers, the significance of groundwater contamination issues is greatly elevated (beyond that "normally" encountered) at the subject site because of the fact that the Hayfields property and surrounding areas are not served by public water and sewer and because of the fact that the vast majority of the land over which the golf course is proposed to be constructed is underlain by the highly productive and unusually sensitive Cockeysville Marble aquifer. The absence of public water and sewer in the area means that residents and property owners are far more dependent on the naturally occurring groundwater supply in the area, in contrast to those who live in areas serviced by public water and sewer where the water they consume is piped from reservoirs and other distant facilities. The Cockeysville Marble aquifer underlays the Hayfields property as well as certain other geographically limited areas in Baltimore County. According to the testimony of Steven Mogilnicki, the official at the County's Department of Environmental Protection and Resource Management ("DEPRM") responsible for DEPRM's review of the proposed golf course, and Patrick Ford (Protestants' planning expert), as well as various materials referred to in that testimony and in exhibits offered in evidence (see, e.g., Protestants' Exhibits 12 and 35), there are tens of thousands of acres in Baltimore County, and in those portions of Baltimore County zoned RC-2 and RC-4, which are not characterized by the presence of the Cockeysville Marble aquifer formation. While the Petitioners' environmental consultant, Ms.

Stephanie Hau, attempted to denigrate and minimize both the significance and vulnerability of the Cockeysville Marble aquifer, both Mr. Mogilnicki and Protestants' environmental expert, Dr. William Ball, testified persuasively that this particular groundwater resource has been officially and repeatedly recognized as a critical natural resource in Baltimore County, and both testified that this official recognition is appropriate and fully justified. Productive aquifers such as the Cockeysville Marble which contain plentiful groundwater supplies are important because of their ability to serve the needs of property owners in the immediate area and also because of their ability to supplement and back up the County's general public water supply, according to the testimony of both of these witnesses. Mr. Mogilnicki referred to the various official documents and reports which have recognized both the importance and the vulnerability of the Cockeysville Marble formation, and Dr. Ball testified to the importance of naturally occurring groundwater supplies as a backup to public reservoir supplies (which, in the case of Baltimore County, are owned and maintained by Baltimore City). Their testimony as to the importance of the Cockeysville Marble groundwater supply, and the importance of preserving it in its uncontaminated form, substantially outweighs the testimony of Ms. Hau, which, with all due respect, is supported by nothing other than her desire to minimize the potential significance of the groundwater contamination issue at this site and flies in the face of official Baltimore County policy.

In addition to establishing the Cockeysville Marble aquifer as a critical and extremely important natural resource, the testimony of both Mr. Mogilnicki and Dr. Ball established the vulnerability of his particular type of rock formation. As these two witnesses testified and demonstrated, the Cockeysville Marble formation is a highly fractured, porous and unpredictable formation, which contains a multiplicity of caverns (within which groundwater is accumulated and stored) and countless and virtually impossible to predict fractures which connect the caverns or areas of groundwater storage with one another and with surrounding properties. The fractured and irregular nature of the Cockeysville Marble formation makes it extremely difficult to predict

where groundwater contamination, once it occurs, will travel to, provides a host of routes for the speedy transport of contaminants from one location to another, and thus enables contaminants to move relatively unimpeded from the point of discharge to a host of other locations on and off the property. The formation is thus significantly different from, for example, a clayey soil area or a granite formation, which are not characterized by such highly irregular fractures and which provide much greater opportunities for cleansing of contaminated groundwater as it moves through the subsurface and which further impedes the travel of contaminants from one location to another. The testimony of these two witnesses with regard to the character and fragility of the Cockeysville Marble formation was much more detailed and credible than the relatively cursory testimony of Ms. Hau, which grudgingly acknowledged the fractured nature of the formation but attempted to minimize its significance.

In addition to attempting to minimize both the significance and the fragility and vulnerability of the Cockeysville Marble formation, Ms. Hau, on behalf of the Petitioner, relied heavily in her Environmental Effects Report and in her testimony on her conclusion that the golf course site is underlain by a "continuous layer of clay" which she said would serve as a barrier to the travel of groundwater contaminants, thus preventing contaminants applied to the surface from reaching the groundwater supply found below the allegedly continuous clay layer. Ms. Hau's assertion of a "protective" continuous clay layer under the entire site was based on her evaluation of the results of a handful of soil borings taken at various locations on the site, and her extrapolations from those soil borings which attempted to establish by the application of modeling principles a property-wide "map" suggesting the continuous presence of the supposedly-protective layer of clay. As the testimony of Mr. Mogilnicki and Dr. Ball established, however, Ms. Hau's analysis was flawed, not supported by sufficient data and unpersuasive. In particular:

1. Ms. Hau's own maps and plats of the property demonstrated the presence of a number of rock outcrops, including one located immediately under the highly-sensitive

maintenance area where chemical materials would be mixed and loaded onto equipment, with the presence of these rock outcrops demonstrating beyond dispute that there was no protective layer of clay at the locations where the outcrops were found;

2. Petitioner failed to demonstrate that its examination of the site had been sufficiently thorough to identify all rock outcrops on the site, thus leaving open the distinct possibility that those rock outcrops which Ms. Hau happened to locate in her visits to the site were but a fraction of the total number of rock outcrop locations actually existing on the property;

3. While Ms. Hau purported to analyze the soil borings data gathered by her firm and its subcontractors, she failed to analyze the extensive soil boring data collected by The Robert B. Balter Company years earlier, also pertaining to the Hayfields property. Analysis of this data, which should have readily available to Petitioner and its consultant, was undertaken by Dr. Ball and revealed a number of significant differences in terms of subsurface soil composition at the property. Several of the Balter samples revealed a complete absence of clay.

4. As the testimony of Dr. Ball and the exhibit he prepared (Protestants' Exhibit 22) demonstrated, Ms. Hau mischaracterized and misanalyzed a number of the soil borings which she did look at in her evaluation of the property. In certain instances, she "overlooked" the fact that the soil sample indeed indicated the absence of a clay layer, and, in other instances, she relied on a laboratory analysis which used the wrong type of soil classification in concluding that certain layers were clay as opposed to some less impermeable material.

5. According to Mr. Mogilnicki, Petitioner had failed to conduct baseline testing of contaminants found in the groundwater at the site, despite earlier requests by DEPRM that it do so. Such tests would have indicated the presence (or absence) of contaminants "pre-golf course," and would have been instructive on the question of whether the alleged clay layer had or had not protected the groundwater from historical contamination.

6. The net result of the mistaken and incomplete analyses conducted by Ms. Hau is that her expressed conclusion of a continuous clay layer is simply not supported by either the data she relied upon or by a proper evaluation of the full collection of the available data. The site maps prepared by Dr. Ball (Prot. Ex. 22) give a far more complete and reliable set of predictions with regard to the clay layer. While acknowledging that even the full collection of available data, when properly analyzed, does not permit anyone to predict with a high level of certainty the extent of the clay layer, Dr. Ball's far more complete and reliable analysis establishes that whatever clay layer exists at the site is far from continuous.

Based upon the above considerations, and other matters as cited in their testimony, both DEPRM's Mr. Mogilnicki and Dr. Ball expressed the opinion that the site is not underlain by a continuous clay layer and that Ms. Hau had failed to demonstrate that it was. Both Mr. Mogilnicki and Dr. Ball testified that in their professional opinions, to a reasonable degree of scientific certainty: (1) there is not a sufficiently continuous clay layer at the site; and (2) groundwater contamination of the subsurface groundwater contained in the Cockeysville Marble aquifer is likely to occur at the Hayfields property as the result of the construction and operation of a golf course. Dr. Ball also testified to the flawed analysis of the on-site treatment of septic effluent utilized by Ms. Hau. In support of their respective conclusions, both Mr. Mogilnicki and Dr. Ball testified about the nature of the contaminants that would be used at this golf course, the way in which they travel through subsurface soils, and the likelihood that these contaminants would find their way into the highly significant groundwater supply found in the aquifer. Mr. Mogilnicki also relied on other evidence of groundwater contamination that had occurred at other golf courses both within and without the County, including at golf courses with Mr. Mogilnicki was personally familiar and which are highly regulated and utilize state-of-the-art chemical storage and application techniques. Mr. Mogilnicki testified that the groundwater contamination that he was aware of at other locations was significant, and he expressed the opinion that such significant contamination was likely to occur at the Hayfields site. As noted above, while some

groundwater contamination may be expected as a result of any golf course operation, the occurrence of groundwater contamination at the Hayfields property would be of far greater consequence here than at some other site because of the absence of public water in the area, and because of the highly significant and vulnerable nature of the Cockeysville Marble aquifer resource.

The evidence further establishes that DEPRM had recommended in its original comments on the Petitioners' Special Exception Application that the golf course be relocated so as to more substantially avoid the portions of the site underlain by the Cockeysville Marble aquifer (People's Counsel Exhibit 3). The evidence establishes that the vast majority of the golf course as laid out by the Petitioner is located directly over the Cockeysville Marble. Mr. Mogilnicki testified that the Petitioner had failed and refused to consider such a change in the layout of the golf course. In addition, the Petitioner, for reasons not established by Ms. Hau or elsewhere in the record, chose to propose the location of the very substantial septic or sewerage treatment field needed to service the course and the clubhouse directly over the Cockeysville Marble, thus further increasing the potential for groundwater contamination. Moreover, again for reasons not established in the record, the Petitioner chose to locate its maintenance facility, where chemicals to be used on the golf course will be stored and mixed, directly over both a rock outcrop (where we can be certain there is no clay layer) and directly over a fault or contact zone between two subsurface groundwater formations, a site which was characterized by Mr. Mogilnicki as the least environmentally appropriate location for such a facility.

For the above reasons, Protestants submit that Petitioner has failed to establish that the construction and operation of the proposed Hayfields country club/golf course facility will not cause contamination of a significant Baltimore County groundwater resource. Because of the importance and relative rarity of the Cockeysville Marble formation, this adverse environmental effect is of far greater consequence at the Hayfields property than it would be at any number of other locations in the County.

2. Adverse Historical Impact

The Hayfields Farm property is the cornerstone property for the Western Run - Belfast Road Historic District, listed on the National Register of Historic Places. It also lies immediately to the east of the Worthington Valley Historic District, which is also listed on the National Register of Historic Places. The history of the Hayfields Farm is spelled out in some detail in Protestants' Exhibit No. 16, and is perhaps best summarized in the Planning Board's March 2, 1995 Report recommending that the Board of Appeals deny the zoning reclassification separately sought by Petitioner for the Hayfields property as follows (see p. 2 of Office of Planning Report dated March 16, 1996, included in Protestants' Exhibit 38):

"From [the Master Plan's] historic preservation perspective, the proposed changes in zoning and use of Hayfields are not justifiable because of the uniqueness of this particular site. The historic structures remaining on the site have been placed on the Baltimore County Landmarks List (the Hayfields main house and six of its outbuildings). These structures have intrinsic value from their association both with the farm's important owners and with Civil War events. The historic value of the listed structures is enhanced by their setting on the Farm, and vice versa. The preeminent historic significance of the Hayfields property, however, derives not merely from those structures, but also at least as importantly from its productivity and use as a farm. (emphasis in original).

Two aspects of this historic use are particularly important, as summarized in item 8 on the Maryland Historical Trust's Inventory form (copy attached). Early in the 19th century, Hayfields' founder, Col. Nicholas Merryman Bosley, extensively regraded and restored the fields from their ruined, gullied condition to an exemplary level of productivity, for which work the Maryland Agricultural Society's award was presented to him by none other than the Marquis de Lafayette. Later in the century, Hayfields was the center of pioneering work by John Merryman (of Civil War notoriety) on the introduction of Hereford cattle to America. Further documentation on these activities has been provided by the Landmarks Preservation Commission in its Appendix to this report.

As important as the Hayfields Farm is in itself, it derives additional importance as part of the Western Run - Belfast Road Historic District (a component of the National Register of Historic Places). In its prominent location at the southwestern entrance to the district, Hayfields distinctively embodies the purposes for which the District was established - recognition and protection of rural, agricultural character. The Hayfields property, as a farm, merits the utmost protection against non-agricultural intrusion much more than other farms in the County because it is the site of improvements, usage and events with documented local and Statewide historic

importance. Its preservation is consistent both with the Master Plan's policies on agriculture and historic preservation and with the purposes of the RC-2 zone." (emphasis added.).

Various exhibits were introduced into evidence before the Board in the course of the hearing on this Petition bearing on the historic significance of the Hayfields Farm. Protestants' Exhibits 6 and 15 are the Hayfields Nomination Form for its historic buildings; Protestants' Exhibit 8 depicts the boundaries of the Western Run - Belfast Road Historic District; Protestants' Exhibits 14 and 32 constitute the Nomination Papers for the Western Run - Belfast Road and Worthington Valley Historic Districts, respectively; and Petitioner's Exhibit 19 consists of the Minutes of a January, 1996 meeting of Baltimore County's Landmark Preservation Commission. Petitioner offered no substantive expert or other testimony on the question of historic impact.

Protestants called as an expert witness Dr. James Wollon, the individual who prepared the nomination papers for the Western Run - Belfast Road and Worthington Valley Historic Districts. People's Counsel called Ms. Rutli Mascari, Chair of the Baltimore County Landmarks Preservation Commission, as an expert witness. Both witnesses were qualified as experts to testify on the historical significance of the buildings, properties and districts about which they testified, and of the impact of the proposed development on the integrity and value of those buildings, properties and districts. Mr. Wollon testified as to the significance of the two districts in the area, focusing on the Western Run - Belfast Road District. He explained the significance of the Hayfields Farm property (which is included in the Western Run - Belfast Road District), both in and of itself and as a prime location at the major entrance point to that district. He described the character and significance of the Western Run - Belfast Road District as agricultural and rural in nature, and described generally the nature of the properties and the buildings contained within that district. He testified unequivocally that the construction of the proposed country club facility at the Hayfields Farm would have a substantial adverse effect on the historic integrity of that District, and would represent a highly visible use that would be in conflict with and in sharp contract to the fundamental character of the District and the properties

in it. He testified that the impact would be exacerbated by the Farm's location at the major entrance to the District. He further testified with specific reference to the Hayfields property that the development of the proposed country club, including its large banquet facility, a lit driving range and other pertinent facilities would be fundamentally inconsistent with the character and history of Hayfields Farm and its buildings and would adversely affect their historical integrity and value. He testified that the banquet facility/clubhouse addition was out of proportion to the original mansion and other buildings, and that the conversion of a former slaves' quarters to a pro shop was singularly inappropriate on historic grounds. He testified to the rarity of slaves' quarters and facilities, and to the special importance of preserving them for historical purposes. His testimony was not seriously challenged in any way on cross-examination, and no testimony was introduced by Petitioner to rebut Mr. Wollon's testimony. Mr. Wollon testified that the adverse impact on the historic integrity of the districts and of the Hayfields property itself was compounded by a number of the particular elements of the proposed country club facility and by the "gateway location" of the Hayfields Farm.

People's Counsel called as an expert witness Ms. Ruth Mascari, Chair of the Baltimore County Landmarks Preservation Commission. Protestants' Exhibit 38 contains a document captioned "Chairman's Report - Development of Hayfields Farm", in which Ms. Mascari states, in pertinent part, as follows:

"... I have testified on behalf of the Baltimore County Landmarks Preservation Commission (LPC) to the [Planning] Board several times concerning the inappropriateness of the development of a golf course on 'Hayfields Farm', the historic site which is the keeper of not only major Baltimore County agricultural history, but is also a Civil War site, the setting for crucial Constitutional history (Chief Justice Roger Brooke Taney's ex parte Merryman) and an outstanding specimen of early County architecture. It is truly a travesty to even consider the development of this site into a golf course. The Baltimore County Landmarks Preservation Commission has and continues to be opposed to this action.

... This Report represents compliance with ... Section [26] of the Code [relative to the development plan process] but does not imply, nor does it wish the Board to infer that it agrees with the development ..." (emphasis added.).

Ms. Mascari testified before this Board that she regarded the Hayfields Farm property to be a truly unique and extraordinary historic asset, and that she could not imagine a more inappropriate site in the County for the development of a country club facility such as the one proposed here. She testified at some length that she found the proposed facility to be utterly inconsistent with the character of the Hayfields Farm and its significant buildings. She added that while the Landmarks Commission had accepted certain design features and aspects of the proposed plan in the course of its participation in the development plan review process, both she and the Commission remained adamantly opposed to the development of the Hayfields Farm property as a country club (as the above-cited documents/exhibits confirm). She set forth the basis for her and the Commission's opposition, and for her opinion that the proposed development would adversely affect this extraordinary historical resource, in some detail, in her testimony before the Board.

As in the case with Dr. Wollon, Petitioner chose to sponsor no testimony or evidence in opposition to Ms. Mascari's testimony - but rather relied solely on cross-examination and on the introduction of a few documents reflecting the Landmarks Preservation Commission's somewhat grudging approval of certain design and location characteristics of Petitioners' development plan for the clubhouse complex.

There can be no serious dispute to the proposition that the preservation of historic districts and buildings promotes the general welfare. Maintaining the integrity of a significant historic district is vital to its historic importance and significance. See, Faulkner v. City of Chestertown, 290 Md. 214 (1981). The testimony and evidence to the effect that the proposed country club will have a substantially negative effect on the historic integrity and value of the

Hayfields Farm and the districts adjacent to it and within which it is located is uncontradicted in the record before this Board. The limited evidence offered by Petitioner to the effect that the Landmarks Preservation Commission, in the discharge of its relatively narrow function of reviewing specific building plans and site plans in the development plan process, accepted those plans does not even begin to overcome the substantial weight of the testimony and evidence on this important point brought forward by Protestants and People's Counsel.

The Petition for Special Exception should be disapproved based upon the Petitioners' failure to satisfy its burden on the subject of historic impact even if this Board were to conclude that it had satisfied its burden on the other contested issues. This is not to say that no property owner may construct facilities on or near historically significant properties, or that no special exception may be granted wherever there is a potential adverse impact on historic properties located on or near the site, or that the opposition of the Landmarks Preservation Commission alone automatically requires the rejection of a special exception application. Protestants also do not argue that there is no use that can be made of the Hayfields Farm other than as a farm. As a zoning matter, Petitioner, of course, is free to use the Hayfields Farm property for any of the uses permitted as a matter of right under the Zoning Regulations and does not need to demonstrate the lack of an adverse historic impact in order to do so. There also are a host of special exception uses that could be located on the Hayfields Farm property without so broadly and fundamentally impacting its value, character and integrity as a historically significant farm. Moreover, by substantially modifying the character and nature of its plans, Petitioner could have planned a golf course or country club on its property without destroying its character as a historically significant farm. There are vast portions of the 475 acre property which do not comprise the cultivated grounds which were at the heart of the Hayfields Farm, and on which Petitioner could have located all or most of its golf course. This golf course actually occupies 210 acres (including all ponds and "rough" areas). Petitioner, presumably in order to maximize its profits and to squeeze the most that it possibly could out of the land, chose to locate housing on the non-cultivated

portions of the property, in lieu of planning its golf course there. Petitioner also chose of its own volition, and presumably to save money, to use the historically significant buildings as the core of a clubhouse complex, which it then chose to surround and encumber with acres and acres of parking, a driving range lit for night use and a substantial banquet facility addition to the original mansion. Petitioner has not attempted in any way to demonstrate or suggest that it couldn't find space somewhere within its 475 acres to locate the golf course and the clubhouse complex in such a way as to better preserve the complex of historic buildings and to leave more intact at least some significant portion of the Farm itself. Petitioner chose instead, by placing its golf course squarely on virtually the entire cultivated portion of the Farm, and wrapping its commercially-aggressive clubhouse complex around the historically significant buildings, to proceed with its development in such a way that maximized rather than minimized the development's impact on this unique historic treasure. Petitioner has no one to blame but itself for thus having maximized the adverse historic impact, and creating a burden for itself on this issue that it is not able to sustain.

3. Traffic

On two additional points of adverse impact, Petitioners did not sustain its burden of demonstrating the absence of such impact. While Petitioner offered Mr. Wes Guckert as a traffic expert, and introduced as Exhibit 9 his firm's traffic study, Protestants submit that Mr. Guckert's significant undercounting of traffic likely to be generated by the golf course facility itself (based on the use of off-season data and an erroneous extrapolation from the Pine Ridge public course facility), and his incredible assumption that traffic to and from the 200 projected banquet facility events per year would not occur during peak hours, renders his study fatally flawed and not worthy of belief. These flaws leave the Board to grope in the dark as to the real and probable impact of the traffic to be generated by this facility - an especially serious problem when one considers that Western Run Road, which will have to accommodate all traffic in and out of the facility, is a meandering two-lane country road that intersects Shawan Road without a traffic

light and in immediate proximity to a major off-ramp from Interstate 83. Even with his substantial undercounts on traffic, and especially peak hour traffic, Mr. Guckert acknowledged that there may be significant waits for traffic exiting the Hayfields project and trying to gain access to Shawan Road, as well as for traffic trying to move from Shawan Road up onto Western Run Road.

4. Water Quantity

In addition, Petitioner attempted to demonstrate that its enormous usage of water for golf course irrigation purposes (nearly 20,000,000 gallons per year under normal use conditions, and over 32,000,000 gallons per year in drought seasons) will not adversely affect adjoining wells from a water quantity point of view or result in harmful depletion of stream flow at the site.³ The testimony of several of the nearby residents (e.g., Messrs. Christopher Downs and Lester Connolly) firmly establish that there are significant private well yield problems in the area surrounding Hayfields, and that these adjacent residents are completely dependent upon the adequacy of their private wells for drinking water. Both Mr. Mogilnicki and Dr. Ball testified that Petitioner had not performed sufficient studies and tests in order to determine whether or not their substantial use of water would have an adverse effect on nearby wells. While Petitioner did conduct a 50-hour pump test, the pump failed at the end of 50 hours and the Petitioner declined, presumably for reasons of expense, to conduct the customary 72-hour pump test, which is generally used and required by regulators of potential major water users to demonstrate the possible draw down and other effects of their significant water usage (Petitioner's Exhibit 13, p. 18). Mr. Mogilnicki noted that Petitioner had not even provided DEPRM with the underlying data from the 50 hour test it did conduct. Dr. Ball criticized Ms. Hau's use of Caves Valley data to attempt to extrapolate results and to serve as a substitute for conducting a full 72-hour test on

³Mr. Mogilnicki testified that the golf course's "normal" water usage was the equivalent of nearly 400 houses.

the site. Both experts also pointed out the inadequacies of the homogeneous model used by Petitioner to predict drawdown in a highly non-homogeneous sub-surface environment. Both Mr. Mogilnicki and Dr. Ball said that they could not express an expert opinion with regard to impact of the facility on water quantity without having available to them the additional data that would exist if the Petitioner had conducted a complete test and not attempted to extrapolate from other sites. The Petitioner is not required by the Zoning Regulations to conduct a 72-hour test, but if its failure to do so leaves it with insufficient data to establish to the satisfaction of qualified experts (as here) and the zoning authorities that its enormous use of water will not have an adverse effect on adjacent property owners and their private water wells, then Petitioner has been penny-wise and pound-foolish. Mr. Mogilnicki also noted that Petitioner had failed to provide to DEPRM the kind of stream depletion analysis necessary to demonstrate the absence of a negative impact on area streams.

In this instance, as with the traffic impact, it is not the burden of the Protestants to establish the presence of an adverse impact, but rather it is the burden of the Petitioners to establish the absence of one. These two impacts, like the impacts discussed at greater length above relative to groundwater quality and historic preservation considerations, are site-specific and turn on the particular circumstances at this site. The traffic to be generated by this facility is significantly greater because of the high number of rounds predicted for this public use golf course, and also because of the presence of a proposed public banquet facility and other public component facilities. The traffic situation is compounded by the rural nature of Western Run Road, and its unusual point of entry off of Shawan Road, in immediate proximity to the I-83 exit ramps. The water quantity situation is also site-specific, and the importance of the Petitioners' burden is significantly greater here because of the absence of public water service and because of the demonstrated presence in this particular area of low-producing and low-yield private water supplies which have, even before the arrival of the golf course, been a regular impairment to the residents' full and complete enjoyment of their property.

B. THE PROPOSED COUNTRY CLUB IS INCONSISTENT WITH THE PROPERTY'S RC-2 ZONING CLASSIFICATION AND WITH THE SPIRIT AND INTENT OF THE ZONING REGULATIONS GENERALLY

Section 502.1(g) of the Zoning Regulations requires the Petitioner to prove that the requested Special Exception will not "be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations . . .". The classification of the property involved in the subject Petition is predominantly RC-2, with a small portion being located in the RC-4 zone. Section 1A01.2 of the Zoning Regulations contains a unique "agricultural preference" provision to the effect that "agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in RC-2 zones." No other zoning category in the Zoning Regulations contains such a "preferential use" provision. Section 1A01.1A.1. contains a series of legislative findings made by the County Council in connection with the establishment of the RC-2 zone. In establishing the RC-2 zone, the Baltimore County Council found "a. that Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development . . . b. that the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry . . . c. that scattered development is occurring in a sporadic areas of Baltimore County containing productive agricultural land . . . [and] d. that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area." Based upon these and other legislative findings, the County Council provided in Section 1A01.1.B. that "[t]he RC-2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses."

The Petitioners' proposed country club facility is located on the major portion of the Hayfields Farm, one of the largest and certainly one of the most visible and prominent farms in all Baltimore County. The Farm's prominence is a result not only of its historical significance, but its historical productivity and its highly visible location at the gateway entrance to the primary Agricultural Preservation Area in Baltimore County. The Petitioner has chosen to concentrate the location of its proposed country club facility on that portion of the Hayfields property which has historically been cultivated and which contains the most highly-rated prime and productive soils on the property. The nature of the proposed facility is such that it will occupy a large quantity of acreage with the golf course itself, the clubhouse complex, and the associated parking and other support facilities. While the highly-productive soils will largely remain on the property following this development, they will be taken out of agricultural production in their entirety, and once the proposed facility is constructed, it is clear that the Hayfields property will never again be returned to its long-standing historical status as a working cultivated farm. As a consequence, hundreds of acres of highly-rated prime and productive soils will be taken out of cultivation and out of the agricultural land inventory of Baltimore County.⁴

Moreover, testimony and evidence submitted by People's Counsel and the Protestants establish that the proposed special exception use and development of the Hayfields property will cause a significant adverse effect on agricultural operations in the immediate and general area and beyond, by causing other farm owners and tenants to reduce and/or defer investments in their farm operations, in recognition of the change in character of this prime Agricultural Preservation

⁴Petitioner routinely points out that it cannot be required to continue farming the property, and that is undeniably true. But once Petitioner is allowed to develop large portions of the property (i.e., 226 acres for the country club alone), that acreage will be lost forever as cultivated farmland and as agriculturally useful prime and productive soils. Uses permitted as a matter of right in RC-2 zones, or less intensive or "land hungry" special exception uses, would at least leave the prime and productive soils largely or entirely undeveloped and undisturbed and thus potentially available for cultivation or agricultural use in the future. An important natural resource doesn't lose its value just because it is not being used at the moment by its present owner - but it does lose its value when it is converted to (or developed for) some other use.

Area that will be caused by the proposed Hayfields development and further in recognition of the intense and inevitable secondary development pressures that will occur as the Hayfields development spawns further development activities. The evidence further demonstrates that these secondary development pressures will be exacerbated by the associated "golf course residential community" by the various commercially-oriented public use facilities which comprise this particular country club facility, and by the proximity of a substantial area of existing commercial development immediately to the east.

In addition to the several lay witnesses and nearby property owners whose testimony included statements of opposition to the special exception based on its adverse impact on agricultural uses and the rural agricultural character of the area (Robert Hastings, Dan Timmel and Mary Hastings), Protestants and People's Counsel offered four witnesses whose testimony focused on the related questions of adverse agricultural impact and inconsistency with the purposes of the Hayfields property's RC-2 zoning classification and with the spirit and intent of the Zoning Regulations generally.

Mr. Thomas Whedbee, co-owner with other family members of substantial agricultural acreage in the Shawan Valley to the west of the Hayfields Farm, testified about the inevitable impact of approval of the Hayfields development on his farming operation and on the long-term development of his acreage. He testified that while he and the other members of his family have maintained and preserved their properties in their historic agricultural state, cash needs have required that they begin to focus on moving forward with some limited development of a portion of their property. Their intent thus far has been to limit and focus that development so that it is confined to a specific portion of the property and will have a minimal adverse impact on the agricultural character of the area and the continuation of agricultural operations on the remainder of their property. This prospective limited development, Mr. Whedbee testified, would be consistent with the family's desire to preserve and enhance the agricultural character of the general area. However, Mr. Whedbee testified that approval of the Hayfields development

would, in his view, fundamentally alter the agricultural and rural character of the general area, and require that he and the other members of the family consider more extensive development of their property. He further testified that the exacerbation of development pressures which he believes would be caused by approval of the Hayfields development would cause both him and the tenant farmer responsible for the actual farming operation to further reduce and defer investments that they would otherwise make in buildings and equipment and in the land itself. Mr. Whedbee observed that approval of the Hayfields development would send a message to all property owners in the area that the development which heretofore had been located to the east of I-83 has now advanced to the west and entered the gateway of what has been the County's prime Agricultural Preservation Area, thus sending the message that it is only a matter of time before agricultural uses succumb to the inevitable development pressures that will follow Hayfields. Against this background, farm owners and operators will view their agricultural operations as short term holding pattern operations, rather than long term investments.

Protestants also called Mr. Thomas Daniels, the Director of the Agricultural Preserve Board of Lancaster County, Pennsylvania and an expert in agriculture and agricultural preservation, rural planning and the impact of development on agricultural operations and agricultural preservation efforts. He testified that in his expert opinion, the approval of the proposed development of Hayfields will have an especially adverse impact on the existing farm operations in the area and will increase the cost to the County of maintaining and continuing its agricultural preservation program. He explained that the following unusual features of the proposed Hayfields development significantly contributed to his opinion/prediction of adverse impact in this case:

1. The immediate proximity of I-83.
2. The location of a substantial highly commercial development immediately to the east of I-83 in the Hunt Valley area.

3. The "commercial extras" included within the proposed "country club" facility.
4. The presence of public water and sewer at the western edge of I-83.
5. The size of the site and the project, and the fact that it includes a residential "golf course community".
6. The presence of a significant number of "rented" farms in the area, which are especially vulnerable to the adverse effects of development pressures

He further cited the fact that many of the farms in the general area are operated by tenant farmers rather than owner farmers, indicating that this contributed to the magnitude of the potential effect of the Hayfields development. Mr. Daniels described what he termed the "impermanence syndrome", which causes farm owners and operators to refrain from investing in equipment, buildings and land as development pressures appear on the immediate horizon, thus causing a further decline in productivity of their farms. He stated that the decline in investment becomes a self-fulfilling prophecy, causing productivity to decrease and thus diminishing the willingness and ability of the farmer to continue to farm as opposed to selling out to development. Mr. Daniels' expert opinion testimony is reflected in the lay testimony of Mr. Whedbee with regard to his own particular situation. Mr. Daniels also explained that the approval of the Hayfields development would cause property values in the area to increase, and explained how this would increase the cost to the County of its agricultural preservation program, which depends on paying property owners for agricultural easements based upon the appraised value of their properties. He testified that significant property value increases could be expected, and that if large farms in the area were offered to the agricultural preservation program, the increased costs to the County of the preservation of these farms would be substantial.

People's Counsel called Mr. Paul Solomon, an agricultural planner and environmental planner, as an expert witness. Mr. Solomon, who was personally involved in the preparation of

the Zoning Regulations establishing the Rural Conservation districts, confirmed that the purpose of the RC-2 zone was to protect the agricultural industry in Baltimore County, and to protect prime and productive soils in the County, from the adverse consequences of erratic development. He described the Hayfields property as being at the corner of Baltimore County's primary Agricultural Preservation Area, and as being a highly visible and significant property in the Shawan Valley. He described the significant characteristics of the Shawan Valley as being its location outside of the public water and sewer area of the County, the presence of substantial prime and productive soils (which he described as among the very best soils in the County) and the fact that thus far it is relatively uncompromised by the incursions of development. He described the Hayfields Farm property in particular as containing 196 acres of Hagerstown soils, comprising approximately 10% of all of the Hagerstown soils in the entire County. He described the Hagerstown soils as rare and among the very best in the County. He expressed general agreement with the DEPRM Report of May 5, 1995 (People's Counsel Exhibit 3) and its evaluation of the soils on and productivity of the Hayfields Farm. Commenting on Hayfields agricultural preservation rating score of 170 out of 200, Mr. Solomon said that he didn't ever recall seeing any farm achieve that high a score. Mr. Solomon testified that approximately 95% of Hayfields' 288 RC-2 acres were comprised of prime and productive soils. Mr. Solomon testified that the significance of the Hayfields Farm was magnified by its size, and that it was one of the largest farms in Baltimore County.

Mr. Solomon testified that in his professional opinion the granting of the proposed country club special exception would be especially detrimental to the health, safety and welfare of the locality. He testified that approval of the proposed development would eliminate the agricultural use of the property and would destabilize agricultural uses in the surrounding area. He described the proposed use of the Hayfields property as an "intrusion" into the rural agricultural area in which it would be located, and stated that the adverse effect here would be greater than one would ordinarily expect in RC-2 zoned property generally. He testified that

there were a number of sites, comprising thousands of acres, in the RC-2 zone in Baltimore County where one could put a golf course without experiencing significant adverse affects.

Mr. Solomon further testified that the granting of the proposed special exception would be inconsistent with the purposes of the Hayfields property's RC-2 zoning. The basis for this opinion, which is similar to Mr. Solomon's opinion relative to adverse effects on health, safety and welfare, is that the proposal does not make any effort to protect prime and productive soils on the property itself and that it would destabilize agricultural uses in the entire valley area. He emphasized the relatively unusual and highly visible position of the Hayfields Farm at the head of not only the Shawan Valley but the agricultural area extending to the north along Western Run Road. Mr. Solomon testified specifically that the development of the proposed country club on the Hayfields property would be inconsistent with the purpose clause of the RC-2 zone. He further testified that he considered that the "locality" or "vicinity" of the area surrounding Hayfields that would be impacted by the proposed development would include not only the property itself and adjacent properties, but other properties in the region, including at least those properties within the ridge lines and comprising the Shawan Valley. Finally, Mr. Solomon testified that the adverse impact of the proposed special exception, and its inconsistency with the purposes of the RC-2 zone, were heightened by the various commercially-oriented public use facilities proposed to be located in and around the clubhouse complex at Hayfields.

Finally, and most recently, Mr. Patrick Ford testified as an expert planner called by the Protestants. Mr. Ford stated his professional opinion that the granting of the proposed special exception would be inconsistent with the purposes of the RC-2 zoning of the property, and inconsistent with the spirit and intent of the Zoning Regulations. Mr. Ford also testified at some length and in considerable detail to the effect that the proposed special exception use would be inconsistent with Baltimore County's Master Plan. While inconsistency with the Master Plan may not be separately identified as one of the statutorily specified criteria in Section 502 of the Zoning Regulations, the Master Plan policies identified by Mr. Ford reflect the importance

attributed by Baltimore County officials to the protection and preservation of the County's agricultural, historic and environmental resources, and in many respects (at least with regard to the RC zones) mirror the purposes of the RC-2 zoning category as well as the spirit and intent of the Zoning Regulations in general. Because Mr. Ford's testimony was given less than 10 days ago, this Memorandum does not set it forth at great length. Mr. Ford's testimony confirmed the rural and agricultural character of the Hayfields Farm as depicted in photographs taken from the perimeter of the site, and identified a number of important views into the property. He presented to the Board a demographic analysis which focused on the Gateway area of Baltimore County along I-83, and which demonstrated that while significant growth had occurred in other census tracts along that Gateway corridor, County development policies have thus far been relatively successful in controlling growth and development in the census tract area in which the Hayfields Farm is located. Mr. Ford then testified about the significance of Hayfields Gateway location and the significance of the proximity of the intense commercial development immediately to the east of I-83. His reasoning as to why granting the proposed special exception would be inconsistent both with the property's RC-2 zoning classification and with the spirit and intent of the Zoning Regulations generally was similar to the reasoning of Mr. Solomon and other witnesses. Mr. Ford stressed the fact that Hayfields, as well as a number of the properties around Hayfields, was a cultivated farm, with substantial prime and productive soils. Mr. Ford found the proposed development inconsistent with the underlying purposes of the RC-2 zoning category based on the loss of substantial prime and productive and cultivated soils on the Hayfields property itself, and the intrusion and inevitable effect on other agricultural uses in the area once the Hayfields development is approved and proceeds. Mr. Ford testified that approval of the special exception would effect a substantial change in the character of the area, and inevitably lead to additional development and incursions in this predominantly agricultural area. Like other witnesses before him, he testified that the presence of the commercially-oriented public access elements of the proposed country club exacerbated the inconsistency and the potential adverse impact on the area. He testified that the presence of these individual facility

components, none of which could be approved in a RC-2 zone, contributed to his opinion that the proposed Special Exception would be inconsistent with the spirit and intent of the Zoning Regulations.⁵

The only testimony offered by Petitioner in opposition to the testimony of Mr. Whedbee, Mr. Daniels, Mr. Solomon and Mr. Ford was the testimony of Mr. Gavrelis and the rebuttal testimony of Mr. James Pepple. Mr. Gavrelis simply recited all of the elements of Section 502, and said, based in many instances solely on the testimony of others, that there would be no adverse impact and there was no inconsistency. With all due respect, Mr. Gavrelis' testimony had a "cookie cutter" character to it, and was short on backup and specific reasoning. Interestingly, while all of the experts who testified against the special exception cited the Gateway location of the Hayfields property vis-a-vis the Agricultural Preservation Area and the historic districts, Mr. Gavrelis characterized the Hayfields property as being located at the edge or perimeter of these protected areas, which suggested to him (in contrast to every single expert who testified for People's Counsel or Protestants) that the impact of the development of the Hayfields property would be minimized. While Mr. Pepple testified that his development of a portion of his own very large farm in Oxford Township, Pennsylvania did not have an adverse impact on the remainder of his property, or on the farms of his neighbors, it is respectfully submitted that that testimony based on that singular experience has no real persuasive value here. Not only is Mr. Pepple's golf course facility as it presently stands very different from (and more limited than) the country club facility proposed here, but Mr. Pepple was testifying largely about his own golf course's impact on his own farm. Moreover, and most significantly, his property is

⁵Consistency with the "spirit and intent" of the Zoning Regulations is different from consistency with the "letter" of the Zoning Regulations. Even if the commercially-oriented public use components of Hayfields' "country club" are deemed by the Board to be consistent with the "letter" of the Zoning Regulations, they are not consistent with the "spirit and intent" of the Zoning Regulations (or at least not in an RC-2 zone, where they could not be located individually).

located at least a dozen miles from the nearest concentration of any development - in marked contrast to the location of Hayfields, immediately next to the highly developed commercial area in Hunt Valley and on Interstate interchange. Finally, to the extent that Mr. Pepple's testimony about the lack of impact thus far on his neighbors' farms is found to have any potential relevance here, it is respectfully submitted that it is much too early to draw any conclusions whatsoever from Mr. Pepple's Pennsylvania experience. His course has only been in operation for a few years, and he has yet to sell the first residential lot. Because of the remoteness of the area from any other commercial development, it is far too soon to determine whether there will be any adverse impacts there.

Protestants submit that Petitioner has failed to satisfy its burden of establishing that the proposed special exception would not be inconsistent with the purpose of the property's RC-2 zoning classification and would not be inconsistent with the spirit and intent of the Zoning Regulations. Indeed, the inconsistency with the spirit and intent of the Zoning Regulations is exacerbated by the Petitioners' inclusion in his proposed country club of the commercially-oriented public use facilities discussed at some length in Protestants' Motion to Dismiss. While the inclusion of these individual facilities might be appropriate and not inconsistent with the spirit and intent of the Zoning Regulations if the Hayfields property were located in zones that permitted public restaurants, public banquet facilities, driving ranges, overnight accommodations, etc., granting the subject special exception for property in an RC-2 zone would be fundamentally inconsistent with the spirit and intent of the Zoning Regulations. Thus, even if the Board should determine that a country club could properly include these commercially-oriented public use facilities in certain zones, it can and should conclude that approval of a country club containing these kinds of individually impermissible facilities in an RC-2 zone would be inconsistent with the spirit and intent of the Zoning Regulations, even if not inconsistent with the letter of the Zoning Regulations.

IV. OTHER ISSUES

In the event the Board denies Protestants' Motion to Dismiss, it still must deal with the commercially-oriented public use aspects of the proposed country club facility in several other contexts. First, as is noted above, the Board must decide whether allowing a "country club" to include individual components that could not be individually approved in an RC-2 zone is inconsistent with the "spirit and intent" of the Zoning Regulations. If the Board decides that those commercially-oriented public use component parts can legally be permitted as a part of a country club in an RC-2 zone under the applicable special exception provisions, then the Board is confronted with the undeniable fact that they constitute a unique (at least in Baltimore County) collection of components, which distinguish this proposed facility from other "generic" country club facilities. This is relevant to the impact analysis under Schultz v. Pritts, *supra*, and the additional adverse impact (to which many witnesses testified) of these unusual and relatively unique component facilities must be considered by the Board in determining whether the Petitioner has satisfied its various burdens. In addition, before even getting to the Schultz v. Pritts adverse impact test, the Board should consider, if it has not granted Protestants' Motion to Dismiss, whether certain of the specific component facilities should be denied or substantially modified as a matter of law.

In particular, Petitioner offered no evidence whatsoever to establish the proposition that overnight accommodations are either a customary or necessary part of a country club facility. While overnight accommodations were approved by the Zoning Commissioner at the Caves Valley Club, they were approved based on a very special justification having to do with the unusual nature of that facility and the anticipated substantial non local membership. Moreover, in sharp contrast to the Hayfields proposal, the accommodations at Caves Valley were, at the request of the Petitioner, specifically and strictly limited to use by members and their guests. Other than a passing reference to the Caves Valley approval, Petitioner here made no effort whatsoever to establish that overnight accommodations are a regular and customary part of a

country club. Petitioner has not proposed any limitation on the use of the rooms to members and/or their guests, nor has it indicated any limitation on the number of rooms. In essence, Petitioner wants to operate a hotel or motel at the Hayfields property. The Board should specifically deny Petitioners' request to include overnight accommodations in its country club complex as being impermissible as a matter of law based on the record in this case.

The Board should also reject the Petitioner's request to include a practice range facility with space for 30 golfers to hit balls simultaneously, and with lighting for nighttime use. Unless one credits Mr. Gavrelis' testimony that the Pine Ridge facility is a country club, there is no "country club" anywhere in Baltimore County (or anywhere else that was cited by Petitioner) that includes a lit driving range for nighttime use. The proposed driving range is also twice the size necessary to accommodate golfers using the course (as is indicated by the testimony of Mr. James Pepple, as well as Mr. John Invernizzi). The practice facility, as conceived by the Petitioner, is not a practice facility connected to the golf course or country club, but it is unabashedly a driving range, which is not permitted in either an RC-2 or an RC-4 zone. Any practice facility to be included as a part of the country club should be limited in size (15 simultaneous tee-box spaces) and should not be permitted to have night lighting.

Petitioner has also proposed that two of the buildings contained within the clubhouse complex be used as year-round residences for employees of the club - and that these year-round residences will somehow not be counted as residences for density purposes in calculating the number of dwelling units which Petitioner is entitled to include in its RC-2 acreage. Other than a passing reference by one of Petitioner's witnesses to the fact that a few other clubs in the area provide residences for their superintendents or other employees, there is no evidence or other support for the proposition that such employee residences are subordinate and customarily incidental to golf courses or country clubs, with the result that they may be included within the special exception use as accessory uses and not counted for density purposes. There is not a shred of testimony or evidence that the employee residences at other clubs are not counted for

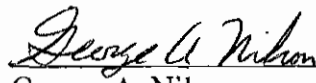
density purposes vis-a-vis the zoning of those other clubs, and there is no evidence that such residences are so customary and regular as to constitute proper accessory uses. The Petitioner has failed to introduce any evidence establishing any special need for these employee residences, and if the Petitioner wishes to provide employee residences in dwelling units on the site, then those dwelling units should be appropriately charged to the allowable density on the RC-2 property. This Board does not have the authority, or the evidentiary basis in the record here, to brush aside residential density limitations on this property by allowing the Petitioner to sweep employee residences within the scope of its country club special exception. These buildings are homes or dwelling units - they are not a proper part of the country club. If they are to be approved by this Board, then they should be "counted" for residential density purposes.

Finally, as noted earlier, the Board has the authority to impose conditions on any special exception that it grants. Attached to this Memorandum as Exhibit A is a list of suggested conditions which the Board may wish to consider in the event that it grants the requested special exception in whole or in part.

CONCLUSION

For all the reasons set forth above, Protestants respectfully request that the Board deny the Petition for Special Exception.

Respectfully submitted,


George A. Nilson

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(410) 576-1769

Counsel for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 1996, a copy of the foregoing Memorandum of Protestants in Opposition to Petition for Special Exception was hand delivered or mailed, postage prepaid, to:

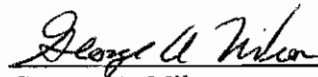
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Sparks, Maryland 21152

and

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Towson, Maryland 21204-2055


George A. Nilson

CASE NO. 95-308-X

**EXHIBIT A TO PROTESTANTS' MEMORANDUM OF
LAW - POSSIBLE CONDITIONS**

In the event the Board should approve the Hayfields Special Exception for country club use, Protestants urge the Board to consider adopting one or more of the following conditions:

1. No overnight accommodations may be provided as a part of the country club facility.
2. Any residential dwelling units made available for use by employees of the club shall be counted for residential density purposes in connection with Petitioner's use of its property.
3. No part of the golf course or practice facilities may be lit for nighttime use, provided, however, that low intensity local lighting may be provided at the putting green area.
4. The various facilities comprising the country club may only be utilized by members and their invited guests.
5. (In the event that use of the recreational facilities is to be permitted by other than members and their guests). Use of the non-recreational facilities that comprise a part of the country club shall be permitted only by members and their invited guests or by persons who are at the property for purposes of using the golf course. This restriction shall apply to the restaurant, cocktail lounge and banquet facility.
6. The maintenance facility shall be relocated to a location not within 200 feet of the area underlain by the Cockeysville Marble aquifer, with the location to be specifically subject to the approval of DEPRM.
7. The banquet facility may not be utilized for more than 100 events per year.

8. The portion of the clubhouse complex which functions as a restaurant/cocktail lounge and which is available for use by other than members and their guests shall not have at anytime a seating capacity in excess of 50.

9. The golf course shall be operated so as not to exceed 35,000 rounds per year.

10. The golf course shall be constructed and operated in strict accordance with DEPRM's guidelines applicable to golf courses, provided that DEPRM in its sole discretion may require the Petitioner to agree to any more stringent provisions contained in the agreement entered into by the Caves Valley Club which, in the sole and non-reviewable judgment of DEPRM, are appropriate for the Hayfields facility.

11. Any residential dwelling units located and permitted on the portion of the site either contained within the special exception or zoned RC-2 shall be located and/or screened in such a way that the structures are not visible from either the mansion house or Shawan Road and in such a way that the lots are not located on prime or productive soils.

12. No event at the banquet facility may begin later than 8:00 p.m. or end later than midnight, and restaurant service shall end at 9 p.m.

13. All hedgerows or other existing natural vegetation along the perimeter of property and tending to screen the property from Western Run and Shawan Roads shall be preserved, and any additional vegetative screening shall be natural in appearance and visually consistent with the existing hedgerow screening to the greatest extent possible.

14. Construction and renovation of the structures comprising the clubhouse complex, as well as the construction of any new buildings and support facilities related to that complex, shall be subject to the review and approval of the Baltimore County Landmarks Commission.

APPEAL

Petition for Special Exception
Hayfields

NW/8 Western Run Road
c/l Shawan Road, 1,780 ft N/W of c/l I-83
8th Election District - 3rd Councilmanic District
Toll House, Inc., Petitioner
Case No. 95-308-X

35 JUL 20 PM 2:05

- ✓ Petition for Special Exception
- ✓ Description
- ✓ Certificate of Posting
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Council
- ✓ Zoning Plans Advisory Committee Comments
- ✓ Petitioner(s) and Protester(s) Sign-In Sheets

- Petitioner's Exhibits:
- ✓ 1 - Aerial photo of site and area
 - ✓ 2 - Site constraints map
 - ✓ 3 - Hayfields Manor Golf Club
 - ✓ 4 - Site plan with current revisions 5/95
 - ✓ 5 - Clubhouse Campus
 - ✓ 6-A - 6-B - Club House and Mansion
 - ✓ 7-A - 7-B - Mass Hall (Pro Shop)
 - ✓ 8 - Master Plan for golf course
 - ✓ 9 - Traffic impact analysis by Wes Guckert
 - ✓ 10 - Recreation and Parks A Plan for the 1990's
 - ✓ 11 - Hau Resumes
 - ✓ 12-A - 12-B - Hau maps
 - ✓ 13 - Environmental Impact Report
 - ✓ 14 - Golf Course Management Plan
 - ✓ 15 - Letter to Property Owner from J. Rodney Little dated March 13, 1979
 - ✓ 16 - Secretary of the Interior's Standards

- Protestant's Exhibits:
- ✓ 1 - Kenneth T. Bosley's Entry of Appearance dated May 8, 1995
 - ✓ 2 - Motion to Dismiss Letter to Lawrence E. Schmidt from Kenneth T. Bosley dated May 10, 1995
 - ✓ 3 - Recommended Areas of Critical State Concern Map
 - ✓ 4 - Petitions in Opposition to the Proposed Rezoning and Golf Courses at Hayfields
 - ✓ 5 - Mobilitzell's statement (At BOA, as per Scott Barhight)
 - ✓ 6 - Inventory Form for State Historical Site Survey
 - ✓ 7 - Inter-Office Memorandum to William T. Hackett dated March 6, 1995
 - ✓ 8 - Map National Register
 - ✓ 9 - Nomination form for National Register of Historic Places
 - ✓ 10 - Curriculum Vitae of William Parks Ball
 - ✓ 11 - Land Use Plan

SAME AS
#S 1-4
IN CR-95-138

P.E. #3 8-16
PROT. #S 1-11
IN
BRASS
Folder
(2 of 3)

- ✓ Plan to Accompany a Petition for Special Exception, Rev. 4/17/95
- ✓ Inter-Office Memorandum to the Hearing Officer from Catherine A. Milton dated March 3, 1995
- ✓ Petitioner's Memorandum
- ✓ Protestants' Memorandum
- ✓ 22 Executive Letters of Response (Folder 3 of 3)
- ✓ One Letter of Support
- ✓ 131 Letters of Opposition (Folder 3 of 3)
- ✓ 11 Miscellaneous Letters
- ✓ Zoning Commissioner's Order dated June 30, 1995
- ② ✓ Notice of Appeal received on July 10, 1995 from G. Macy Nelson, Anderson, Coe and King on behalf of The Valley's Planning Council, and Peter Max Zimmerman, People's Counsel.

cc: Mr. Scott Barhight, Esq., Whiteford, Taylor, Preston, etc.,
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 Ms. Ruth Mascari, Chairperson, Landmarks Preservation Commission,
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 Mr. George Gavrellis, Daft-McCune-Walker, Inc., 200 E. Pennsylvania
 Avenue, Towson, MD
 Dr. Richard W. McQuaid, 1500 Harris Mill Road, Parkton, MD 21120
 Ms. Victoria Woodward, P.O. Box 58, Upperco, MD 21155
 Mr. John Bernstein, Valleys Planning, P.O. Box 5402,
 Towson, MD 21285-5402
 * People's Counsel of Baltimore County, M.S. 2D10

Request Notification: Patrick Keller, Director, Planning & Zoning
 Lawrence E. Schmidt, Zoning Commissioner
 Arnold Jablon, Director, Permits and
 Development Management

/nmn

NOTE: Macy Nelson's
 appearance
 to enter appearance on
 behalf of protestants

Joseph LaVerghetta, Esquire
 1205 York Road
 Lutherville, MD 21093

Leslie M. Pittler, Esquire
 Suite 610, 29 W. Susquehanna Avenue
 Towson, MD 21204

IN RE:	*	BEFORE THE
PETITION FOR SPECIAL EXCEPTION		
NW/s Western Run & Shawan Roads	*	BOARD OF APPEALS
at its Intersection with Interstate 83		
(310 Western Run Road)	*	FOR
8th Election District		
3rd Councilmanic District	*	BALTIMORE COUNTY
	*	Case No. 95-308-X

* * * * *

**HEARING MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL
EXCEPTION**

Petitioner, Hayfields Inc. ("Hayfields"), by its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., hereby submits its Memorandum in Support of Petition for Special Exception, and states:

INTRODUCTION

Hayfields, the developer, filed a Petition for Special Exception to permit construction of a country club on property zoned R.C. 2 and R.C. 4. The subject property, known as 301 Western Run Road, is located northwest of and abutting the interchange of Interstate 83 and Shawan Road in the vicinity of Hunt Valley. Hayfields seeks to develop, on the proposed site, an 18-hole golf course and related amenities, including a practice range, pro shop, maintenance areas, club house, pool, and tennis facilities.

The subject property, also known as the Hayfields Farm, originally totaled over 1,000 acres. Because of numerous subdivisions, however, the farm currently approximates 474 acres and is divided into Parcels A and B. Parcel A, predominantly

zoned R.C. 2, contains the 226-acre portion of the site proposed for use as a country club. At the northeast end of Parcel A exists a small area of land zoned R.C. 4. Parcel B comprises the remaining acreage of the site proposed for development as the residential component of the project. The issues concerning the development of the project's residential component, however, have no bearing on the resolution of the issues underlying the Petition for Special Exception.

Because country clubs are permitted by special exception in both the R.C. 2 and R.C. 4 zones, the Zoning Commissioner of Baltimore County had original and exclusive jurisdiction over the Petition. After a five-day hearing, at which numerous exhibits were presented and numerous witnesses testified, the Zoning Commissioner approved the Petition for Special Exception. In a detailed opinion, the Zoning Commissioner determined that the requested special exception use would not have an adverse impact upon neighboring properties in the general area, and that it comported with each of the criteria set forth in § 502.1 of the Baltimore County Zoning Regulations ("BCZR"). Dissatisfied with that decision, however, Protestants and People's Counsel filed the instant appeal, seeking a *de novo* hearing before the Board of Appeals of Baltimore County.

STANDARD OF REVIEW

In *Mosburg v. Montgomery County*, No. 58, Sept. Term, 1995 (Md. Ct. Spec. App. Oct. 2, 1995), the Court of Special Appeals of Maryland set forth the standard by which hearing authorities should evaluate requests for special exception uses and provided an

in-depth analysis of “(1) how provisions for special exceptions are created in zoning cases, (2) the policy statements made by the creation of those provisions, (3) the inherent permissive nature of such exceptions, and (4) the proper focus to be utilized in determining whether a proposed special exception satisfies the conditions of the statute.” *Mossburg*, No. 58, slip op. at 2-3. Of particular importance to the instant case is the *Mossburg* court’s analysis of the focus used when determining whether a proposed special exception satisfies the statutory requirements.

“‘A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied.’” *Mossburg*, No. 58, slip. op. at 5 (quoting *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984)). The legislative body, by designating a use as a special exception, “has made a policy decision for all of the inhabitants of the particular governmental jurisdiction . . . that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.” *Id.* In Baltimore County, a special exception request must satisfy a two-prong test before it may be granted by the Zoning Commissioner or the Board of Appeals: (1) the special exception use must satisfy the conditions set forth by the applicable zoning statutes (in this case, §§ 1A01.2.C and 1A03.3.B of the BCZR), and (2) the use must not violate § 502.1 of the BCZR.

Under *Mossburg*, when filing a Petition for Special Exception in Baltimore County, the Petitioner, initially, must demonstrate to the hearing authority that the proposed special exception is permitted in the subject zone. Section 1A01.2.C of the

BCZR permits golf courses or country clubs in R.C.2 zones, with the following limitation:

Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C. 2 zone, provided 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

Section 1A03.3.B permits golf courses or country clubs in any R.C. 4 zone without any special limitations. In the instant case therefore, the proposed golf course is presumptively permissible in the RC 2 zone.

Once the applicant presents sufficient evidence that the proposed use satisfies the requirements of §§ 1A01.2.C and 1A03.3.B, the Petition should be granted, unless , however, the Protestants demonstrate that, under the standard of review set forth in *Schultz v. Pritts*, 291 Md. 1 (1981), the proposed use violates § 502.1 of the BCZR, which provides:

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not: [BC.Z.R., 1955; Bill No. 45, 1982.]

a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]

b. Tend to create congestion in roads, streets or alleys therein; [B.C.Z.R., 1955.]

c. Create a potential hazard from fire, panic or other dangers; [B.C.Z.R., 1955.]

d. Tend to overcrowd land and cause undue concentration of population; [BC.Z.R. 1955.]

e. Interfere with adequate provisions for schools, parks, water, sewerage,

transportation or other public requirements, conveniences, or improvements; [B.C.Z.R., 1955.]

f. Interfere with adequate light and air; [B.C.Z.R., 1955; Bill No. 45, 1982.]

g. Be inconsistent with purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations; nor [Bill No. 45, 1982.]

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations. [Bill No. 45, 1982.]

If there is any evidence demonstrating that the proposed special exception use violates the conditions set forth in § 502.1, then the hearing authority must review the requested special exception under the following standard set forth in *Schultz v. Pritts*:

The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is *whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.*

291 Md. at 21-22 (emphasis added).

Mossburg clarifies that, "[o]nce an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute[, in this case §§ 1A01.2.C and 1A03.3.B], even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere." *Mossburg*, No. 58, slip op. at 7. Stated differently, after the Petitioner demonstrates that the proposed use qualifies as a special exception permitted by statute in the subject zone, the Protestants

have the burden of proving that the “special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone.” *People’s Counsel v. Mangione*, 85 Md. App. 738, 750 (1991).

For example, in *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317 (1965), and *Anderson v. Sawyer*, 23 Md. App. 612 (1974), *cert. denied*, 274 Md. 725 (1975), the Courts in each case held that the Protestants failed to meet their burden of demonstrating that the proposed use violated § 502. under the *Schultz v. Pritts* standard. In *Deen*, the Court of Appeals stated that:

Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality. . . . This factor was without relevance in this case, because *there was no evidence produced* at the hearing which would show that the effect of high tension wires . . . [in] this area would be in any respect different than its effect on any other rural area. *Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area*

Id. at 330-31 (emphasis added).

Similarly, in *Anderson*, the Court of Special Appeals , reviewing a Special Exception Petition involving the construction and operation of a funeral home, held that,

[b]ecause *there were neither facts nor valid reasons* to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.

Anderson, 23 Md. App. at 625 (emphasis added). The Court in *Anderson* further held that,

[t]he presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses.

Anderson, 23 Md. App. at 624-25.

By making the proposed use a special exception, the legislature has already determined that the use would benefit the community. “[I]f there is not probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.” *Id.* at 617.

Not only does *Mossburg* make clear that the Protestants bear the burden of proving that the proposed use fails to comply with the conditions set forth in § 502.1 of the BCZR, but *Mossburg* also holds that, in meeting their burden, it is insufficient for the Protestants merely to demonstrate that the proposed use will create the adverse impacts set forth in § 502.1. “[S]ome adverse impact is contemplated or the use would be permitted generally without resort to the special exception process.” *Mossburg*, No. 58, slip op. at 22. “By reason of the holdings in *Schultz*, and its progeny, such general conditions as are [listed in § 502.1 of the BCZR] are themselves subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally

inherent with such a use anywhere within the relevant zones in the regional district[, in this case Baltimore County].” *Id.* Accordingly, the general provisions of § 502.1 “would have added to them, by operation of the language of the case law, *i.e.*, *Schultz*, limiting language similar to that [which] is emphasize[d] below [in certain, reiterated general provisions:]”

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a) Be **[more]** detrimental to the health, safety, or general welfare of the locality involved ***[than it would be generally elsewhere in the zone or applicable other zones];***
- b) Tend to create **[more]** congestion in roads, streets, or alleys therein ***[than it would be generally elsewhere in the zone or applicable other zones];***
- c) Create **[more of]** a potential hazard from fire, panic or other dangers ***[than it would generally elsewhere in the zone or applicable other zones];***
- d) Tend to overcrowd land and cause undue concentration of population ***[more at the subject site than it would generally elsewhere in the zone or applicable zones];***
- e) Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements ***[more at the subject site than it would generally elsewhere in the zone or applicable zones];***
- f) Interfere with adequate light and air ***[more at the subject site than it would generally elsewhere in the zone or applicable zones];***
- g) Be **[more]** inconsistent with the purposes of the property’s zoning classification ***[than it would be generally elsewhere in the zone or applicable zones, or]*** in any other way ***[be more]*** inconsistent with the spirit and intent of these zoning regulations ***[than it would be generally elsewhere in the zone or applicable zones];***

h) Be [*more*] inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations. [*than it would be generally elsewhere in the zone or applicable zones*].

See *Mossburg*, No. 58, slip op. at 22-23.

In sum, under *Mossburg*, the Petitioner meets its burden of proof by demonstrating to the hearing authority that the proposed use qualifies as a Special Exception Use permitted in the requested zone. Once the Petitioner demonstrates compliance with those statutory requirements, the hearing authority must grant the Petition. If, however, the Protestants present substantial evidence that, applying the more specific, limited *Schultz* standard, the proposed use does not comply with § 502.1, then “the matter is one for the Board to decide.” *Anderson*, 23 Md. App. at 617.

DISCUSSION

Witness Testimony

In the instant case, numerous witnesses on behalf of Hayfields, Inc., testified that the proposed golf course qualified as a special exception use permitted in the RC 2 zone in Baltimore County.

Hayfields’ Laywitness **John Mangione**

In particular, John Mangione, vice-president of Commercial Contractors, Inc., and the developer of the proposed Hayfields Manor Golf Club, informed the Board of Appeals that the proposed country club would consist of an 18-hole golf course and a clubhouse complex, as well as appropriate ancillary facilities such as a golf pro shop, driving range, swimming pool, and tennis courts. T. 82-88 (1-11-96). Section 101 of the

BCZR defines the term “country club” as used in § 1A01.2.C.10 of the BCZR as follows: “A 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities [such as tennis facilities].” Accordingly, under the tests enunciated in *Anderson, supra*, and *Mossburg, supra*, Mr. Mangione’s testimony, in and of itself met the necessary burden of proof regarding Hayfields’ Petition for Special Exception by demonstrating that the proposed country club use qualified as a use permitted by special exception in the RC 2 zone. See B.C.Z.R., § 1A01.2.C.10.

Hayfields’ Expert Witnesses

Although it did not bear the burden of showing that its proposed country club met the requirements of BCZR §§ 1A01.2 and 502.1, Hayfields nevertheless, produced several expert witnesses who testified that the inherently adverse impacts associated with the proposed country club would have no greater effect on the subject site than would ordinarily be expected if the proposed country club were constructed elsewhere within the RC 2 zone. See *Schultz, supra* and *Mossburg, supra*. Specifically, Stephanie Novak Hau, an expert in environmental sciences, hydrology, and environmental effects of golf courses, George Gavrelis, an expert in land use planning and planning and zoning, and Wes Guckert, an expert in traffic engineering, testified that the proposed golf course complied with the requirements set forth in the BCZR and met the standard established in *Mossburg*.

Stephanie Novak Hau

According to Ms. Hau, golf courses, if managed properly, have minimal environmental impact, if they have any impact at all. T. 106 (1-18-96). Ms. Hau explained that the main issues arising from the development of golf courses is whether the use of chemicals, such as pesticides and herbicides, in the golf course will contaminate or pollute streams or ground water sources, and whether the golf course development will harm wetlands, forests, and wildlife habitat. T. 107 (1-18-96).

Regarding the Hayfields site, Ms. Hau testified that she conducted several tests on the soils and the site's geology. Those test results revealed that a well-defined clay layer underlies the entire property. T. 112-15 (1-18-96). According to Ms. Hau, the presence of that clay layer would slow down the infiltration of rain water, allowing natural microbial processes to break down and essentially "eat" the nitrate from the golf course that might ordinarily get into the ground water systems. T. 126-27(1-18-96). Ms. Hau also testified that that there would be no adverse impacts to the ground water resources as a result of the golf course development on the Hayfields' site and that the site was fortunate to have an irrigation well centrally located on the property. Regarding the irrigation well, Ms. Hau explained that, because the well was a high yield well, it would have little impact on lower yield wells on the Cockeysville Marble south of the property. T. 119 (1-18-96). In Ms. Hau's opinion, it would be extremely unlikely that the use of the centrally located well on the Hayfields' site would affect household wells to the north of the property. Ms. Hau also testified that the developer

intended that there would be no net loss of any jurisdictional wetlands as a result of the proposed country club development.

Regarding the requirements of § 502.1 and the Mossburg standard, Ms. Hau testified as follows:

- Regarding the problem of the drying up of the surrounding streams, Ms. Hau testified that the impacts for the golf course development on the Hayfields site would not be any greater than would ordinarily be expected regardless of the location on the proposed golf course elsewhere in the RC 2 and RC 4 zones. T. 128 (1-18-96)
- Ms. Hau testified that the potential wetland impact would have no greater effect than would ordinarily be expected regardless of the proposed location of the proposed golf course in the RC 2 and RC 4 zones. T. 130 (1-18-96)
- Ms. Hau testified that as a result of the golf course development there would be 11 to 12 acres of new forest planted on the Hayfield sites. Relative to forest cover, Ms. Hau testified that there would be no greater negative impact than would ordinarily be expected regardless of the proposed location of the proposed golf course elsewhere in the RC 2 and RC 4 zones. T. 131(1-18-96).
- Regarding rare, threatened, or endangered species on the property, Ms. Hau testified that there was no endangered wildlife or habitat on the property. Ms. Hau, in fact, testified that the wetlands that already exist on the Hayfields site would be enhanced, and therefore, that habitat for whatever species live on the site would be

enhanced. Ms. Hau testified that with regard to the impacts relative to habitat, the potential negative impacts would be no greater than would ordinarily be expected regardless of the location of the proposed golf course elsewhere in the RC 2 and RC 4 zones. T. 132 (1-18-96).

- Regarding environmental impacts in a collective fashion, Ms. Hau testified that those impacts would not be any greater in a negative fashion than would ordinarily be expected regardless of the proposed location of the proposed golf course elsewhere in the RC 2 and RC 4 zones. T. 134 (1-18-96).
- Ms. Hau testified that the comments from DEPRM will be addressed in the ongoing development plan process for the country club. T. 141 (1-18-96).
- Ms. Hau testified that having the golf course at the Hayfields' site is not predicated upon the existence of the clay layer nor the existence of the Cockeysville Marble. Ms. Hau stated that there is not much impact to be expected at the subject site than at any other site or compared to any other site in Baltimore County where there is RC 2 or RC 4 zoned land or any other area. She explained that the same facts would be expected. With regard to the potential for contamination, the potential for water resource depletion, and the forest impact, Ms. Hau testified that there would not be any greater environmental impact at the Hayfield's location than would ordinarily be expected elsewhere in the RC 2 and RC zones. T. 269 (1-18-96).

Wes Guckert

Similarly, Mr. Guckert informed the Board that he had performed a traffic analysis for the proposed Hayfields site and the result of his analysis revealed that the roads in place are adequate to handle the increased volumes of traffic that would be places upon them by the proposed country club. T. 22 (1-18-96). Additionally, Mr. Guckert testified that, assuming that 70% of the traffic entering the facility will use I-83, the facility's close proximity to major roadways indicates that it will have less of an impact at the proposed site than it would if it were located elsewhere in the RC 2 or RC 4 zones. Like Ms. Hau, Mr. Guckert also testified concerning the requirements of section 502.1 and the *Mossburg* standard. Specifically, Mr. Guckert testified as follows:

- Mr. Guckert testified that the proposed country club use would not create a hazard from fire, panic or other potential danger greater than would be expected ordinarily if the facility were located elsewhere in the RC. 2 or RC. 4 zones. T. 25 (1-18-96).
- Mr. Guckert testified that the proposed country club would not be any more detrimental to the health, safety, and welfare of the community involved than would ordinarily be expected if it were located elsewhere in the RC 2 or RC 4 zones. T. 26 (1-18-96).
- Mr. Guckert testified that the proposed country club would not tend to interfere with adequate provisions for transportation more than would ordinarily be expected if the proposed facility were located elsewhere in the RC 2 or RC 4 zones because of the proposed site's proximity to major road systems. T. 26 (1-18-96).

George Gavrelis

In addition to Mr. Guckert and Ms. Hau, Mr. Gavrelis testified that the proposed country club was an appropriate use of the subject site. Mr. Gavrelis confirmed Mr. Mangione's testimony that the proposed facility met the requirements of 1A01.2.C.10 and section 101 of the BCZR by testifying that the proposed country club will consist of an 18-hole golf course, a clubhouse, and appropriate ancillary facilities such as a golf pro shop, golf cart storage, maintenance facilities, parking, tennis courts and a swimming pool. T. 77 (1-24-96). Like Ms. Hau and Mr. Guckert, Mr. Gavrelis also testified regarding the requirements of section 502.1 and the *Mossburg* standard:

- Mr. Gavrelis testified that, from an expert perspective the proposed country club would not tend to create any greater congestion in the roads, streets, or alleys therein than it would generally create elsewhere in the RC 2 or RC 4 zones in Baltimore County. T. 79 (1-24-96).
- Mr. Gavrelis testified that from the perspective of an expert in land use planning and zoning the proposed country club would not create a greater potential hazard for fire, panic, or other dangers than it would generally if located elsewhere in the RC 2 or RC 4 zones in Baltimore County. Mr. Gavrelis testified that, as with any land use, the building facilities and the existing buildings on the site would have to comply with the building and life safety codes for Baltimore County. T. 81 (1-24-96).
- Mr. Gavrelis testified that, essentially, the core facilities of the Hayfields' Project are all located the center of the site, and therefore, there is no impact in terms of population on any adjacent or adjoining property. Mr. Gavrelis testified that, from

the perspective of an expert in land use planning and planning and zoning, the proposed country club would not tend to overcrowd the land more or cause a greater undue concentration of population than it would generally if located elsewhere in the RC 2 or RC 4 zones.

- Mr. Gavrelis testified that from the perspective of an expert in land use and land use planning and planning and zoning the proposed country club would not interfere more with adequate provision for schools than it would generally if located elsewhere in the RC 2 or RC 4 zones of Baltimore County. Mr. Gavrelis explained that a country club here or elsewhere in a RC 2 or RC 4 area is in effect, an open space recreation use. Because it has no resident population that generates pupils who need service by the schools, adequate provisions for schools is not an issue. T. 85 (1-24-96).
- Mr. Gavrelis testified that, from the perspective of an expert in land use planning and planning and zoning the proposed country club would not interfere more with adequate provisions for parks than it would generally if located elsewhere in the RC 2 or RC 4 zones of Baltimore County. Mr. Gavrelis further testified that in essence the golf course/country club would help Hayfields fulfill certain needs for recreational activities dealing with golf. T. 86 (1-24-96).
- Mr. Gavrelis testified that from the perspective of an expert in land use planning and planning and zoning the proposed country club would not interfere more with adequate provisions for water, sewerage, transportation, or other public

requirements, conveniences, or improvements, than it would generally if it were located elsewhere in an RC 2 or RC 4 zone in Baltimore County. Mr. Gavrelis stated that the reason for his opinion was the fact that Hayfields, as a country club, is basically self-supporting in terms of its requirement for infrastructure. T. 87 (1-24-96).

- Mr. Gavrelis further commented on the location of the Hayfields country club and stated that its location immediately adjacent to I-83, Shawan Road, and a host of other public infrastructure, made public service requirements minimal in terms of the impact that Hayfields would have on the surrounding area. Mr. Gavrelis testified that, from the perspective of an expert in land use planning and planning and zoning, the proposed country club would not interfere more with adequate provision for air and light than it would generally if located elsewhere in the RC 2 or RC 4 zones of Baltimore County. T. 88. (1-24-96)
- Mr. Gavrelis testified regarding the purposes of the RC 2 and RC 4 zoning classification. Mr. Gavrelis testified that, from the perspective of an expert in land use planning and planning and zoning, the proposed country club would not be more inconsistent with the purposes of the property zoning classifications or in any other way more inconsistent with the spirit and intent of the Baltimore County Zoning Regulations than it would generally if located elsewhere on the RC 2 and RC 4 zoned of Baltimore County. T. 89-90 (1-24-96).

- Mr. Gavrelis testified that from the perspective of an expert in land use planning and planning and zoning, the proposed country club would not be more inconsistent with the impermeable surface and vegetative retention provision of the property zoning classification than it would generally if located elsewhere in the RC 2 or RC 4 zones. T. 95 (1-24-96).
- Mr. Gavrelis testified that the proposed country club would not be more detrimental to the health, safety, and general welfare of the locality involved than it would generally if located elsewhere in the RC 2 or RC 4 zones. Mr. Gavrelis emphasized that the country club plan does not violate the 25% natural vegetative cover removal requirement and that most of the vegetative cover on the site is not natural vegetative cover but rather agricultural vegetative cover. T. 96 (1-18-96)
- Mr. Gavrelis testified that , from the perspective of an expert in land use planning and planning and zoning, in his opinion to a reasonable degree of certainty, the proposed country club would not be more detrimental to the primary agricultural uses in its vicinity than it would generally if located elsewhere in the RC 2 or RC 4 zones in Baltimore County. T. 98 (1-24-96).
- Mr. Gavrelis testified that it was his firm belief that the proposed country club's special exception petition would not be detrimental at all to any agricultural uses in the vicinity. Mr. Gavrelis pointed out that the only agricultural activity that immediately abuts the proposed site is the Tillman property on the west side. According to Mr. Gavrelis that property is used as a horse farm. Mr. Gavrelis

further testified that Hayfields essentially is downhill from the Tillman property and therefore would have no impact on the continued agricultural activities on the Tillman property.

- Mr. Gavrelis testified that there is no historic preservation mechanism dealing with Hayfields Farm in total because the Hayfields Manor House and the other six structures are designated as historic; the farm land is not designated as being in the historic district. Mr. Gavrelis testified that he did not believe that, in the context of the special exception request, the Hayfields Farm was an historically significant farm. T. 134 (1-24-96).
- Mr. Gavrelis also testified that the proposed country club would in no way impact Worthington Valley. T. 136 (1-24-96).
- Mr. Gavrelis testified that the proposed country club would not affect any of the views from the roads. In particular, Mr. Gavrelis noted that, the Master Plan carefully shows that there is only one significant view onto the Hayfields property, and that view is located on Western Run Road looking onto the Hayfields sites; the view is basically an enclosure view from the Western Run Road toward the Hayfields Manor House. T. 147 (1-24-96).
- According to Mr. Gavrelis, Hayfields is an open surface use of 228 acres and therefore would not alter the contrast between the very active urban employment uses on the east side of I-83 and the uses on the left side of I-83. T. 144-45 (1-24-96).

Protestants' Expert Witnesses

The record shows that Hayfields exceeded its requirements under the standard set forth in *Mossburg*, and substantially addressed each of the requirements set forth in sections 101 and 502.1 of the BCZR. On the other hand, Stephen Mogilnicki, Dr. William Parks Ball, Thomas Daniels, Paul Solomon, Ruth Mascari, Patrick Ford, and James Woolen, who testified on behalf of the Protestants, failed to apply the *Mossburg* standard and neglected to address adequately the requirements set forth in section 502.1. Accordingly, the Protestants presented no evidence demonstrating that the proposed country club use should not be permitted by special exception on the proposed site and failed to meet their burden of proof as set forth in *Schultz v. Pritts* and *Mossburg*.

Stephen Mogilnicki

In an attempt to discredit Ms. Hau's testimony, Mr. Mogilnicki, a geohydrologist advisor for the Ground Water Management Section of Baltimore County, DEPRM, disputed Ms. Hau's opinion that the Cockeysville Marble was no more vulnerable than any other aquifer in Baltimore County in the Piedmont Region. T. 28 (1-25-96). Mr. Mogilnicki also testified that, in his opinion, an extensive clay layer did not exist, as Ms. Hau suggested, to protect the ground water from contamination. T. 37.(1-25-96). Mr. Mogilnicki, however, admitted that eleven of the thirteen Balter Borings had clay shown within them, and that the presence of clay on the site would tend to make the site less vulnerable. T. 67, 93 (1-25-96). Although Mr. Mogilnicki testified that constructing a country club over the Cockeysville Marble would endanger ground

water resources, Mr. Mogilnicki conceded that a portion of the Caves Valley Country Club is situated over the Cockeysville Marble and that Caves Valley is operated in an environmentally responsible way. T. 46, 82 (1-25-96). In fact, Mr. Mogilnicki testified that he was unaware of any empirical evidence that there had been any ground water contamination of the Cockeysville Marble which underlies the Caves Valley Country Club.. Mr. Mogilnicki further testified that there is no empirical evidence that there has been any ground water contamination due to, or as a result of, any golf course operation in Baltimore County. Mr. Mogilnicki clarified that, although there was some minor contamination at Caves Valley, there was no health threat because the contamination level was well below the recommended federal limits. T. 112 (1-25-96). Mr. Mogilnicki also clarified that the atrozone detected at some levels in the wells near the Caves Valley site were picked up before Caves Valley golf course was constructed. T. 114 (1-25-96).

Although Mr. Mogilnicki portrayed Ms. Hau's environmental studies as inadequate, Mr. Mogilnicki conceded that the operational monitoring plan could be submitted post-construction, and that, as indicated by the May 5, 1995 DEPRM report, all of the extensive ground water data necessary and sewage disposal systems plans would be submitted by the developer and approved by DEPRM as part of the development plan approval process. T. 130 (1-25-96).

Mr. Mogilnicki testified that the ordinary negative impacts one would expect from a golf course, regardless of its location within an RC 2 or RC 4 zone would be the

possibility that golf course chemicals could reach ground water; however, Mr. Mogilnicki NEVER testified that the impact from the proposed golf course at the Hayfields site would generate a greater impact with regard to ground water contamination at that location than would generally be expected elsewhere in the RC 2 or RC 4 zones. T. 134 (1-25-96). Mr. Mogilnicki conceded that he was not familiar with the operation of a golf course to the extent that a Golf Course Manager would be. He also testified that he was not specifically aware of the level of fertilizer, pesticides, or herbicides that were ordinarily applied to golf courses. T. 140 (1-25-96). Moreover, Mr. Mogilnicki testified that he was unaware of the level of chemical applied to the Hayfields property during its farming operations, and that he was unaware of the actual level of chemicals being applied to golf courses in Baltimore County (other than Caves Valley Golf Course). According to Mr. Mogilnicki, he had no idea whether the amount of pesticides to be applied at the Hayfields golf course would be any greater than would normally be expected at any other golf course in Baltimore County,

As the record amply demonstrates, Mr. Mogilnicki did not testify according to the standards set forth in *Mossburg* and section 502.1 of the BCZR. *Mossburg* clearly states that the Protestants must demonstrate that the inherent adverse impacts will be greater at the proposed location than would be expected ordinarily if the proposed use were located elsewhere in the relevant zone. Because Mr. Mogilnicki did not study the impacts of golf courses located at other RC 2 or RC 4 sites in Baltimore County, it can not be inferred from Mr. Mogilnicki's testimony that the inherent adverse impacts

created by the proposed golf course at the Hayfields site will be greater at that location than if located elsewhere in the RC 2 or RC 4 zones. Accordingly, Mr. Mogilnicki's testimony fails to qualify as evidence which would show that Hayfields' Petition for Special Exception should be denied.

William Parks Ball

Similarly, the testimony of Dr. William Balls Parks fails to qualify, under the *Mossburg* standard, as evidence which would show that the Hayfields' Petition for Special Exception should be denied. Dr. Ball testified as an expert in environmental engineering, with a specialty in the nature and transport of chemical substances in the subsurface environment. T. 11 (2-9-96). Dr. Ball reviewed the environmental impact statement and the drought water management plan prepared by Ms. Hau and her employer, CEM, Inc. Dr. Ball testified that, in his opinion, some ground contaminants from the golf course will reach the ground water resources. T. 33-34 (2-9-96). Dr. Ball also disputed the thickness of the clay level reported by CEM, Inc., and Ms. Hau T. 42 (2-9-96). When asked whether CEM, Inc.'s impact report represented a satisfactory, credible evaluation of the issues of groundwater contaminant and the water quality impact of the proposed country club on the Hayfields' site, Dr. Ball only testified that he did not believe the study would pass "peer review." T. 66 (2-9-96).

Dr. Ball conceded that he was unaware that the data which DEPRM had requested from the Developer should be provided during the development process, which occurs subsequent to the special exception hearing. T. 70 (2-9-96). Dr. Ball was

also unaware of development plan approval process. When asked whether he believed there was clay on the subject site, Dr. Ball testified that he did think there was clay on the site. T. 73 (2-9-96). Additionally, when asked whether he disagreed with Ms. Hau about the precise location of clay and the depth of the clay at different locations throughout the site, Dr. Ball testified that he "would not say that I disagree with her on the subject." T. 73 (2-9-96). Dr. Ball indicated that he was aware that DEPRM would require at a future point in time, actual soil borings be taken at the specific suggested location of each of the tees and greens. T. 75 (2-9-96).

As for his qualifications, Dr. Ball testified that he had prepared no golf course management plans, had reviewed only 2 golf course management programs, had never implemented a golf course management plan, and had never prepared an environmental impacts report for any golf course. T. 80-81 (2-9-96). Also, Dr. Ball conceded that he had never conducted any studies on the site and was not specifically familiar with various types or levels of chemicals applied to the various types of golf courses.

As Dr. Ball's testimony demonstrates, Dr. Ball never testified concerning the inherent adverse impacts that one would normally associate with golf course development and he never reviewed the requirements of section 502.1 under the *Mossburg* standard. Therefore, like Mr. Mogilnicki's testimony, Dr. Ball's testimony may not be considered evidence that the proposed golf course should not be permitted by special exception.

Thomas Daniels

In addition, Mr. Daniels testified for the Protestants as an expert on agriculture as a business and a land use, on rural planning, on agricultural preservation, and on the impact of the development and development approvals on architectural operations and agricultural preservation efforts. T. 10 (2-9-96). According to Mr. Daniels, residential development and commercial development in the RC 2 zones signals area farmers that change is inevitable and therefore encourages them to discontinue their agricultural use of the land. T. 19 (2-9-96). Mr. Daniels referred to this impact as the "impermanent syndrome." T. 18 (2-9-96).

When asked whether or not the approval of the proposed country club would significantly impact farming operations in the context of the impermanent syndrome, Mr. Daniels testified that constructing the proposed golf course on the Hayfields site would trigger the impermanent syndrome. T. 21-22 (2-9-96). Mr. Daniels conceded, however, that he had never reviewed the site plans for the proposed country club. When asked whether the effects of the proposed golf course development with respect to the impermanent syndrome would be greater "than you would expect generally because of the particular features of this development or its location, Mr. Daniels responded, "Well, certainly, a big factor is the proximity of public sewer and water and also the proximity to the interstate interchange. And as I mentioned, the shopping and employment opportunities east along Shawan Road. So I think it would be, in this general area, would really become a magnet for development." T. 23 (2-9-96). When

asked whether those specific factors would create a greater impermanence syndrome impact of a lesser impact, Mr. Daniels responded "Greater." Mr. Daniels, however, never stated that, with regard to the impermanent syndrome, the inherent adverse impacts of the proposed golf course development would be greater at the proposed location than would ordinarily be expected if located elsewhere in the RC 2 or RC 4 zones in Baltimore County.

Regarding the impermanence syndrome, Mr. Daniels testified that the following six factors need to be studied to determine whether the impermanence syndrome might occur as a result of the proposed development: (1) the age of the farmers; (2) whether the land is owner-occupied or rented; (3) the financial condition of the Landowners/farming operation; (4) personal preference; (5) the type of proposed development; and (6) the degree of public involvement on the infrastructure. T. 50. Notwithstanding the importance of these six factors, Mr. Daniels conceded that he neglected to perform any analysis with regard to the six factors when forming his opinion of whether the impermanent syndrome might impact the Hayfields' site. T. 55. (2-9-96). Moreover, with regard to "Factor # 6," Mr. Daniels conceded that he was unaware of Baltimore County's public infrastructure policies. T. 57(2-9-96).

Mr. Daniels conceded that he did not prepare the map exhibit (Protestant Exhibit No. 20) upon which he relied during his testimony, did not review the tax maps to verify the accuracy of the map exhibit, did not mark the map exhibit, and did not go out into the field to confirm the accuracy of the placement of those marks, which identified

actively farmed land. T. 41 (2-9-96). With regard to the map exhibit, which the Valleys Planning Council prepared, Mr. Daniels did not know which adjacent properties were owner-occupied and which were rented. T. 43 (2-9-96). He also had no personal knowledge as to whether the annotations on the map exhibit were accurate. T. 45 (2-9-96).

Mr. Daniels testified that, in his opinion, a golf course is an open space/recreational use and that a golf course is not an urban use. In fact, Mr. Daniels testified that agriculture was an industrial use. T. 47 (2-9-96). Mr. Daniels, who lives in Lancaster County, Pennsylvania, conceded that the model ordinance in Lancaster County differed from the RC 2 zoning regulation because in Lancaster County, golf courses and country clubs are not permitted in agricultural areas by special exception. T. 49-50 (2-9-96). Overall, Mr. Daniels' testimony demonstrated a relatively limited degree of exposure to golf courses. T. 61 (2-9-96).

Mr. Daniels agreed that the owners of the Hayfields' property could not be required to farm their land. Additionally, Mr. Daniels testified that he agreed with the substance of a DEPRM memorandum (People's Counsel's Exhibit No. 3) dated May 5, 1995 concerning "off-site characteristics." Specifically, Mr. Daniels testified that that he agreed that there are no special or unique agricultural operations immediately adjacent to the site, no special support structures, and no "more intensive" operations such as grain dryers or intensive or sensitive animal operations which represent substantial capital investment. T. 67 (2-9-96). According to Mr. Daniels, the Hayfields property is

not adjacent to "a farm which is used for the central base for wide spread agricultural operations,," T. 67, or farms which are preserved under the Maryland Environmental Trust. T. 68 (2-9-96).

Although Mr. Daniels testified that "the further you get away from the development site, the less pronounced the impermanent syndrome is likely to be[,] " Mr. Daniels never testified that the proposed development at the proposed location would have a greater impact than would ordinarily be expected if located elsewhere in the RC 2 or RC 4 zones. Not only did Mr. Daniels fail to study the "six factors" of the impermanence syndrome in relation to the impacts of the proposed development at the proposed location, he also failed to study whether the proposed development would have less of an impact if located on other sites in the RC 2 or RC 4 zones. Finally, Mr. Daniels failed to identify the universe of expected and inherent adverse impacts normally associated with the proposed use. Accordingly, under the standard set forth in *Mossburg*, Mr. Daniels' testimony fails to qualify as relevant evidence tending to show that Hayfields' Petition for Special Exception should be denied.

Paul Solomon

Paul Solomon testified for the Protestants as an expert in planning with a particular emphasis on agricultural planning and environmental planning. T. 9 (2-15-96). Mr. Solomon testified that the proposed golf course and country club would be detrimental to the health, safety, and general welfare of the locality involved. T. 47 (2-15-96). According to Mr. Solomon, if the 474 acre farm were approved for a country

club use, such approval would destabilize agriculture on the property and the surrounding farms. Mr. Solomon testified that, with regard to 'destabilization,' other farm owners would view agriculture as a zoning designation which is not permanent. T. 48 (2-15-96). Mr. Solomon, however, did not testify that the proposed country club would be more detrimental at the proposed location than it would be if located elsewhere in the RC 2 or RC 4 zones.

Although Hayfields counsel informed the Board and opposing counsel of the correct *Mossburg* standard during Mr. Solomon's testimony, opposing counsel nevertheless directed the questioning without regard to the requirements of section 502.1 or the appropriate application of the *Mossburg* standard. Specifically, Mr. Solomon was asked the following question: "In terms of comparing the Hayfields site to other properties within the RC 2 zone that you are familiar with, how would you compare the impact of putting a golf course at Hayfields versus putting a golf course in general somewhere else in the RC 2 zone?" At that point in the testimony, Hayfields' counsel stated, "It is incumbent upon the opposition to first indicate what are the inherently negative impacts, and then to indicate whether that is greater than you would normally expect elsewhere. It is not a comparison test where Mr. Solomon is allowed to bounce around the county, say it would be better or worse here at this location. That is clearly not what *Schultz v. Pritts*, and *Mossburg*, state." T. 53. (2-15-96).

In response to Hayfields' counsel's observations, the Chairman of the Board stated, "I think it's also not our role to try Mr. Zimmerman's case for him. If he is going

to ask the question in this form, the Board is going to consider the answer and give it the weight we think it deserves." T. 54 (2-15-96). Notwithstanding those revealing comments on the applicable *Mossburg* standard, opposing counsel asked the following question: "In terms of adverse effects on agricultural, Mr. Solomon, how do you compare the proposal of the golf course at Hayfields versus the adverse effects, if any, that one would find by putting a golf course on other properties in the RC 2 zones?" T. 54 (2-15-96).

In response, Mr. Solomon testified:

First, it must be understood when you develop new zoning classifications, it has a specific purpose in mind, in this case to protect the agricultural industry in Baltimore County, or the prime and productive soils, whatever. You go through the mechanics of saying what uses can we allow in this zone which are compatible with this purpose and which use runs a certain risk. And, therefore, instead of a matter of right, we'll make them as a special exception. And then there are many uses which you exclude altogether because they obviously have a serious effect on that purpose. And in this case, we understood and knew that we had soils which were more marginal. We also knew that golf courses were not going to occur like ten a year. And so it was understood that there were areas within the RC 2 zone where golf courses would be allowed by special exception on the marginal areas of RC 2.

T. 54 (2-15-96). Mr. Solomon's response however fails to demonstrate whether the proposed country club complies with the requirements of section 502.1 in the context of the *Mossburg* standard.

Additionally, Mr. Solomon concluded that, in his opinion, there would be better locations for the Hayfields Manor Golf Course there were tens of thousands of acres in the RC 2 zones in Baltimore County where a golf course would have little or no effect.

T. 56 (2-15-96). Mr. Solomon, however, indicated that he could not name any of those better-suited areas because he had not studied the area to determine specifically which sites would be more appropriate for the proposed country club use. T. 105 (2-15-96).

Mr. Solomon testified that the development of a golf course on the proposed site would be inconsistent with section 1A01.1 of the BCZR because a golf course use would not protect the productive agricultural soil types which exist on the property and it would destabilize or might have a negative effect on agriculture in the entire valley. Section 1A01.1 states that the RC 2 zoning classification was established pursuant to legislative findings in order "foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban use."

As Mr. Daniels testified, however, golf course development is not an urban use. T. 47 (2-15-96). Moreover, by permitting golf course and country club development by special exception in the RC 2 zones, the legislature has afforded those land uses a presumption of compatibility. To overcome that presumption, Mr. Solomon had to testify that the proposed country club at the proposed site would have a greater negative impact than it would if it were located elsewhere in the RC 2 or RC 4 zones in Baltimore County. Although he testified that there were other locations in the RC 2 zones where the proposed golf course would have little or no effect, Mr. Solomon also testified that if the site plan is "good" and the contractor is qualified, land used for a golf course could be returned to its prior agricultural use with little or no adverse

consequences. T. 69 (2-15-96). Regarding the Hayfields site, Mr. Solomon never testified that he had studied the site plan for the proposed country club and had determined that the site plan was inadequate or that the contractor was unqualified.

Mr. Solomon also testified that the proposed golf course would be inconsistent with the general purposes listed in section 1A00.2 of the BCZR. Section 1A00.2 provides the general purposes of the Rural Conservation Zones. Mr. Solomon's testimony focused on section 1A00.2.c, which provides that the purpose of an RC zone is to "protect both natural and man-made resources from compromising effects of specific forms of development and densities of development." T. 61 (2-15-96). Mr. Solomon conceded, however, that owners of RC 2 zoned land are not required to farm their land and that the soils of the adjacent properties would not be affected directly by the disturbance of the soil on the Hayfields site. T. 68 (2-15-96). Additionally, Mr. Solomon conceded that country clubs are permitted in the RC 2 zones and that special exception uses are presumed to be compatible with surrounding land uses.

Mr. Solomon testified that he had not visited any country clubs recently, and that although he had some general knowledge of country clubs and golf courses, he did not conduct a study with regard to his testimony on the Hayfields case. T. 88 (2-15-96). Although he testified that, in his opinion, the zoning regulations indicate that a golf course development cannot displace prime and productive soils in the RC 2 zones, Mr. Solomon stated, "There are times when you are allowed to utilize this property by displacing the prime and productive soils." T. 96 (2-15-96). According to Mr. Solomon a

special exception involving a winery would be permitted without major difficulty. T. 96 Accordingly, Mr. Solomon would permit, pursuant to 1A01.2.C.24.g, a “[w]inery, including accessory retail and wholesale distribution of wine produced on-premises,” and “[t]emporary promotional events, such as wine tastings or public gatherings associated with the winery” but he would not permit an open space use such as golf course or country club.

Mr. Solomon testified that the conversion of the subject site to a non-agricultural use would be inconsistent with the intent of purpose of the RC 2 zoning classification. According to Mr. Solomon, the approval of the special exception in this case potentially would reduce the continued viability and maintenance of agricultural use in the area of the Shawan Valley “unless the approval was prudently conditioned.” Mr. Solomon’s opinions on the intent and purposes of the RC 2 zoning classification, however, ignore that the BCZR permits certain non-agricultural uses as of right in the RC 2 zones; *i.e.*, public schools, commercial film production, and transit facilities. Although he testified concerning the appropriateness of the proposed facility on the subject site, Mr. Solomon never testified concerning the requirements of section 502.1 in the context of the standard set forth in *Mossburg*. Mr. Solomon’s testimony, therefore, does not constitute evidence strong and substantial enough to overcome the presumption of permissibility attached to the proposed special exception land use.

Ruth Mascari

Regarding the issues of historic preservation, Ruth Mascari testified on behalf of the Protestants as an expert on historic preservation. T. 122 (2-15-96). Ms. Mascari, the Chairman of the Landmarks Preservation Committee ("LPC"), stated that the LPC is the local designee assigned to review all nation register nominations, and derives its power from the Baltimore County Code, Section 26-530. T. 129-30 (2-15-96). Ms. Mascari informed the Board that, with regard to the Hayfields site, there are seven structures on the final Baltimore County Landmarks List: the main house, the stone wall garden, the manager's house, the cook's house, the carriage shed, and the big brick barn. T. 130 (2-15-96). According to Ms. Mascari, the historical significance of the Hayfields farm is unparalleled in Baltimore County: "In the agricultural end, we have everything from liming the soils to the breeding of cattle and horses. We have the associative history or the Merryman family which is also incredible because the Merryman family in the past and today is a prominent family related to many others, not only in farming but also in the early history of the county as being on the county commission." T. 139 (2-15-96).

When asked whether the proposed golf course development would be detrimental to the health, safety, and general welfare of the locality involved, Ms. Mascari stated that if the proposed development is approved, "an incredible base of history" will be lost to the citizens forever. T. 145 (2-15-96). Ms. Mascari testified that the proposed development was "just totally unacceptable."

Although Ms. Mascari indicated strong opposition to the proposed development, her testimony does not constitute evidence substantial enough to overcome the

presumption of permissibility attached to Hayfields' request for special exception. For example, Ms. Mascari was asked the following question: "With regard to the general welfare of the area in which this particular site is located, do you have an opinion whether the special exception use will have an adverse effect on this particular site as compared to other sites in the locality?" Ms. Mascari responded "If I had to assign my students to a project topic, the worst example of non-historic preservation, this would be it, to put a golf course up." T. 145 (2-15-96). Ms. Mascari then clarified that, in her opinion, the golf course development would be detrimental to the general welfare of the locality. T. 146 (2-15-96). Not only did counsel incorrectly frame the *Mossburg* question, but Ms. Mascari's response does not demonstrate that the proposed country club would have greater adverse effects at the proposed location than it would if located elsewhere in the RC 2 or RC 4 zones in Baltimore County .

Ms. Mascari was also asked: "From the perspective of historical preservation, do you have an opinion as to the extent of the proposed use for Hayfields as compared to other farms that are not listed on the historic district or within the historic district or not listed on the Landmarks Preservation list?" T. 147 (2-15-96). Ms. Mascari responded: "Well, to try to do this to Hayfields is just absolutely abysmal, especially if you compare it to non-historic farms." T. 147 (2-15-96). Ms. Mascari added that the proposed use would be more detrimental to Hayfields than to non-historic farms, and that, as compared to other sites on the Landmarks Preservation List, the proposed development on the Hayfields site "is the worst place that a developer could pick.." T. 147 (2-15-96).

Notwithstanding that the question incorrectly implied that the Hayfields farm is on the historic register, Ms. Mascari's response, that the proposed development would be more detrimental to the Hayfields site than it would if located on other non-historic farm sites, distorts the standard set forth in *Mossburg*. *Mossburg* provides that the detrimental effects of development at a particular site must not have a greater impact on surrounding areas than would be expected ordinarily if located elsewhere in that particular zone. The *Mossburg* test is not concerned with adverse impacts to the location proposed for development.

Ms. Mascari conceded that, before any exterior alterations can occur to historic structures, the owner must submit an exterior alterations plan to the LPC for both review and approval. T. 171 (2-15-96). According to Ms. Mascari, the development plan for the Hayfields site has been referred to the Planning Board for comment on the issue of historic involvement. T. 160-61 (2-15-96). Ms. Mascari also confirmed that the LPC reviewed the ad hoc committee report previously submitted at the committee's January 17, 1996 meeting and that the committee had already agreed on certain recommendations about the impact of the proposed development on the historic structures listed. T. 169-70 (2-15-96). Ms. Mascari conceded that, although the LPC has opposed, in writing, the reclassification petition, the LPC has not taken any written action regarding the special exception request. T. 197 (2-15-96). Ms. Mascari also conceded that the LPC cannot require the owner of the Hayfields property to farm the land. T. 178 (2-15-96). Notably, Ms. Mascari testified that the Hayfields site would not

be appropriate for use as a public school or a transit facility, notwithstanding the fact that those uses are permitted as of right in the RC 2 zones in Baltimore County. T. 178 (2-15-96).

According to Ms. Mascari, "we have just degenerated our history so badly that I don't know why we would by comparison, justify some of the things we need to do." Unfortunately that sentiment is completely irrelevant to the issue of whether the special exception request should be approved. Section 502.1 does not require that, "[b]efore any Special Exception may be granted, it must appear that the use for which the Special Exception is requested [will not have any adverse impact on the historic district in which the proposed site is located or on historic structures located on the proposed site.]" In fact, section 100.5 of the BCZR provides that "[t]he designation of any historic property, site, or historic district on the zoning maps does not change the zoning classification or any requirement with respect to that zoning classification, unless specified otherwise in these regulations." "[P]lans for renovation, reconstruction, alteration or demolition of any structure on the Baltimore County Landmarks Preservation Commission's preliminary or final landmarks list or in a Baltimore County Landmarks Preservation Commission's historic district require special approvals as set forth in Article V. of Title 22, of the Baltimore County Code." BCZR, Section 100.5. Although Ms. Mascari's testimony may be appropriate in the context of the development plan, it has no bearing on the outcome of this Board's determination of Hayfields' request for special exception..

James Woolon

In addition to Ruth Mascari's opinions on historic preservation, James Woolon testified as an architect specializing in historic preservation. Mr. Woolon testified that Hayfields is the most visible site in the district from the approach from Interstate 83 and Shawan Road, which is the most frequently used entrance into the district. T. 18 (1-25-96). Mr. Woolon described the Hayfields site as agricultural, with "broad fields, broad, long vistas that, in the case of Hayfields and in many other sites throughout the district, . . . terminate in and with a historic house or group of historic agricultural structures."

T. 21. According to Mr. Woolon, the proposed country club development would adversely effect the character of the Hayfields site because:

It will no longer be a farm. It will no longer look like a farm,. The historic structures would receive, particularly the house, the principle historical structure on the site would receive a very large addition that appears to at least double the footprint of the house very nearly so. And I believe for the uses proposed for the house, there would be yet more additions that are not shown. T. 25 (1-25-96).

Mr. Woolon also testified that adaptive reuse of the slave quarters would destroy the historical integrity and quality of the site and its buildings. T. 29 (1-25-96).

Regarding the vistas, Mr. Woolon indicated that the proposed development would adversely impact the historical integrity and the quality of the adjacently-situated Worthington Valley district because the primary entrance to Western Run Valley (the Hayfields site) is also the primary entrance to the Worthington Valley. T. 32 (1-25-96). Mr. Woolon, however, did not testify that the adverse impacts of the proposed development on the Hayfields site would have greater impact at that location

than would be expected ordinarily if located elsewhere in the RC 2 or RC 4 zones in Baltimore County. T. 34 (1-25-96).

Although he advocated against the proposed development and the proposed adaptive reuse of the historic structures on the proposed site, Mr. Woolon conceded that he was unaware of the specific structures on the Hayfields site that are listed on the Baltimore County Final Landmarks Preservation list. T. 44 (1-25-96). Mr. Woolon also conceded that the LPC was the proper authority to determine whether the proposed adaptive reuse of a historic structure would be appropriate. T. 45 (1-25-96). Mr. Woolon agreed that, hypothetically, if the LPC were to approve an adaptive reuse proposal, then that adaptive reuse presumably would not alter the structures beyond their historical significance. T. 46 (1-25-96). Additionally, although he stated that the adaptive reuse for the historic structures on the Hayfields site would require extensive and disruptive alterations, Mr. Woolon testified that he was unfamiliar with the floorplans and dimensions of those historic structures. T 46-47(1-25-96).

Mr. Woolon indicated that when reviewing the impacts of development on historic structures, the opinions and comments of the LPC would not influence his opinion on whether the proposed development were appropriate. T. 58 (1-25-96). The Board, however, reminded Mr. Woolon that he had testified previously that, if the LPC approved a proposed adaptive reuse, then the proposed reuse should be considered appropriate. T. 59 (1-25-96). Mr. Woolon further testified that he was basically unfamiliar with the development plan proceedings before the Hearing Officer

regarding the approval of the proposed adaptive reuse of the historic structures on the Hayfields site. Mr. Woolon had only a “general knowledge” that the LPC was in the process of making recommendations to the planning board regarding the historic structures and had no knowledge of the standard of review utilized by the planning board in a referral from the hearing officer in a development plan case regarding historic involvement.. T 68 (1-25-96).

Mr. Woolon conceded that he was not familiar with country clubs and golf courses in existence within the national register district and that he had only been told of the existence of the Caves Valley Country Club. T. 71 (1-25-96). Mr. Woolon testified that he did not know whether the LPC or any other Baltimore County agency could compel the owner of the Hayfields property to farm the property. Mr. Woolon, however, asserted that it would be inappropriate for the Hayfields property to be converted to a public school use or a transportation facility, notwithstanding the fact that those uses are permitted as a matter of right under the BCZR. T. 77-78 (1-25-96).

As the record demonstrates, Mr. Woolon’s testimony does not address the requirements of section 502.1 in the context of the *Mossburg* standard. Although Mr. Woolon’s testimony does indicate the proposed development’s impact on the sites historic structures and the vistas, section 502.1 does not require that the proposed special exception use have no “adverse impacts” on historic structures or vistas. Moreover, Mr. Woolon never explained how the proposed open space golf course

development would interfere with the “open space” vistas which exist currently. Accordingly, Mr. Woolon’s testimony is insufficient to overcome the presumption of permissibility which attaches to special exception uses.

Patrick Ford

Patrick Ford, an expert in planning, zoning, and land use controls, also testified concerning the vistas and views relative to the Hayfields site. According to Mr. Ford, the Master Plan mandates that “special concerns and special regulation should be applied to this particular viewshed from 83 into Baltimore County.” T. 15 (4-16-96). Mr. Ford described the Hayfields site as a unique site; a “gateway” into Baltimore County. Mr. Ford testified that his “viewshed analysis” revealed that the proposed location of the proposed development “is a unique and specifically identified in the master plan as a gateway, and that particular character of that property, there are certain characteristics that should be preserved.” T. 23 (4-16-96).

Mr. Ford explained that his “viewshed analysis” involved demographic analyses of census tracts of the properties in Baltimore County. T. 23 (4-16-96). The analyses purported to show the growth in the vicinity of the Hayfields property that had occurred by census tracts between 1980 and 1990, specifically with regard to housing units and the rate of that growth over that ten year period. T. 26 (4-16-96). Mr. Ford further explained that what his demographic analyses “wanted to do [was] to look at the parcels in the land within this particular gateway to see if there were any one parcel, and in this case census tract, which would be any more unique than the other to

determine how sensitive, number one, the particular tract is and, number two, to what extent can we preserve the character and that uniqueness based on the definition of gateway." T. 32 (4-16-96). Mr. Ford concluded from the disparity in population growths among the various census tract that "looking at the spirit and intent of the master plan and the zoning ordinance, of all the census tracts that are in this corridor . . . that [Hayfields] is still one census tract we have been very effective as a county in preserving its character based on the intent of the zoning ordinance." T. 35 (4-16-96).

Additionally, Mr. Ford testified that, in his opinion, "once establishing the precedent for the uses as proposed on this site, based on the characteristics of the soils and its gateway features, it would set a precedent for pressures for future development in surrounding areas, surrounding parcels for similar and then compatible type uses as opposed to being incompatible." T. 38-39 (4-16-96). Mr. Ford stated that this domino effect caused by the proposed development of the Hayfields site would tend to foster conditions unfavorable to the continued agricultural uses in the area. T. 38 (4-16-96).

Both Mr. Ford's demographic analyses and his testimony are inadequate to overcome the presumption of permissibility associated with a special exception use. Regarding Mr. Ford's demographic census tract analyses, Mr. Ford conceded that he was unaware that there is a much larger preponderance of RC 5 zoning in the census tracts on the east side of I-83, and that he could not remember the underlying zoning classifications of the particular census tracts which he studied. T. 68 (4-16-96). Mr. Ford also conceded that he did not study all of the census tracts in the area and that,

when he determined that the Hayfields site is comparatively “slow-growing,” he did not consider the differences in zoning classifications; *i.e.*, Mr. Ford completely ignored that lots in RC 5 zones have a maximum gross residential density of 0.667 dwellings per acre (1A04.3.B.1) while lots in RC 2 zones have may only be subdivided at a rate of 1 lot for each 50 acres of gross area and may only contain one dwelling per lot (1A01.3.B.1 & 1A01.3.B.4). Accordingly, Mr. Ford’s “demographic analyses” cannot constitute evidence that Hayfields special exception request should be denied.

Regarding Mr. Ford’s testimony that the development of the Hayfields site would negatively impact agricultural uses on surrounding sites, Mr. Ford never testified that the negative impacts associated with the proposed development on the subject site would be greater than ordinarily expected if located elsewhere in the RC 2 and RC 4 zones. Therefore, Mr. Ford’s testimony that the proposed development would create a “domino effect” or “impermanence syndrome effect,” does not constitute evidence that the petition for special exception should be denied. Furthermore, Mr. Ford’s testimony that the proposed country club use would be inconsistent with the master plan because of its impact on the “gateway” and on agriculture ignores that the master plan is only a development guide. Mr. Ford, in fact, conceded that none of the requirements in section 502.1 refer to the master plan. T. 75 (4-16-96). Moreover, Mr. Ford never testified concerning the requirements of section 502.1 in the context of the *Mossburg* standard, nor did he research the productivity of the soils on the Hayfields site and the surrounding properties. Mr. Ford’s testimony

concerning soil productivity was based on prior testimony as to the productivity of the soils on the Hayfields site. T. 75-77(4-16-96). In addition, Mr. Ford admitted that, regarding the impact of country club uses in areas adjacent to the Hayfields site, he only analyzed one other golf course: River Downs in Westminster, Carroll County. T. 95 (4-16-96). Mr. Ford's concessions that he did not study the impact of the proposed development on surrounding areas confirms that he did not apply properly the *Mossburg* standard to the special exception issue in the instant case.

Mr. Ford was unaware that the Baltimore County master plan identifies the Hayfields site as containing agriculture and open space uses. Additionally, Mr. Ford testified that he "never really gave any thought to whether [the proposed country club] would be considered an open space use or not," T. 85-86, and he indicated that he did not have an opinion as to whether the proposed country club would be an urban or rural use. T. 86 (4-16-96). As Mr. Daniels testified, however, the proposed country club use is an open space use and is not an urban use. T. 47 (4-16-96).

Mr. Ford correctly testified that special exception uses are presumed to be desirable and necessary T. 98 (4-16-96). Mr. Ford's testimony that special exceptions must be proven not to be "detrimental to public health, safety and general welfare," however, demonstrates the misunderstanding of the requirements of section 502.1. that pervaded the Protestants' case before the Board. As *Mossburg* clearly states, the test is not whether the special exception use will be detrimental to the health, safety, or general welfare of the locality involved, but whether the special exception will be more

detrimental to the health, safety, or general welfare of the locality involved at the proposed site than would be expected ordinarily if located elsewhere in the locality involved.

Analysis of Testimony of Protestants' Witnesses in Light of *Mossburg*

Regarding Hayfields' Petition for Special Exceptions, *Mossburg* clearly states that, in order for the Protestants to prevail, the Protestants must show that the special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. Although the Protestants' witnesses testified concerning the detrimental impacts of the proposed golf course, none of the witnesses testified with regard to the requirements set forth in section 502.1 in the context of the *Mossburg* standard. Moreover, none of the witnesses identified the universe of potential adverse impacts usually associated with a country club use.

The Protestants' witnesses did testify concerning the unique qualities of the Hayfields' site and the unique effects that the proposed golf course would have on the Hayfields site and the surrounding site. None of the witnesses, however, testified that those unique effects "would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone." *People's Counsel v. Mangione*, 85 Md. App. 738, 750. Stated differently, the Protestants' witnesses neglected to testify

how the potential adverse effects of the proposed country club on surrounding areas would be greater at this site than they would generally regardless of their location in the RC 2 and RC 4 zones.

Protestants identified certain potential impacts resulting from the proposed country club use which they testified would uniquely impact the proposed site. The Protestants also testified concerning the unique qualities of the Hayfields site itself. That testimony, however, is irrelevant to a determination of whether the special exception request should be granted. In particular, the witnesses testified concerning the unique soils on the subject site, the presence of the Cockeysville Marble, the Historic Structures, the Gateway and the vistas, and the impermanence syndrome. The witnesses, however, neglected to indicate how those unique qualities created, with regard to the requirements set forth in section 502.1, unique impacts which were above and beyond the impacts associated with the use regardless of its location within the RC 2 or RC 4 zones. The unique nature of the site does not imply that the potential adverse impacts of the proposed use on surrounding areas would be greater in kind and degree than if located elsewhere in the RC 2 or RC 4 zones.

Although the Cockeysville Marble underlies the subject site, the witnesses did not testify that the potential adverse impacts associated with contamination would be greater on surrounding areas if located at the subject site than they would be if the proposed use were located elsewhere in the RC 2 or RC 4 zone. Similarly, with regard to the prime and productive soils and the impermanence syndrome, none of the

witnesses testified that those adverse impacts would be greater on surrounding areas if the proposed use were located at the subject site than they would be if the proposed use were located elsewhere in the RC 2 or RC 4 zones. Additionally, as stated above in the discussion of the testimony of Ruth Mascari and James Woolon, the impact on the historic district is not relevant to the issue of whether the proposed special exception use should be granted because section 502.1 does not concern impacts on historic structures or historic districts. Also, regarding the vistas of the subject site, Mr. Daniels, the Protestants' witness, testified that the golf course use is not an urban use, but rather, an open space use. Accordingly, as George Gavrelis testified, an open space use should have little or no impact on the vistas or "gateway" nature of the Hayfields site. T. 144-45 (1-24-96).

Application for Variances

In the instant case, Hayfields, Inc., filed petitions for variances from setback requirements from existing structures and petitions for variances from height regulations. Hayfields noted those requested variances on the special exception site plan, showing the existing uses and the heights of those structures, and the proposed uses and the heights of those structures. At the time the petitions for variances were filed, Hayfields was unsure whether the LPC would approve the adaptive reuse of the historic structures or whether the development plan, filed and referred to the Planning Board by the Hearing Officer for a determination of the impacts on the listed historic structures, would be approved without conditions. Hayfields filed the petition for

special exception to resolve the land use question of whether the proposed country club was permitted by special exception on the subject site. As of today, neither the the Planning Board nor the hearing Officer have not approved the development plan.

Pursuant to section 26-206.1, “[i]f the development plan requires a special exception, variance special hearing, or interpretation of the zoning regulations, the applicant may combine the public hearing required by section 26-127 and by the county zoning regulations with the public hearing held by the hearing officer on the plan.” In the instant case, the development plan was referred to the Planning Board because of its historic involvement. Section 26-206.1 only permits, it does not require simultaneous filings. Hayfields filed its petition for special exception prior to filing the petitions for variances and the development plan. The development plan approval as it relates to the historic structures and the variances relative to the maintenance of the historic structures, exists separately from the issues regarding the petition for special exception.

In *Umerley v. People’s Counsel for Baltimore County*, No. 802, September Term, 1995 (filed March 1, 1996), the Appellants, who operated a trucking facility in violation of the zoning regulations, filed petitions for variances and for a special request to legalize the use of their land. The Appellants originally operated their trucking facility legally; however, in 1976, stricter zoning regulations were enacted to minimize the adverse impacts of trucking facilities on environmentally sensitive and residential areas. The new legislation permitted existing trucking facilities to apply for exemptions from the new requirements; however, the Appellants never availed themselves of those

exemptions. The Court of Special Appeals affirmed the Circuit Court's decision to deny the variances because the Appellants' property did not have any unique site constraints. The Court of Special Appeals also affirmed the Circuit Court's decision to deny the special exception on the grounds that the Appellants failed to show that all the condition established by the Baltimore County Council for operation of a Class II trucking facility had been met. *Umerley*, slip op. at 14.

In *Umerley*, the Court did not hold that, in order for the Board to grant a special exception, the Petitioner first must obtain all necessary variances. Rather, the Court in *Umerley*, recognized that the Appellants needed the variance approvals *in order* to qualify as a special exception use. In the instant case, the proposed development constitutes a use permitted by special exception in an RC 2 zone (a country club) irrespective of whether the variances are granted or denied. Accordingly the *Umerley* case does not affect the Board's ability to grant the special exception request.

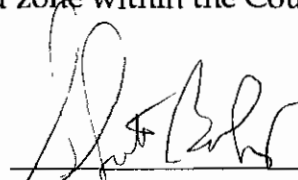
CONCLUSION

"A special exception use is part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid." *Rockville Fuel and Feed Co. v. Board of Appeals*, 257 Md. 183, (1970). Accordingly, the Protestants logically bear the heavier burden of proving that the proposed special exception use has an adverse impact on neighboring properties above and beyond what the adverse impact would be if the special exception use were established, where zoning permits, elsewhere in the County. In the instant case, at the *de novo* hearing

before the Board, Hayfields, which has the benefit of the legislative presumption of compatibility and validity, demonstrated that the proposed country club constitutes one of the “enumerated uses which the legislature has determined to be permissible absent any fact or circumstances negating the presumption.” *Anderson*, 23 Md. App. at 617. The Protestants, therefore, were required to show conclusively that the proposed country club failed to meet the requirements of § 502.1 because the adverse impact which the country club would have on the properties which neighbor the subject site would be above and beyond the adverse impact which the country club would have if it were developed at another permitted location within the County. A review of the record, however, reveals that none of the Protestants’ witnesses ever testified according to the applicable standard enunciated in *Schultz v. Pritts*, *supra*, and *Mossburg*, *supra*.

As owner of the subject property, Hayfields may utilize the property in any lawful manner. Hayfields is under no obligation to continue farming operations on the site. “[The proposed site] may be developed with dwellings or other uses permitted as of right at the pleasure of [Hayfields], assuming that the development regulations and other codes which regulate same are complied with.” Memorandum Opinion and Order at 8. If, after the *de novo* hearing, Hayfields demonstrates that the proposed country club use meets the requirements of § 1A01.2.C and 1A03.3.B, then, in light of *Mossburg*, the Board must grant the Petition for Special Exception. The Board may only deny the Petition for Special Exception if the Protestants present sufficient evidence demonstrating that, although the proposed use meets the statutory requirements of

§§ 1A01.2.C and 1A03.3.B, the proposed use violates § 502.1 because it will have an adverse impact on neighboring communities greater than the adverse impact it would have if it were established in another permitted zone within the County.

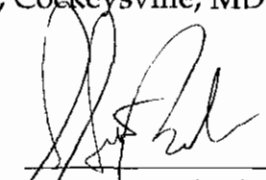


G. Scott Barhight
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Attorney for Petitioner,
Hayfields, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 1995, a copy of the
Petitioner's Hearing Memorandum in Support of Zoning Commissioner's Grant of
Petition for Special Exception was mailed first class, postage prepaid to: G. Macy
Nelson, Anderson, Coe & King, Suite 2000, 201 N. Charles Street, Baltimore, MD 21202;
Peter Max Zimmerman, People's Counsel for Baltimore County, 400 Washington Ave.,
towson MD, 21204 ; and Kenneth T. Bosley, Box 334, Cockeysville, MD 21030.



G. Scott Barhight

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
301 Western Run Road, c/l Shawan		
Road, 1780' NWly of c/l I-83	*	COUNTY BOARD OF APPEALS
8th Election District,		
3rd Councilmanic	*	OF BALTIMORE COUNTY
TOLL HOUSE, INC. (aka Hayfields)	*	CASE NO.: 95-308-X
Petitioners		
* * * * *		

PEOPLE'S COUNSEL'S MEMORANDUM ON
THE ISSUE OF COUNTRY CLUB

BCZR Section 101 defines country club as:

"A 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A). [Bill No. 62, 1978.]"

The reference to Section 406A is to the use regulations on tennis facilities.

The question presented is the meaning or scope of "appropriate facilities" within the statutory definition. To address this issue, we have researched the Maryland and national case law relevant to clubs of various types, including country clubs. As a result, we provide the attached source materials:

1. Montgomery County v. Merlands Club, Inc., 96 A.2d 261 (1953) - see noted passages at 263-264, 266, special exception for country club, scope of club use defined - membership, nonprofit.
2. City of Baltimore v. Poe, 168 A.2d 193 (1961) - scope of club use in residential district - membership, nonprofit.
3. Williams, American Land Planning Law, Sec. 81.29 to 81.34.
4. Anderson, American Law of Zoning 3d, Sec. 12.50 to 12.53.
5. Annotation, What is a "Club" or "Clubhouse" within provisions of Zoning Regulations? 52 ALR.2d 1098.

A fair reading of the source materials reveals that the established meaning or scope of "appropriate" club use in residential areas extends only

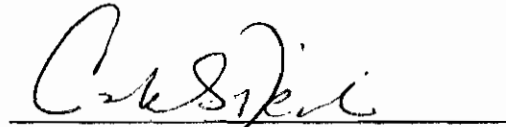
to membership clubs not run for profit. BCZR Sec. 406A is consistent with this understanding.

We hope these materials assist the Board in its review.



PETER MAX ZIMMERMAN

People's Counsel for Baltimore County



CAROLE S. DEMILIO

Deputy People's Counsel

Room 47, Courthouse

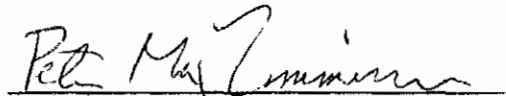
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of ^{February} January, 1996, a copy of the foregoing People's Counsel's Memorandum on the Issue of Country Club was ^{hand-delivered} mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, and to George Nilson, Esquire, Piper and Marbury, 36 S. Charles Street, Suite 1100, Baltimore, MD 21201.



PETER MAX ZIMMERMAN

Contractor's Equipment Storage Yard: The use of any space, whether inside or outside a building for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage, or landscaping equipment and associated materials. [Bill No. 149, 1987.]

Contractor's Office: A room or group of rooms for conducting the business affairs of a building trade. [Bill No. 149, 1987.]

Contractor's Shops: Establishments for trades involved in the installation and servicing of items whose use is related to the construction, improvement or maintenance of buildings or landscaping of grounds. [Bill No. 149, 1987.]

Controlled-Environment Structure: A temporary or permanent structure enclosed by glass or plastic, utilized exclusively to cultivate plants, to protect plants from the elements, or to produce plants out of season. (Bill No. 41, 1992.)

Convenience Store: A retail establishment which primarily sells refrigerated products, household items, carry-out food products or prepackaged frozen, chilled, or sealed foods and meals, that may be heated by the customer at the premises, but are generally eaten off-site. A convenience store does not exceed a gross floor area of 5,000 square feet and is usually open for at least 12 hours in a 24 hour period. (Bill No. 86, 1994.)

Country Club: A 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A). [Bill No. 62, 1978.]

Country Inn: A bed and breakfast inn that also contains a full-service restaurant which also serves the general public. A country inn is allowable only in a building originally constructed as a one-family dwelling pursuant to the provisions and procedures prescribed in Section 402E of these regulations. [Bill No. 113, 1988.]

County Trucking-Facilities-Development Officials: A committee consisting of the county administrative officer, as chairman; the directors of planning, public works, permits and licenses, and traffic engineering; and the director of the industrial development commission; or their respective designees. [Bill No. 18, 1976.]

["Density, Gross..."] {Deleted by Bill No. 106, 1963.]

["Density, Gross Residential..."] {Deleted by Bill No. 100, 1970.}

["Density, Net..."] {Deleted by Bill No. 100, 1970.}

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WILLIAMS

American Planning Law Land Use And The Police Power

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Volume 3A

(1985 Revision of Volume 3)

Cite as: Williams Am Land Plan §—



Callaghan

CALLAGHAN & COMPANY/3201 Old Glenview Road/Wilmette, Illinois 60091

IN THE MATTER OF SPECIAL
EXCEPTION FOR HAYFIELDS, INC.

* BEFORE THE

* BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

* Case No: 95-308-X

* * * * *

MEMORANDUM OF LAW RE "COUNTRY CLUB"

Hayfields, Inc., by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, L.L.P., hereby files its Memorandum of Law in support of its Petition for Special Exception, and states:

The Petitioner, Hayfields, Inc., filed a Petition for Special Exception to permit a country club on a tract of R.C. 2- and R.C.4-zoned land located in the Northwest Quadrant of I-83 and Shawan Road. Specifically, the Petitioner requested approval for development of a country club with a semi-private eighteen-hole golf course, clubhouse, practice facility, tennis courts, swimming pool, and other appropriate facilities. At the hearing before the Board of Appeals, the Protestants argued that the Board should deny the Petition for Special Exception because the proposed Development did not meet the definition of "country club" as provided in § 101 of the Baltimore County Zoning Regulations ("BCZR"). According to Protestants, the proposed country club fails to qualify as a use permitted by Special Exception pursuant to the BCZR requirements because it will be operated as a semi-private facility. Protestants maintain that, by

definition, the term "country club" excludes those clubs which permit non-members to utilize their facilities and that total "exclusivity" of all the facilities is required by the BCZR. The Petitioners assert that this position is not mandated by the BCZR, is contrary to actual industry practices, and is inconsistent with common sense.

Issue

The issue presented in the above-referenced matter is as follows: Whether the term "country club" as used in the BCZR, by definition, include *semi-private* clubs?

Discussion

" The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Oaks v. Connors*, 339 Md. 24, 35 (1995). "When the meaning of a statute . . . is at issue, the court's inquiry begins with the words of the statute, and ordinarily, also ends there." *Tidewater/Havre De Grace, Inc. v. Mayor and City Council*, 337 Md. 338, 344 (1995). Similarly, when the meaning of a BCZR provision is at issue, the Board's inquiry should begin with the words of the statute. "The first step in determining legislative intent is to look at the statutory language and '[i]f the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, [the courts] will give effect to the statute as written.'" *Oaks*, 339 Md. at 35 (quoting *Jones v. State*, 336 Md. 255, 261 (1994)). Where a statute is susceptible of more than one meaning and therefore contains an ambiguity, however, "courts consider not only the literal or usual meaning of the words, but their meaning and

effect in light of the setting, the objectives, and purpose of the enactment." *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 75 (1986). When ambiguity exists, the court "in seeking to ascertain legislative intent, may consider the consequences resulting from one meaning rather than another, and **adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.**" *Id.* (Emphasis added). "Moreover, no portion of the statutory scheme should be read 'so as to render the other, or any portion of it, meaningless, surplusage, superfluous or nugatory.'" Application of these rules of statutory construction and interpretation to the pertinent sections of the Baltimore County Zoning Regulations demonstrates that the term "country club" cannot, by definition, exclude semi-private clubs.

In 1978, the Baltimore County Council enacted Bill No. 62-78 which, among other things, added the definition of "country club" to "Section 101, Section 406A and subsections 406A.1, 406A .2, 406A.3, 406A.4, 406A.5, and 406A.6 thereto." Pursuant to §101 of the BCZR, the term "country club" means a **"9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A)."** (Section 406A.2 governs "Tennis Facilities" established in conjunction with eighteen-hole golf courses). Both country clubs and golf courses are permitted by special exception in R.C.2 and R.C. 4 zones and nowhere in the BCZR does the County Council specify that a country club facility must be private. The BCZR only requires that to constitute a land use permitted by special exception, a country club have a 9-hole or 18-hole golf course and a clubhouse.

When construing the meaning of the words of a statute," the reviewing authority may consider a related statute that fairly bears on the fundamental issue of legislative purpose or goal." *Mayor and City Council of Baltimore v. Cassidy*, 338 Md. 88, 94 (1995). Under §§ 8-212 thru -218 of the Tax-Property article of the Annotated Code of Maryland, qualified country clubs may receive favorable assessment of their lands for property tax purposes. For the purposes of Title 8, subtitle 2, a country club is eligible to receive a beneficial tax assessment only if it "(1) has at least 100 members, who pay dues averaging \$50 or more annually for each member; (2) restricts use of its facilities primarily to members, families, and guests; and (3) is located on at least 50 acres of land, on which is maintained: (i) a regular or championship golf course of at least 9 holes; and (ii) a clubhouse." Md. Tax-Prop. Code Ann., § 8-212 (1994 Repl. Vol.) By qualifying the term country club, this statute contemplates the existence of different types of country clubs and differentiates among those types for the purposes of use assessment; only country clubs that meet § 8-212 standards may benefit from the use assessment set forth in § 8-213 thru -218.

Because no portion of the statutory scheme should be interpreted in such a manner as to render that portion surplusage, the term country club cannot, by definition, exclude private and semi-private facilities. To qualify for the beneficial tax assessment, a country club must have, *inter alia*, a policy restricting the use of its facilities primarily to members, families, and guests. If, by definition, the term "country club" meant a private facility, then the General Assembly would not have felt compelled to define, in § 8-212, the type of

country club which may benefit from the tax assessment method set forth in §§ 8-213 thru -218. The restrictions set forth in § 8-212 necessarily imply that there are country clubs (1) which have less than 100 members, (2) who pay dues averaging \$50 or less annually for each member, **(3) which do not restrict the use of their facilities primarily to members, families, and guests,** and/or (4) which are not located on at least 50 acres of land, on which are maintained a regular or championship golf course of at least nine holes and a clubhouse.

The purpose of "zoning" in Baltimore County is to promote "the health, security, comfort, convenience, prosperity, orderly development, and other aspects of the general welfare of the community[;] zones are intended to provide broad regulation of the use and manner of use of land, in accordance with comprehensive plans." BCZR, §100.1(A)(1). In *Mayor and City Council of Baltimore v. Poe*, 224 Md. 428 (1960), the Court of Appeals of Maryland recognized the well-settled law in Maryland that the "zoning ordinance is concerned with the *use* of the property and not with the *ownership* thereof nor with the *purpose of the owners or occupants*. *Id.* at 433 (emphasis added). In *Poe*, the Protestants alleged that a fraternity house near the Johns Hopkins University Campus was a "rooming house" existing in violation of the zoning ordinance. In order to determine whether the fraternity house was operating as a legally permitted use, the Court examined whether the dominant use of the property, or the chief activity carried on thereon, was such as was customarily carried on in a room and board business. The Court determined that the "room and board" component of the fraternity house's

operation was incidental to its "social club" component. Accordingly, the Court concluded that the fraternity house was social club use permitted by special exception.

In the instant case, George Gavrelis, an expert in Land Use Planning, and Planning and Zoning, testified before the Zoning Commissioner that the proposed country club, as defined in the regulations, and the functions and activities as described by the developer, matched the definition of country club. According to Mr. Gavrelis, the facility's components, which include, among other things, a clubhouse banquet or functions facility, a pro shop, maintenance facility, golf cart storage, and driving range, are consistent with components of a typical country club. Mr. Gavrelis testified further that proposed development of the subject site as a country club would not create added traffic congestion, would not create a potential hazard from fire, panic, or other dangers, would not cause overcrowding of the land or undue concentration of the population, and would not interfere with adequate light. Mr. Gavrelis also indicated that the special exception for the proposed country club would not have a more adverse effect on the surrounding neighborhood than a similar country club located elsewhere in an RC2/RC4 zone.

Additionally, Brian Ault testified at length regarding facilities that are customarily found in country clubs in the industry. Mr. Ault's testimony demonstrates that the industry contains a wide variety of country clubs, with a vast array of appropriate facilities that serve members, guests, and the general public and which range from complete exclusion of the public to a total welcoming of the public. According to Mr.

Ault, semi-private country clubs, such as the proposed Hayfield's Country Club, actually represent the industry trend. Mr. Ault's testimony referred to country clubs in Baltimore County, throughout Maryland, and throughout the nation.

Wes Guckert, an expert in traffic engineering, also testified that the proposed country club would not have an adverse impact on the health, welfare, and safety of the general locale. Mr. Guckert stated that the traffic generation near the proposed site was relatively minimal and that, from his traffic engineering perspective, there were no identified traffic problems existing in that area as defined by Baltimore County rules and regulations. Mr. Guckert also testified that although the proposed banquet facility would be open to the public, the resulting traffic increase would be confined primarily to weekends.

Stephanie Hau addressed that the potential environmental impacts of the proposed country club and opined that there would be no significant adverse environmental impacts as a result of the country club. There is no evidence in the record that the proposed country club will have any greater impact on the vicinity as a semi-private operation than would ordinarily be expected of any other country club. Accordingly, in a land use context, the record contains substantial evidence that the proposed country club, regardless of the availability of its facilities to non-members, would operate within the acceptable guidelines for a country club use permitted by special exception pursuant to §§ 1A01.2.C.10, 1A03.3.B.7, and 502.1.

Additionally, two recent decisions from the Zoning Commission demonstrate that, the term "country club," as used in the BCZR, does not exclude semi-private facilities. In an October 6, 1995 decision, the Zoning Commissioner granted the Owings Mills Golf Community's Special Exception Petition to permit a golf course and associated club house, swimming pool, two (2) tennis courts, a community building, together with permitted accessory uses in accordance with BCZR §§ 1B01.1.C.6. (Case No: II-501 and 96-53-SPHXA). Just as §§ 1A01.2.C.10 and 1A03.3.B.7 permit golf courses and country clubs by special exception in R.C. 2 and R.C.4 zones, § 1B01.1.C.6 permits golf courses and country club by special exception in D.R. zones. If the term "country club" embraced only private facilities, then the country club development proposed in the Owings Mills Golf Community matter could not have been approved pursuant to § 1B01.1.C.6, the Special Exception equivalent of §§ 1A01.2.C.10 and 1A03.3.B.7, because the Owings Mills Country Club permits non-members to use its facilities.

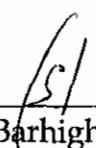
Furthermore, in the matter of the Caves Valley Country Club, the Zoning Commissioner's decision conditioned approval of the Special Exception Petition upon the club's operation as a **private facility**. This condition clearly implies that the term "country club" incorporates semi-private and public facilities. If the term country club excluded semi-private clubs or public facilities, then conditioning approval of the Caves Valley Special Exception Petition upon operation as a completely exclusive facility would have been redundant, and without meaning. Certainly, the Zoning Commissioner would not have imposed a condition that was without meaning or purpose

Conclusion

The BCZR adopted the term country club with little qualification; the BCZR defines country club as requiring a golf course and a clubhouse. In the absence of an exclusivity requirement, in light of the policies and purposes underlying the BCZR, and in light of the recent decision to grant the special exception for the Owings Mills Golf Community's public golf and clubhouse facilities, the Legislature intended that, in the context of land use, the term country club embrace private, semi-private, *and* public clubs. Additionally, the General Assembly recognized the broad scope of the term country club when it determined that only certain types of country club facilities qualified for special land use assessment under §§ 8-213 thru -218. The Protestants are manipulating the term "country club" because, simply put, they do not want anything other than an exclusive club. The Petitioners, on the other hand, propose to develop a semi-private country club that will serve the residential needs of a diverse group of members and the public.

WHEREFORE, the Petitioner respectfully requests that, pursuant to §§ 1A01.2.C.10 and 1A03.3.B.7, the Board

1. Grant the Petition for Special Exception to permit the proposed country club in the above-referenced matter; and
2. Such other and further relief as this Board may deem appropriate.



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(410) 832-2000

Attorney for Hayfields, Inc.

IN THE MATTER OF	*	BEFORE
THE APPLICATION OF		
TOLL HOUSE, INC. (HAYFIELDS, INC.)	*	COUNTY BOARD OF APPEALS
NORTHWEST SIDE WESTERN RUN ROAD		
AND SHAWAN ROAD AT ITS INTERSECTION	*	OF
WITH I-83 (301 WESTERN RUN ROAD)		
8TH ELECTION DISTRICT	*	BALTIMORE COUNTY
3RD COUNCILMANIC DISTRICT		
	*	CASE NO. 95-308-X

PROTESTANTS' MEMORANDUM IN SUPPORT OF THEIR PETITION TO DISMISS THE
SPECIAL EXCEPTION REQUEST FOR A COUNTRY CLUB

I. INTRODUCTION - RELIEF REQUESTED

Protestants file this Memorandum in Support of their previously-made oral Motion to Dismiss the Petition herein on the grounds that the facility for which the Petitioner now seeks special exception approval differs materially from the facility described in its original petition for special exception, and more importantly does not qualify as a "country club" as that term is used in the Baltimore County Zoning Regulations. In considering this Motion, Protestants submit that the Board should take the proposed facility "as it finds it." By that we mean that if the Board agrees that the facility envisioned and described to the Board by Petitioner does not fit the definition of the term "country club" (or is materially different from the one proposed in the original petition), then it should deny the request in its entirety rather than attempt to modify, condition or limit the facility proposed so as to attempt to qualify it as a country club (or conform it to the original proposal). If simply one aspect or one particular feature of the proposed facility were beyond the bounds of the term "country club" (or beyond the original proposal), then the elimination of that particular feature by condition might be an appropriate form of relief. However, in this case the inconsistencies with the term "country club" are numerous and pervasive, as are the deviations from the original proposal. The current version of the Hayfields

facility has clearly been planned by the Petitioner as an integrated whole, and is proposed by Petitioner as a series of related public use facilities. If the Petitioner wants to plan and propose a members (and their guests) only club facility, then it should do so in a new Petition. That facility might and presumably would differ in significant respects from the public use facility now proposed, and the Board should not be put to the test of guessing what elements Petitioner might chose to include in such a private use membership facility.

In the event that the Board agrees with Protestants that the proposed project exceeds the term "country club" (and/or varies materially from the original petition) but disagrees that the remedy should be dismissal, then we urge the Board to clearly and unequivocally spell out in its Order those features of the proposed facility which may not be permitted as a part of a country club exception. In this regard, the Order should address the issues raised by the driving range (and its night lighting), the restaurant or clubhouse eating facility (and its associated cocktail lounge), the banquet facility, the overnight accommodations, the question of members (and their guests) use versus public use, the issue of whether a for-profit facility (as this one) can qualify as a country club, and any other issues raised by the various elements of the Petitioners' proposal. Such relief would require the Board to address each of these elements more specifically than would be necessary if the Board simply agrees that, for the various reasons discussed herein, the proposed facility exceeds the scope of the defined term and the Petition should be dismissed.

Finally, if the Board concludes that the term "country club" should be given a definition sufficiently expansive to include the Hayfields facility, it should nonetheless recognize that such a facility is not the norm and that, in determining whether the § 502 Special Exception standards have been satisfied by Petitioner, this aggressively commercial and public facility will have adverse impacts greater than a "normal" or generic private membership country club would be expected to have on this or any other site. This special exception analysis would be comparable to an evaluation of an unusually large or busy facility of any kind.

II. THE PROPOSED FACILITY

A. As Described by the Plans accompanying the original Petition to the Zoning Commissioner, and the notes found on those Plans.

The facility now before the Board can best be described as a fast growing and ever changing chameleon. In the original Petition, it was simply described as a proposed "country club". In the Plans which accompanied both the original Petition and the Petition as it is presented before this Board, the nature of the facility was described in considerably greater detail, but those descriptions differ in certain material respects from the project as described in testimony before the Board. Touching only on the elements of the proposed facility which are germane to the "country club issue", the following items appear on the notes to sheet 1 of 2 of the Petitioner's accompanying plans:

1. The proposed principal uses include "golf practice facilities", which are described in the parking chart as "practice range/green", with no indication that any of these facilities will be lit for nighttime use or available to the general public (See note 5g).

2. Under note 8 dealing with the "clubhouse facility", the applicant says that it "will maintain a clubhouse facility to serve the golfing and related needs of the membership." That note, being applicable to all of the clubhouse facility as thereafter itemized, plainly indicates that the facility is contemplated as a membership facility. Nothing whatsoever is said about public use, and indeed notes describing several of the particular facilities clearly indicate that they are to be private club facilities.

3. Note 8.a. indicates that the clubhouse facility will include "private dining room(s) and support kitchen facilities." This is consistent with the terminology used on the parking chart that the facility will include "dining (non-class D)." The reference to class D is a reference to the class D liquor license, that would ordinarily be issued for restaurants, as distinct from the class C liquor license, which is issued to private clubs in Baltimore County. The note gives no indication that a public restaurant is contemplated.

4. Note 8.b. calls for a "cocktail lounge (private club liquor license required)." Once again, the reference to a "private club liquor license" clearly indicates that the facility is to be operated as a "members (and their guests) only" facility, and not as a public cocktail lounge.

5. Note 8.c. indicates that the clubhouse facility will include a "banquet facility capable of handling approximately two functions, each accommodating up to 200 people," (the original note indicated 300 people). Testimony before the Zoning Commissioner and this Board indicated that that note was in error, and that the banquet facility is only planned to accommodate a single function, accommodating up to 200 people. The parking chart shown on the original and current plan indicates that the banquet facility will be "non class D", again indicating a class C private club liquor license rather than a class D public facility license.

6. Note 8.d. indicates that "overnight accommodations may be provided for in existing structures currently leased as residential units." While the particular buildings that the applicant had in mind were not specified in the notes, and while no numerical limitation was proposed for the overnight accommodations, testimony before the Board establishes that the buildings in question would include portions of the existing mansion house as well as retained buildings 2 and 6. While the introductory portion of Note 8 indicates that all of the component parts of the clubhouse facility will be designed to serve the "needs of the membership," Petitioner has told this Board that the overnight accommodations will be available for use by the general public and will not be limited to members.

7. Under Note 9 covering accessory uses, the plan indicates that residences for as many as four employees of the club are planned in buildings 2 and 6 as allegedly "customary accessory uses within the country club's special exception" and that these residences are not to be included for purposes of RC-2 density calculations.

8. Underscoring the clear thrust of the facility as described in the plans accompanying the original Petition as a private use or membership facility is Note 17 - Parking: "off street parking shall be provided for employees and members of this facility." There is no

mention whatsoever made of parking for the general public, who comprise a substantial percentage of the people who will make use of the facility as now proposed.

The clear thrust of the proposed facility as described on the original plans and their notes was as a private membership facility planned "to serve the golfing and related needs of the membership." This is quite different from the facility described in testimony before the Board.

The Zoning Commissioner's Opinion reflected an awareness that the golf course and clubhouse facilities would be open to the public (at p. 5). The Commissioner also briefly addressed and rejected an argument that a public banquet facility was not permitted as an "appropriate accessory use to the country club" (at p. 33).

B. Proposed Facility As Described in Testimony

Principally through the testimony of Mr. John Mangione, the Petitioner/Applicant now states that the planned facility for which approval is sought includes the following characteristics or elements:

1. Mr. Mangione testified on several occasions that the overall facility is planned to be operated "basically as a public facility" or as a "public use facility". Mr. Mangione indicated that while Hayfields contemplates having "a small core membership" which at full growth might approximate 200, virtually all facilities (with the possible exception of a members dining section and a few rooms in the clubhouse) will be fully and freely available for public use by anyone who wishes to use them.

2. The "golf practice facilities" are now described as including a driving range with space for 30 persons at a time, to be lit for evening and nighttime use. While this facility will be available for those who are on the property to use the golf course, it will also be available for members of the general public simply coming to the property in order to use the driving range, both during the hours of operation of the golf course and on into the evening.

3. The proposed "private dining room(s)" and "cocktail lounge (private club liquor license required)" have now become a public restaurant and cocktail lounge facility to be located

in the mansion house with food service seating for approximately 80 persons, with some unspecified portion of that facility to be set aside as a members dining area.

4. Testimony establishes that the banquet facility will be marketed and operated as a public facility, available to be used by any member of the general public who wishes to engage it for use for any event. Mr. Mangione testified that he projects it will be used for an average of three weekend events per week (on Friday, Saturday and Sunday) with an average attendance of 150 persons, and for an average of three weekday events on the remaining four days of the week with an average attendance of between 125 and 150 persons. He readily acknowledged that one of the purposes and effects of making it a public banquet facility is to capture and reach out to an additional and larger market than would be reached by a private club banquet facility. The projected use substantially exceeds what would be expected at such a facility designed to "serve the needs of its membership."

5. Mr. Mangione indicated that while the overnight accommodations were not discussed at the hearing before the Zoning Commissioner (and are not mentioned anywhere in his Opinion), the Petitioner does seek permission to locate overnight accommodations in as many as three structures on the property. A fair reading of Mr. Mangione's testimony about those three structures indicates that they could be developed to include as many as 15-20 rooms available for transient and overnight use, with all of those rooms being available to the general public and not in any way being limited to use by members and their guests.

6. Mr. Mangione's testimony confirms the possibility that two of the buildings may be used as permanent residences for employees of the club, and should in the Petitioner's view not be counted for density calculation purposes.

7. Finally, Mr. Mangione's testimony indicates that while the racquet courts and the swimming pool will have a separate membership that will apparently be extended to the purchasers of home sites on the property, it will also be available for use by others, including

anyone who is on the property (whether as a member of the general public or otherwise) for the purpose of using the golf course.

III. THE TERM "COUNTRY CLUB" AS USED IN THE ZONING REGULATIONS

Under Section 1A01.2 of the Zoning Regulations, the uses permitted by special exception in RC-2 zones include "golf courses or country clubs." Section 1A03.3 permits as a special exception use in RC-4 zones "golf courses, country clubs or other outdoor recreation clubs, and game preserves." Most of the proposed Hayfields "country club" facility is located in an RC-2 zone; a few holes are located in an RC-4 zone. The Petitioner does not seek a special exception for a "golf course" or an "other outdoor recreation club", but seeks a special exception for a "country club." Petitioner has not asked for a special exception for a "driving range," a "restaurant," a "cocktail lounge", a "hotel" or "motel," or a "catering hall" or "banquet facility." Petitioner could not qualify for such special exception uses on this or any other property zoned RC-2 or RC-4 (except possibly for a tea room or standard restaurant conversion).

Section 101 of the Zoning Regulations defines a "country club" as "a 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A)." The term "other outdoor recreation club" (as permitted in an RC-4 zone) is not defined in the zoning regulations. While the term "club" is not separately defined in Section 101, the meaning of that term can be gleaned from an examination of Council Bill No 62-78, enacted by the County Council in 1978, which is the bill that added to the Zoning Regulations for the first time the current definition of country club, as well as certain other definitions which are instructive here. A copy of Bill No. 62-78 is attached as Exhibit A to this Memorandum, and will be offered as an exhibit in these proceedings. As noted above, the legislative definition of "country club" contains a cross-reference to Section 406A. Section 406A, as also added to the Zoning Regulations by Bill No. 62-78, includes in Section 406A.1 a definition of the term "neighborhood tennis club". A "neighborhood tennis club" is defined by that legislation as "a non-profit incorporated association, the purpose of which is to own or

maintain a tennis facility for the exclusive use of its members and non-paying guests and having a majority of the club's members residing or employed within the neighborhood." An examination of that definition makes it clear that the County Council intended and understood the term "club" to be "a non-profit incorporated association, the purpose of which is to own or maintain a . . . facility for the exclusive use of its members and non-paying guests . . .". Conversely, Bill No. 62-78 also adopted as a part of Section 101 a definition for the term "open space, common." That term was defined as "local open space, public parks or other amenity open space, including such recreational facilities as are customarily found in public parks, reserved for public use and enjoyment, whether privately owned or owned by the County, State or Federal government or other agencies." Protestants submit that, when read together and as an entirety, the provisions of Council Bill 62-78 establish the proposition that while a country club may include a golf course together with a clubhouse and other "appropriate" facilities, the club must be a non-profit incorporated association the purpose of which is to maintain the facility for the exclusive use of its members and guests, with any use by others than members and their guests to be incidental at most.

This is consistent with the generally understood scope of the term "country club", both at the time this legislation was adopted and at the present time. The general authorities cited in the separate Memorandum of Peoples' Counsel establish that the terms "country club" or "club" are most typically employed to refer to a non-profit facility owned or at least operated for the benefit of its members and guests, albeit perhaps permitting incidental use of the facility by others for special events. Even more so than the term "club," the term "country club" invariably describes a limited membership and limited access facility, in contrast with a public facility such as Pine Ridge. The County's Golf Course Master Plan recognizes the distinction between private and public golf facilities. By way of further illustration, the By-Laws of the United States Golf Association establish two classes of "members" - "Member Clubs" and "Member Courses." See Exhibit B hereto. A "Member Club" is a "permanent club comprised of individual dues-paying

members . . . whose position on a matter relating to the Association shall be determined by the entire membership." A "Member Course" is any golf course in the United States which is not eligible as a "Member Club." Hayfields would only qualify as a Member Course, and not as a Member Club. In further support of the proposition that the term "country club" is meant to refer to a membership facility, Protestants' Exhibit 18, already in evidence, tells us that the Maryland Department of the Environment Guidelines for on-site sewage treatment systems sets flow requirements for "country clubs" exclusively on a gallons per day "per member" basis. Those same Guidelines set different requirements for "golf courses."

To the extent that the Board finds it appropriate to turn to a dictionary definition of the term "club" (as specified in Section 101, Webster's Third New International Dictionary of the English Language, Unabridged), the relevant definition found as item 2b(1) is "an association of persons for social and recreational purposes or for the promotion of some common object . . . usu. jointly supported and meeting periodically, membership in social clubs usu. being conferred by ballot and carrying the privilege or use of the club property . . .". See Exhibit C hereto, including also the definition of the word "clubby".

As described above, the notes to the Petitioner's plans make reference to a "private club liquor license" and to "non-class D" liquor licenses. Article 2B of the Annotated Code of Maryland provides for the issuance of liquor licenses to "clubs." A "club" is defined for general purposes under Article 2B as "an association or corporation which is organized and operated exclusively for educational, social . . . or athletic purposes and not for profit." See Exhibit D hereto. The Hayfields facility is in no sense planned (or described) as a non-profit facility. Not surprisingly, most of the provisions of § 6-301 of Article 2B (providing for "club licenses") contain explicit limitations confining service of alcoholic beverages to members and their guests. Rule 24 of the Baltimore County Liquor Board governing "Class C (Club) License Holders" (Exhibit E hereto) clearly contemplates that a non-profit club holding a Class C License may generally sell alcoholic beverages only to its members and guests, although provision is made for

occasional renting out of the club's facility to others, operating the event under a "Special One Day License." Neither these provisions (nor the facility as described in the notes to the Petitioner's original plan) contemplate the operation of a full-fledged public use facility, with a restaurant, cocktail lounge and banquet facility all being operated every single day for the benefit of the general public.

IV. OTHER COUNTRY CLUB FACILITIES IN BALTIMORE COUNTY

There are sixteen privately owned (or not municipally owned) country club facilities in Baltimore County. Many of these facilities were established before the enactment of the Baltimore County Zoning Regulations limiting land uses in the County, and most of them were established before the current definition of the term "country club" was added to the County Zoning Regulations in 1978.

Some of the witnesses who testified for Petitioner suggested that at least a few of these clubs allow public use of some of their facilities. Mr. Mangione was not able to name a single country club facility in Baltimore County or elsewhere, with the exception of his own Turf Valley in Howard County, that was operated as a full public access facility, although he did say he had seen advertisements for the banquet facilities at Hunt Valley, Eagles Nest and Country Club of Maryland. Mr. Guckert, Petitioner's traffic expert, testified that the private developers of the proposed Greystone Facility (which is now to be developed and operated as a municipal facility) planned that facility for full public access. The Zoning Commissioner's Order approving the Greystone Facility is directly to the contrary, indicating that the Petitioner "testified that the Club will be limited to members and their families." (See Exhibit F hereto, at page 3). Mr. Brian Ault, the Hayfields golf course architect, acknowledged that most of the country clubs in Baltimore County with which he was familiar limited access to their courses and other facilities to members and their sponsored guests. Mr. Ault did testify that Towson Golf and Country Club (or Eagle's Nest) and the Country Club of Maryland did allow members of the general public to reserve their banquet facilities, and he further indicated that he believed public play was

permitted on the Hunt Valley course "on a space available basis." He did not testify that either Towson Golf and Country Club or the Country Club of Maryland permitted general public play on their golf courses. Mr. Ault's testimony about Hunt Valley's "space available" public play (undercut by Petitioner's Ex. 21) is the only evidence that public play is permitted on any of Baltimore County's country clubs. The Eagle Golf Guide, a book identified by Mr. Ault and introduced as Petitioner's Exhibit 21, does not include Hunt Valley, Country Club of Maryland or the Towson Golf and Country Club in the public access listings. Mr. Ault acknowledged that notwithstanding his assertion that Hunt Valley permits limited play on its golf course, that facility is listed under the category of "private clubs" in the Eagle Golf Guide. Mr. Ault did testify that there is a recent trend to allow more public access to some facilities at some privately-owned clubs, although most of these facilities with which he was familiar were not located in Baltimore County. He acknowledged on cross-examination that 15 years ago (i.e., around the time that the definition of the term "country club" was added to the Zoning Regulations), the "vast majority" of club facilities limited use of all of their facilities to their members (and guests).

Mr. George Gavrelis, though admitted as a planning and zoning expert, testified that he is not a golfer and had limited professional experience with golf club facilities. Indeed, he acknowledged that the only golf club facilities with which he had been professionally involved are clearly available for use only by their members and the members' guests. Mr. Gavrelis, while testifying that in his opinion the Hayfields facility qualified as a country club, also testified that the municipally-owned Pine Ridge facility also satisfied "his definition" of country club. With regard to the various component facilities included in the Hayfields complex, he did not express any opinion as to whether the public overnight accommodations qualified as "appropriate facilities" comprising a part of a country club complex.

Evidence to be offered by Protestants will further demonstrate that none of the golf or country club facilities in Baltimore County are operated as public access facilities in anywhere

near the manner or to the degree proposed for Hayfields. Those existing country clubs have been and are private membership facilities which, at most and only in isolated instances, permit some public use of their eating facilities (and, according to Mr. Ault, in only one instance limited public use of its golf course). Evidence to be offered by Protestants will further demonstrate that banquet facilities operated at country club/golf club complexes in Baltimore County are overwhelmingly available only to members and their guests. Ten of the facilities would not even give out over the phone any information at all with regard to their banquet facilities except to or through a sponsoring member. Of the four clubs that indicated that their banquet facilities at least are available for public use, one (Country Club of Maryland) was established in 1923, before zoning regulations had been adopted in Baltimore County, one (Hillendale Country Club) represented at a special exception zoning hearing six years ago that "no outside groups are permitted to utilize the Club facilities and individual guests must be accompanied by a member of the Club." This testimony was given in a proceeding in which the Petitioner club successfully sought to establish itself as a special exception use rather than a non-conforming use. See Exhibit G hereto. The final two clubs, Hunt Valley and Towson Golf and Country Club, have been the subject of special exception decisions (before adoption of the Zoning Regulations' definition of "country club") which did not indicate whether the facilities were operated for use by members and their guests only or were available to the general public. See Exhibits H (Hunt Valley - II 69-183X) and I hereto (Towson Golf and Country Club - #70-66H).

The record thus establishes that subject to certain very limited exceptions, the 16 country clubs/golf clubs in Baltimore County are operated as facilities available for use only by their members and their members' guests. Of the four clubs whose banquet facilities are apparently available for at least some public use, one is a long-standing non-conforming use (Country Club of Maryland) and one represented as recently as six years ago that its facilities are limited to membership only use. With the possible exception of limited public play at Hunt Valley, the record herein indicates that all of the golf courses are available only to members and their guests.

The evidence establishes that the other facilities at these clubs (practice ranges, restaurants and swimming and tennis facilities) are limited to use by members and their guests.

Even with regard to few clubs which make some of their facilities available for public use, such public use is clearly incidental to the very predominantly membership use of the facility. None of these clubs even approach constituting a model for the Hayfields facility, where membership use and not public use will be the incidental component.

When viewed against the context of both the late 1970's and today, country clubs in Baltimore County (and elsewhere) were and are overwhelmingly private membership facilities operated on a not for profit basis for the benefit and enjoyment of their members. Any public use of these clubs has been and is incidental and confined to particular parts of the facility. The term "country club" as used in the Zoning Regulations should be construed so as to be limited to non-profit facilities operated exclusively for use by members and their guests. If public use of any of the facilities is to be included within the scope of the term, it should be incidental at most. Petitioner's counsel formulated the issue in his opening statement as whether the proposed project included facilities "normally and customarily incidental to a country club." The Board should reject his suggestion that such a "normal and customary" evaluation should ignore public use vs. private use. If public use vs. private use is properly included in the kind of evaluation suggested by Petitioner's counsel, then the petition should be dismissed.

V. SIGNIFICANCE OF THE NON-PROFIT AND MEMBERSHIP ELEMENTS OF THE TERM "COUNTRY CLUB"

Protestants do not argue that the term "country club" should be restricted to facilities operated on a not-for-profit basis used by members and their guests simply because it is convenient to do so, or because the Hayfields facility fails to satisfy such a definition. Moreover, the argument that the term must be limited to membership facilities is not intended to be an exclusionary argument in any traditional sense of that term, since Protestants make no contention whatsoever here that Hayfields' membership should or must be limited or restricted by any

consideration other than the fact that any group of members who pay a significant amount of money to join a facility will want to limit the membership to some number so that they can derive a tangible benefit from their membership and avoid the facility's becoming overrun by excessive use. It is inherent in the nature of a membership facility, and especially one that is operated on a not for profit basis, that the members, who will pay by way of initiation fees and annual dues significant amounts of money for the use of a facility, will seek to limit both the total number of members and the extent to which the facility is used, so as to derive some benefit from their membership. The fact that the facility is operated on a not for profit basis means that it will be operated at a lower level of use for the benefit of the members, and that excessively high and avowedly commercial use of the facility in general or of its individual component parts will not be pursued in the interest of making a profit. While such considerations cause a membership facility to operate at a relatively lower level of activity, the absence of membership control and the presence of a profit making motive inevitably push towards a far higher level of activity, a much more distinctly commercial operation, a far greater use of the facilities, and a significantly increased impact on the area where such a facility is located. No membership facility mentioned in these proceedings, or known to any of the witnesses, operates a driving range lit for nighttime use (except to the extent that one credits Mr. Gavrelis' testimony that the municipal Pine Ridge facility is a country club). With possibly one limited exception, country clubs in Baltimore do not open their courses for public play. The 45,000 rounds of play per year projected by Mr. Mangione are considerably in excess of the rounds of play which characterize a typical private membership facility in Baltimore County (as evidenced by the County's Master Plan for golf course facilities). If the expected 200 members average 25 rounds per year and each is a family membership with two golfers (both very generous assumptions), then they would account for 10,000 rounds per year (or less than 1/4 of the total projected). No country club has been said to make its pool and tennis courts available for use by other than members and their guests. Membership facilities do not operate public restaurants within their clubhouses. Subject only to

isolated exceptions (which may or may not be in accord with the Zoning Regulations), membership facilities or private clubs do not operate their banquet facilities on a public use basis, nor do they aspire to stage as many as six events per week at their banquet facilities. Private membership clubs do not generally offer overnight accommodations, and none has been referred to in evidence in this case that purports to offer overnight accommodations to members of the general public.

These characteristics of country clubs are important because together they constitute an inherent restraint on the size of the operation and the extent to which it is used and impacts the area in which it is located. To take away these limitations and allow commercial, for profit public use facilities, makes a mockery of the general proposition that commercial facilities are incompatible with RC zoning and flies in the face of the undeniable fact that many of the specific facilities planned for Hayfields are explicitly not permitted.

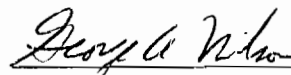
By construing the term "country club" broadly as the Petitioner would have this Board do, that term becomes the vehicle through which this Petitioner or others like it can locate commercially driven, for profit facilities in Baltimore's most highly rural zones (RC-2 and RC-4), simply by making them part of a golf facility complex and calling the entire project a country club. These very same facilities, be they restaurants, banquet facilities, public (as opposed to community) swimming pools and tennis courts, driving ranges or overnight rooms available for public occupancy, could not be located in an RC-2 or an RC-4 zone if they were proposed by themselves as free-standing facilities. This is so because these kinds of uses are, at least when operated for public use and on a for profit basis, essentially commercial or urban uses which are thought to be inappropriate in RC-2 and RC-4 zones. Simply by putting them together as a part of a complex which happens to include a golf course with a limited membership, they do not become any less commercial or any less urban. Indeed, by putting a number of such facilities in one place, they become collectively more commercial and more urban - and therefore singularly inappropriate in rural zones such as RC-2 and RC-4. The Zoning Regulations of Baltimore

County provide separately for "catering halls" (or banquet facilities), "restaurants", non-community swimming pools and tennis courts, "driving ranges", and "hotels" and "motels." The kind of golf course facility that Petitioner desires to build and operate could be located in various parts of Baltimore County in other zones where such facilities, or the facilities just described, can be located either as a matter of right or by special exception. We are not saying that the kind of public use golf facility that Petition envisions cannot be properly located anywhere in Baltimore County. We do contend that such a facility, including this variety of commercial uses which themselves cannot be located on this property, cannot collectively qualify as a "country club", and cannot be permitted by special exception on the Hayfields property in an RC-2 and RC-4 zone.

VI. CONCLUSION

For the foregoing reasons, Protestants respectfully request that the Petition herein be dismissed, or alternatively that in the event the Board concludes that the Petitioner has otherwise satisfied the Section 502 standards, the approved facility be conditioned in such a way as to make it qualify as a "country club" as that term is used in the Zoning Regulations. Alternatively, Protestants submit that the facility varies materially from the one originally proposed and advertised for hearings before the Zoning Commissioner, and cannot be approved in this appeal for that reason.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1996, copies of the foregoing Protestants' Memorandum in Support of Their Petition to Dismiss the Special Exception Request for a Country Club were delivered, by hand, to:

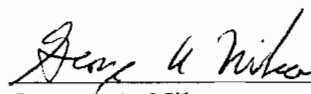
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George A. Nilson

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1978, Legislative Day No. 16

EXHIBIT
A

BILL NO. 62-78

Mr. Murphy, Councilman

By the County Council, June 5, 1978

A BILL
ENTITLED

AN ORDINANCE to specially provide for tennis and similar facilities in residential zones, by repealing and re-enacting with amendments, the definition of "open space, common" of Section 101 and subsections 1A01.2.C.7, 1A02.2.B.7, 1A03.3.B.3, 1A04.2.B.5, 1B01.1.C.6, of the Baltimore County Zoning Regulations and by adding the definition of country club and tennis facilities to Section 101, Section 406A and subsections 406A.1, 406A.2, 406A.3, 406A.4, 406A.5, and 406A.6 thereto.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board and has held a public hearing thereon recommending the adoption of legislation regarding tennis and similar facilities in residential zones; and

WHEREAS, the County Council has determined that the adoption of the legislation referred to herein is in the best interests of the citizens of Baltimore County and that it affects the health, safety, morals and general welfare of its citizens; now therefore

1. SECTION 1. Be it ordained by the County Council of Baltimore County, Maryland,
2. that the definition of "open space, common" of Section 101 and subsections 1A01.2.C.7,
3. 1A02.2.B.7, 1A03.3.B.3, 1A04.2.B.5 and 1B01.1C.6 of the Baltimore County Zoning
4. Regulations be and they are hereby repealed and re-enacted with amendments; to read
5. as follows:
6. Sec. 101.
7. Open space, common: Local open space, public parks, or other amenity open space,

8. including such recreational facilities as are customarily found in public parks,
9. reserved for public use and enjoyment, whether privately owned or owned by the County,
10. State, or Federal government or other agencies. Upon the adoption of appropriate

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

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9. reserved for public use and enjoyment, whether privately owned or owned by the County,
10. State, or Federal government or other agencies. Upon the adoption of appropriate

standards pursuant to the authority of Section 504, nontidal streams and lakes and other nontidal watercourses or bodies of water lying within, lying partially within, or abutting common-open space land areas are to be considered part of the common open space to the extent permitted under those standards.

1A01.2.C.7 Community buildings, swimming pools, or other uses of a civic, social, recreational, or educational nature, including tennis facilities, provided that no tennis facility shall comprise more than 4 courts (see Section 406A).

1A02.2.B.7 Community buildings, swimming pools, or other uses of a civic, social, recreational, or educational nature, including tennis facilities, provided that no tennis facility shall comprise more than 4 courts (see Section 406A).

1A03.3.B.3 Community buildings, swimming pools, or other [structural or land] uses [devoted to] of a civic, social, recreational, or educational [activities] nature, including picnic grounds and tennis facilities, provided that no tennis facility shall comprise more than 4 courts (see Section 406A).

1A04.2.B.5 Community buildings, swimming pools, or other uses of a civic, social, recreational, or educational nature, including tennis facilities, provided that no tennis facility shall comprise more than 4 courts (see Section 406A).

1B01.1.C.6 Community buildings, swimming pools, commercial beaches, golf courses, country clubs, or other [similar civic, social, recreational, or educational uses, including tennis facilities, provided that no tennis facility in a D.R. 1 or D.R. 2 zone shall comprise more than 4 courts and no tennis facility in a D.R. 3.5, D.R. 5.5, D.R. 10.5 or D.R. 16 zone shall comprise more than 6 courts (see Section 406A).

SECTION 2. Be it further ordained, that the definitions of country club and tennis facilities are added to Section 101 and subsections 406A.1, 406A.2, 406A.3, 406A.4, 406A.5 and 406A.6 are hereby added to the Baltimore County Zoning Regulations, to read as follows:

Sec. 101

Country club: A 9- or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A).

Tennis facility: A single court, or 2 or more adjoining courts on a single lot,

1. for playing tennis, paddleball, handball, squash, jai alai, or other, similar games
2. or sports.

3. Section 406A - TENNIS FACILITIES

4. 406A.1 - A tennis facility may be established as a principal use in an R.C. or
5. D.R. zone only if it is owned by a homes or residents' association, as defined in the
6. Comprehensive Manual of Development Policies adopted pursuant to Section 504 of these
7. Regulations, by a neighborhood improvement association, or by a neighborhood tennis
8. club. For the purposes of this subsection, a "neighborhood improvement association"
9. is an incorporated association, the purpose of which is to promote the common good
10. and general welfare of its members, who reside within the association's boundaries as
11. defined in its charter or bylaws; a "neighborhood tennis club" is a non-profit
12. incorporated association, the purpose of which is to own or maintain a tennis facility
13. for the exclusive use of its members and non-paying guests and having a majority of
14. the club's members residing or employed within the neighborhood.

15. 406A.2 - No tennis facility established in conjunction with a 9-hole country
16. club shall comprise more than 8 courts, and no tennis facility established in
17. conjunction with an 18-hole country club shall comprise more than 12 courts. THOSE
17a. COUNTRY CLUBS IN EXISTENCE AS OF JULY 1, 1978 SHALL NOT BE LIMITED IN
17b. THEIR ABILITY TO CONSTRUCT ADDITIONAL TENNIS FACILITIES PROVIDED THAT
17c. THEY COMPLY WITH ALL SITE AND SETBACK REQUIREMENTS AS ESTABLISHED IN
17d. SECTION 406A.1 THROUGH SECTION 406A.6 OF THIS BILL.

18. 406A.3 - Site Area Distance to Residential Site Boundaries. The area of the site
19. of any tennis facility shall be at least 15,000 square feet per court. No tennis
20. facility shall be established within 100 feet of any site boundary line of an R.C. or
21. D.R. zoned property, and no variance in the requirements may be granted under the
22. provisions of Section 307 of these regulations.

23. 406A.4 - Parking. Parking spaces shall be provided on the site of a tennis
24. facility at a rate of not less than 2 nor more than 4 spaces per court. In considering
25. a petition for a special exception for a tennis facility, the Zoning Commissioner, in
26. addition to making the determinations required by Subsection 502.1, shall consider
27. whether the proposed facility would create additional on-street parking in the
28. neighborhood.

29. 406A.5 - Appearance; Miscellaneous Provisions.

30. A. General Design. The Zoning Commissioner may require any changes in building

1. or site design which would make the facility more compatible with its surroundings
2. or more attractive.

3. B. Any practice board provided shall be constructed of masonry or other
4. sound-absorbing material and shall be designed to minimize noise.

5. C. The Zoning Commissioner shall stipulate the hours of operation of a tennis facility
6. as a condition for granting a special exception necessary for its establishment.

7. D. Landscaping.

8. 1. At least 15 percent of the total area of the site of any tennis facility
9. shall be landscaped.

10. 2. Landscaping shall include trees of substantial size. Until specific
11. regulations concerning landscaping are developed, the Director of Planning may specify
12. the types and placement of trees to be used in landscaping.

13. 3. Plantings shall be well maintained and shall be replaced as necessary.

14. E. Lighting. All lighting shall be of such a size and so arranged and shielded
15. as to prevent direct or reflected glare onto any portion of any adjacent motorway,
16. into the path of oncoming vehicles, or onto any portion of adjoining residential
17. properties.

18. 406A.6 - Effect on previously granted special exceptions. Nothing herein above
19. contained shall apply to any parcel of land for which a special exception has been
20. granted under any previous ordinance or regulation by a final order of the Zoning
21. Commissioner or the County Board of Appeals, as the case may be, or extension thereof,
22. for the construction, maintenance, or operation of a tennis court or courts.

23. SECTION 3. And be it further ordained, that this ordinance shall take effect
24. forty-five days after its enactment.

RESTATED CERTIFICATE - Continued

SEVENTH: The Association shall not have authority to issue any capital stock. The conditions of membership in the Association, the rights (including, without limitation, voting rights) and obligations of its members and the classification of members, if any, shall be as provided in the By-Laws.

EIGHTH: The Association shall, to the full extent permitted by Section 145 Delaware General Corporation Law, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto

UNITED STATES GOLF ASSOCIATION® BY-LAWS ARTICLE I MEMBERSHIP

SECTION 1. *Classes of Members.* The Association shall be composed of two classes of members, as follows:

(a) Member Clubs.

(b) Member Courses.

SECTION 2. *Member Club.*

(a) *Definition:* Membership shall be open to any organized golf club in the United States. An organized club is a permanent club comprised of individual dues-paying members with committees appointed to organize golf activities. Such a club shall operate permanently at one course or shall nominate a golf course as its home course. A Member Club's position on a matter relating to the Association shall be determined by the entire membership.

(b) *Privileges:* Member Clubs shall be entitled to all privileges of the Association.

(c) *Dues:* Annual dues for a Member Club shall be in an amount fixed by the Executive Committee.

SECTION 3. *Member Course.*

(a) *Definition:* Membership shall be open to any golf course in the United States which is not eligible as a Member Club.

(b) *Privileges:* A Member Course shall be entitled to all privileges of the Association except the right to vote at meetings of the Association.

(c) *Dues:* Annual dues for a Member Course shall be in an amount fixed by the Executive Committee.

SECTION 4. *Application:* Application for both classes of membership shall be made on forms provided by the Association and shall be accompanied by such information as the Association's Executive Committee may require. An applicant shall agree that its application is subject to approval or rejection at the discretion of the Executive Committee. Application shall be accompanied by the payment of dues for the current year.

SECTION 5. *Membership.* Upon approval of an application by an officer or employee of the Association appointed by the Executive Committee for the purpose, the applicant shall become a member of the Association subject to ratification by a two-thirds vote of all members of the Executive Committee.

SECTION 6. *Payment of Dues.* Annual dues for both classes of membership shall be payable on January 1. Dues shall not be pro-rated for any part of the year. However, dues for the current year shall be waived in the case of a new application effective after September 1 of such year, provided that dues for the next year accompany the application.

SECTION 7. *Continuity of Membership.* Membership shall be automatically continuous unless interrupted by written resignation or expulsion. Members shall be liable for all dues according to the date of such resignation or expulsion.

SECTION 8. *Individual Members.* In addition to the classes of memberships provided in Sections through 7 of this Article I, individuals who pay prescribed annual amounts to the Association, called Associates prior to July 1, 1991, will be called Members but will have the same status as Associates had before that date. They will not have any of the rights or obligations of Member Clubs and Member Courses provided in the other sections of these By-Laws for Members, but will receive the Golf Journal and other material mailed to them by the Association and may be given such other perquisites as are determined from time to time by the Executive Director or his designee.

ARTICLE II OBLIGATIONS AND DISCIPLINE

The acceptance of membership in the Association by a golf club or golf course shall bind each Member of the club or course to uphold all the provisions of the Association's Certificate of Incorporation, and By-Laws as other rules and to accept and enforce all rules and decisions of the Executive Committee acting within its jurisdiction.

Any member failing in its obligations as above set forth (other than payment of dues) may be suspended or expelled by a two-thirds vote of all members of the Executive Committee or by a two-thirds vote of the Association, provided such Member shall have been given due notice of the charges or changes preferred against and an opportunity to be heard in its own defense. A Member which has failed to pay its dues when due, has been given written notice of such nonpayment and fails to pay such dues within 60 days after such notice may be

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Art. 2B, § 1-102 ANNOTATED CODE OF MARYLAND

(4) (i) "Club" means an association or corporation which is organized and operated exclusively for educational, social, fraternal, patriotic, political or athletic purposes and not for profit.

(ii) In Allegany County the Board of Alcoholic Beverages License Commissioners shall be the judges of whether such an establishment is operated in good faith within the meaning of this subsection.

(5) "Comptroller" means the Comptroller of the Treasury of the State.

(6) "Consumer" means any natural person 21 years old or older, or any corporation not otherwise interdicted by this article or any other law of this State, who buys, possesses, keeps or transports alcoholic beverages upon which the taxes provided by the tax provisions of Title 5 of the Tax-General Article have been paid, for the person's own use and not for sale.

(7) "Court" means the circuit court of a county or any judge of a circuit court.

(8) "Family beer" means homemade beer produced for home consumption and not for sale.

(9) "Family wine" means homemade wine produced for home consumption and not for sale.

(10) (i) "Hotel" means an establishment:

1. Which accommodates the public;
2. Which is equipped with not less than ten bedrooms and a dining room with facilities for preparing and serving regular meals; and
3. In which the average daily receipts from the hire of rooms and the sale of foods exceed the average daily receipts from the sale of alcoholic beverages.

(ii) The board of license commissioners in any county or in Baltimore City, and the Mayor, Counselor and Aldermen of the City of Annapolis, may by regulation prescribe a different standard as to what constitutes a hotel.

(iii) The requirements of this subsection relating to average daily receipts are not applicable to any licenses issued in Cecil County.

(11) (i) "Illicit alcoholic beverages" means any alcoholic beverages which have been manufactured, bottled or rectified within this State on any premises other than a premises licensed under this article, or which have been manufactured, bottled or rectified outside of this State on any premises other than a premises licensed under the United States Internal Revenue Code or the laws of a foreign country.

(ii) Any alcoholic beverages found in any container without a regular label which truly describes its contents and which states the true name of the importer, manufacturer, bottler or rectifier are presumed to be illicit alcoholic beverages. However, the presumption does not apply to any alcoholic beverages found:

1. In drinking glasses or other similar open containers for drinking purposes;
2. In home-type decanters found in a dwelling house or in a punch bowl or other receptacle of a similar nature, if found under circumstances which indicate that the alcoholic beverages contained in the receptacles are intended for consumption on the premises by consumers and not for sale; or

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RULE 24 - CLASS C (CLUB) LICENSE HOLDERS

The following pertain to the provisions and restrictions of the laws and rules and regulations governing the operation of clubs under a Class C (Club) license in Baltimore County.

A. A Class C license shall authorize the holders thereof (who must be officers of the organization) to keep for sale and sell all alcoholic beverages at retail to bona fide members and their guests at the place therein described, for consumption on the premises only.

B. No alcoholic beverages may be sold to members or guests to be taken off the premises of the club.

C. No member or guest may bring any alcoholic beverage onto the premises of the club.

D. When the club sponsors an affair that is open to the general public, or sells tickets, or charges admission to an affair, a Special One-Day license must be obtained from the Liquor Board if alcoholic beverages are to be served.

E. When the club rents its facility or a portion thereof to any other club, society or organization to hold an affair for which tickets are to be sold, admission is to be charged and/or alcoholic beverages are to be served, a Special One-Day License must be obtained from the Liquor Board, and the alcoholic beverages may not be furnished by the club from its stock, but must be purchased by the renting agency from a brewery or retail package goods dealer.

F. When the club rents its facility or a portion thereof for wedding receptions, reunions, or other like private affairs to which no admission is to be charged, or alcoholic beverages sold, no Special One-Day license is required. However, if alcoholic beverages are to be consumed, such beverages must be purchased by the lessee of the club from a retail establishment and may not be furnished or sold by the club from its stock.

RULE 25 - LICENSES, CHANGES

If, following the original or subsequent data and information filed by a licensee with the Board, e.g. Change of Telephone Number, Change of Address, Death of a Licensee, Dissolution of a Corporation, Change of Name, Election or Change of Officer(s), Change of Ownership or Control in any way, and/or any other information necessary for the Board's records, are to be immediately reported in writing to the Office of the Liquor Board in the manner prescribed by law or rule.

12

RULE 26 - CLOSING OF BUSINESS ESTABLISHMENT

If a licensee closes his business for any reason for a period exceeding ten (10) days, it shall be necessary that he inform the Board in writing within seventy-two (72) hours of the closing date, giving the reason for the closing, the estimated time the business will not be operated, and the future intention as to use of the license. If no such written explanation is received, the Board may consider such failure to communicate as evidence that the license has been vacated within the meaning of Article 2B.

RULE 27 - MANAGERS, EMPLOYMENT OF

If a licensee employs a full-time manager or individual to whom licensee delegates discretionary power to organize, direct, carry on, or control operations of the licensed business, the licensee must make application to the Board giving required information on appropriate forms available in Board Office in order that an investigation may be made to determine the qualifications of said manager or employee so delegated to act as manager.

RULE 28 - NO SALES TO MINORS

No licensee holder shall sell or furnish alcoholic beverages to any person under twenty-one (21) years of age. The licensee holder shall be fully responsible in determining that the person to whom the sale is made is over twenty-one (21) years of age.

RULE 29 - PURCHASES

No licensee holder shall purchase alcoholic beverages except from a duly licensed manufacturer or wholesaler; and no licensee holder shall, at any time, keep or permit to be kept upon the licensed premises, any alcoholic beverages unless so purchased. No retail licensee holder shall sell to any other licensee holder any alcoholic beverages.

RULE 30 - DRINKING LIQUOR IN BEER ESTABLISHMENTS FORBIDDEN

No licensee holder shall permit any person to consume any alcoholic beverages on the licensed premises other than those which the license permits to be sold thereon.

RULE 31 - PROHIBITED HOURS

A. No licensee shall permit any person to consume alcoholic beverages on the licensed premises during hours when such sales are prohibited by law.

B. No alcoholic beverages shall be served, dispensed, furnished or given away in any part of the premises during the hours when such sales are prohibited by law.

13

EXHIBIT

F

From the Liquor Board's Rules & Regulations

Doc - March 23, 1990

EXHIBIT

F

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND SPECIAL EXCEPTION * ZONING COMMISSIONER
SW of the intersection of * OF BALTIMORE COUNTY
White Hall & Vernon Roads * CASE # 90-19-SPHX
7th Election District *
3rd Councilmanic District *

Furman E. Hendrix, et al, *
Legal Owners *
E. Donald Airey, Jr., *
Contract Purchaser *

Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a Special Exception for a country club (primarily a golf oriented facility) including a golf course, practice facilities, a clubhouse complex including without limitation a pro shop, lounge, eating facility and other appropriate recreational facilities, maintenance facilities associated with the foregoing, shelters and other structures, and improvements or facilities generally associated with golf or country clubs; a Petition for Special Hearing to approve the right to use the existing buildings in the M.L. zone area on the site as maintenance, storage and accessory buildings in conjunction with the operation of the country club, as more particularly described on Petitioners' Exhibit No. 10.

The Petitioners, E. Donald Airey, Jr., Contract Purchaser and Furman E. Hendrix, Legal Owner, were represented by Thomas G. Bodie, Esquire. The Protestants were represented by J. Carroll Holzer, Esquire. The Petitioners' request generated considerable community concern and numerous individuals and civic groups appeared to testify on both sides of the issue presented. Phyllis Friedman, Esquire, Peoples Counsel, appeared as an interested party.

IN RE: PETITION FOR SPECIAL EXCEPTION
 WS of Blenheim Rd., 250' S
 Country Club Road
 13700 Blenheim Road
 10th Election District
 6th Councilmanic District
 Hillendale Country Club, Inc.
 Petitioner

* BEFORE THE
 * ZONING COMMISSIONER
 * OF BALTIMORE COUNTY
 * CASE # 89-420-X
 *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Exception for a golf course and country club inclusive of accessory uses and structures, as more particularly described on Petitioner's Exhibit No. 1.

The Petitioner, by Stephen B. Cook, President, appeared and was represented by Manley F. Gately, Esquire. Appearing on behalf of the Petition was Chester W. Beatty, General Manager. There were no Protestants.

Testimony indicated that the subject property known as the Hillendale Country Club at 13700 Blenheim Road consists of 149.77 acres +/-, zoned R.C.4 and is improved with the subject country club.

Mr. Gately proffered testimony on behalf of the Petitioner. Mr. Gately testified that the Hillendale Country Club has been at its present location for the past 34 years and currently exists as a nonconforming use in the R.C.4 zone. He testified that the Club currently has 525 members who account for approximately 25,000 rounds of golf per year.

Testimony indicated that no outside groups are permitted to utilize the Club facilities and individual guests must be accompanied by a member of the Club.

Testimony indicated that the Petitioner is desirous of establishing the subject country club as a special exception use and, thereafter, enlarging the existing club house within the footprint indicated on Petitioner's Exhibit No.1.

Date 5/8/92
 By M. M. M. M.

CASE #69-183-X

(EXHIBIT H)

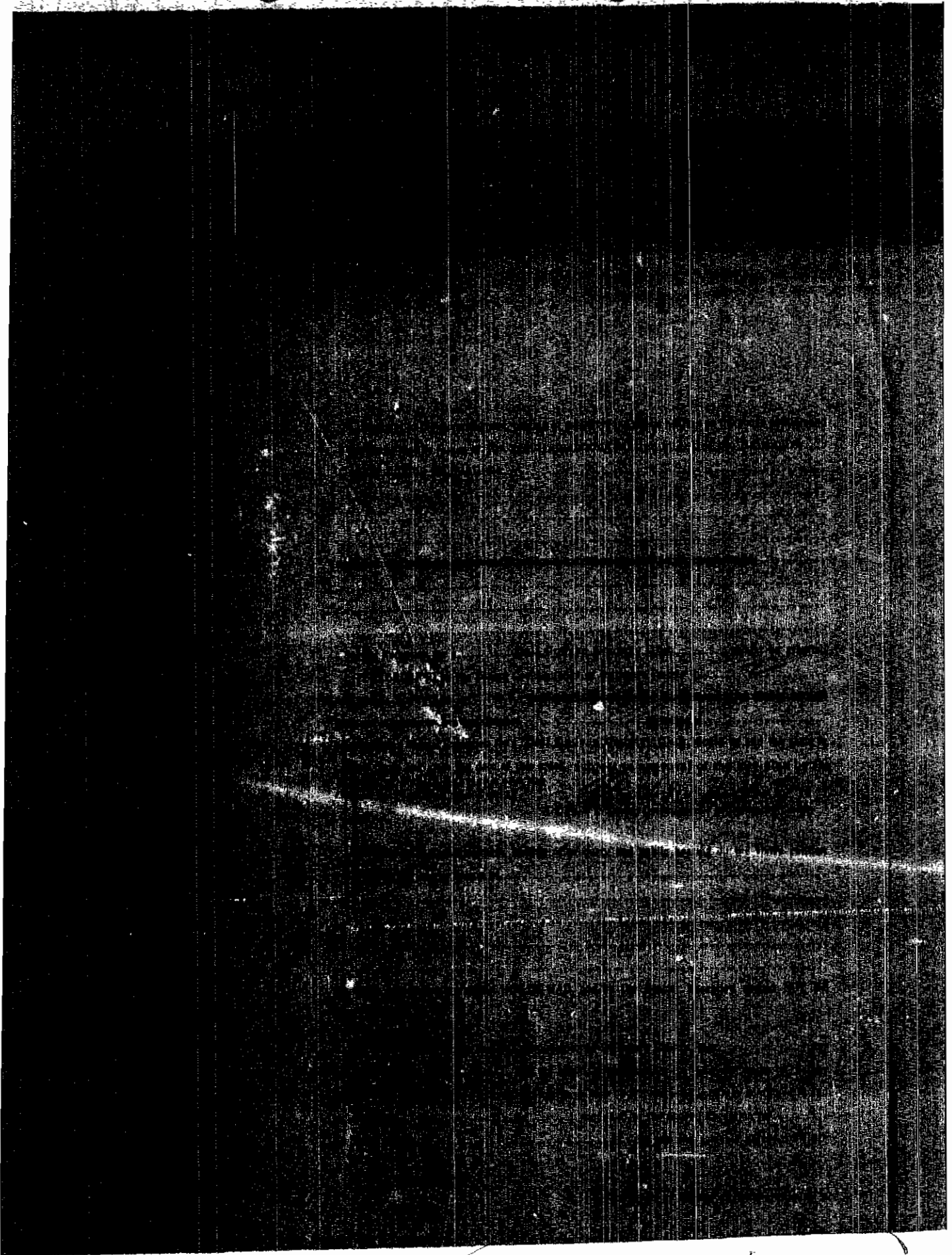


EXHIBIT I

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
NW/S Western Run & Shawan Rds. @ *
its intersection w/Interstate 83 * ZONING COMMISSIONER
(301 Western Run Road) *
8th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District *
Case No. 95-308-X
Hayfields, Inc. *
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for that property known as 301 Western Run Road, located northwest of and abutting the interchange of Interstate 83 and Shawan Road in the vicinity of Hunt Valley. The property is more well-known as the Hayfields Farm. The Petition was filed by the owners of the property, Hayfields, Inc., by John M. Mangione, Director, through G. Scott Barhight, Esquire. The Petitioner seeks a special exception to permit a country club in an R.C. 2 and R.C. 4 zone. The subject property and relief sought are more particularly described on the site plan submitted and accepted into evidence as Petitioner's Exhibit 4.

It should be noted that the Petition identified the legal owners of the property as Tollhouse, Inc. However, at the public hearing held for this case, an amendment was offered by counsel for the Petitioner to correct the name of the property owner to Hayfields, Inc. The propriety of that amendment will be discussed hereinafter. Whatever the corporate identity, the principals behind the project are the Mangione family, owners of the Turf Valley Country Club in Howard County and well-known developers in the Baltimore County area.

As correctly noted in the Petitioner's memorandum submitted in lieu of closing argument, the subject Petition is but one step of many

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which need be taken by the Petitioner to obtain County approval for the proposed golf course/residential community. The special exception relief requested herein is limited. Only approval for a country club on a portion of the subject site is requested. The special exception does not relate in any manner to approval of the residential component of the project. Presently, a Petition for Reclassification for a portion of the property from R.C. 2 to R.C. 4 is pending before the Baltimore County Board of Appeals. That case has no legal significance to the Petition for Special Exception before me. In that the use proposed is permitted by special exception in both the R.C. 2 and R.C. 4 zones, the Zoning Commissioner has original and exclusive jurisdiction over the Petition for Special Exception. That is, because the country club is an identified special exception use in both zones, the Petitioner cannot attempt to seek special exception approval from the Board of Appeals within its Petition for Reclassification.

Moreover, the Petitioner apparently acknowledges that other approvals for the proposed development will be necessary. Development plan approval need be obtained pursuant to the development regulations in Baltimore County, codified in Title 26 of the Baltimore County Code. Although Section 26-206.1 of the Code allows for the consolidation of zoning and development hearings, no such consolidation request has been made here. This matter will no doubt return to the Zoning Commissioner/Hearing Officer for consideration of the development plan. Moreover, it is recognized that other approvals may be necessary. Specifically, approvals may be needed from both County and State agencies because of the potential environmental impacts and impact on historical structures necessitated by the

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project. Lastly, it is of note that no variances or other zoning relief is requested.

Rarely has such a zoning Petition generated such public interest. Although the hearings were not particularly well-attended, this Zoning Commissioner does not recall ever having received as much correspondence as was generated on this case. The correspondence was nearly unanimously opposed to the Petition. The public hearings held for this case took five full days. Numerous exhibits from all interested persons were offered.

The Petitioner was represented by G. Scott Barhight, Esquire. John M. Mangione, Director of Hayfields, Inc., and project manager for this development, appeared at the hearing as did several other members of the Mangione family. Other witnesses called by the Petitioner were John W. Guckert, expert Traffic Engineer, Stephanie Howe, an expert Hydrologist and Environmental Scientist, Frank Gant, an architect with expertise in the renovation of historic buildings, and George E. Gavrelis, former Director of the Office of Planning and Zoning for Baltimore County. Mr. Gavrelis is now employed by Daft-McCune-Walker, Inc., the engineering firm which prepared the site plan (Petitioner's Exhibit 4). He testified as to many of the requirements for special exception approval contained within the Baltimore County Zoning Regulations (B.C.Z.R.).

As to the Protestants, their interests were represented by two individuals. G. Macy Nelson, Esquire, represented the Valleys Planning Council and a number of individual property owners in the area. Also participating at the hearing in opposition to the request was Kenneth Bosley, a nearby property owner. Four expert witnesses were presented by the Protestants. They included Wayne McGinnis, a farmer with significant experience in agriculture and soils, Mr. Bosley, a long-time farmer and

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property owner in the area, William Ball, an environmental engineer, and Ruth Mascari, Chairperson of the Landmarks Preservation Commission. Thirteen lay witnesses were also presented by the Protestants. Many of these witnesses live near the site. Essentially, their testimony related to their concerns over detrimental impacts of the development on wells and environmental resources, visual impacts, adverse increases in traffic, etc.

An overview of the subject property was presented by the Petitioner's witnesses and is more particularly described on the site plan of the property identified herein as Petitioner's Exhibit 4. Testimony revealed that the Hayfields farm was originally a large tract of land which totalled over 1,000 acres. Over the years, the farm has been subdivided and presently encompasses approximately 474 acres. The tract is presently configured as divided into two parcels, Parcels A and B, of which Parcel A contains that portion of the site proposed for use as a country club and is being considered within the Petition for Special Exception. Parcel A is comprised of approximately 226 acres in area, and is predominantly zoned R.C. 2 with a small percentage zoned R.C. 4. The R.C. 4 zoned portion of the site is located in the northeast end of Parcel A. Parcel B comprises the remaining acreage of the site and will be the residential component of this project. The property enjoys a rich agricultural history. It is one of the better-known farms in Baltimore County. Testimony presented is that the soils on site are among the best in the region.

The Mangione family acquired the site in the mid-1980s. A site inspection conducted by me shows that the property is still farmed, somewhat, and is improved by an original country home and several outbuildings. These buildings are on the list of historic structures as designated by the Landmarks Preservation Commission. The buildings include the original

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manor house, a servants' quarters, and several barns and outbuildings. All these buildings will be retained and refurbished as part of the project. The manor house will be converted to a club house and an additional structure will be attached thereto to serve as a banquet hall. The servants' quarters will be converted to a pro shop, and many of the barns will be used for storage and to house golf carts.

As to the proposed use, the Petitioner requests approval for development of an 18-hole golf course and related amenities. The country club use includes not only the golf course, but a practice range, pro shop, maintenance areas, club house, pool and tennis facilities. The golf and club house facilities will be open to the public. The facility will be semi-private. The Petitioner anticipates having a limited membership which will have priority for tee times and use of the facilities. The pool and tennis facilities will be restricted to members of the club and owners of residential lots; however, the general public will be able to use the golf facilities.

THE LAW OF SPECIAL EXCEPTIONS:

In essence, the B.C.Z.R. classify the permissibility of land uses in a given zone in one of three categories. That is, for each zone, uses are either permitted by right, prohibited, or, permitted by special exception. Those uses permitted by right are automatically allowed, notwithstanding a potential adverse impact on the neighboring locale. For example, farms, open space, streets and ways are all permitted uses as of right in an R.C. zone. No matter how adverse the impact, a property owner may utilize its land for permitted uses without limitation.¹ Other uses,

1. Obviously, a property owner must comply with all public laws, building codes etc., in utilizing a given property. The "Unlimited" exercise of property rights as discussed herein is from a zoning (land use) perspective.

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such as manufacturing plants and offices, are prohibited in an R.C. zone under any circumstances. Thus, even the benign or favorable impacts of a prohibited use will not be a basis to permit same. Special exception uses constitute, in effect, a middle ground. Special exception uses, (e.g. a church or a country club in an R.C. zone), are permissible only after a public hearing during which the property owner must demonstrate that the use satisfies the standards set forth in the B.C.Z.R. For special exception uses, the statutory criteria which must be satisfied are set forth in Section 502.1 of the B.C.Z.R.

Moreover, the B.C.Z.R. are written in the inclusive. Any use other than those permitted by zoning ordinance and being carried on as of right or by special exception is prohibited. See Kowalski v. Lamar, 25 Md. App. 493 (1975). Thus, the proposed use must be particularly identified in the regulations to be allowed. A country club is designated as permissible by special exception in Section 1A01.2.C.(10) of the B.C.Z.R. for R.C. 2 zones and in Section 1A03.3.B.(7) for R.C. 4 zones.

Although the law of special exceptions is clear, the public perception of same is not. Surely, the words "special" and "exception", when combined to identify these middle ground uses, contributes to the public's misconception. The uses identified in the regulations as permitted by "special exception" are in most cases not "special", and are definitively not "exceptions" to the zoning code. The use of these words engenders public misunderstanding as to the nature and propriety of these uses under the zoning code.

Recently, the Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691 (1995) observed the distinction between special exceptions and variances. Although that case came to the Court on a Petition for

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variance, the Court discussed the nature of special exceptions. Borrowing with favor from an Alabama case (i.e. Lundquist v. Board of Adjustment, 490 So2nd 16 {1986}), the Court repeated language within that opinion which stated "Thus, a special exception is not truly an exception to the zoning regulations at all." Cromwell, pg. 702. Under both Alabama and Maryland law, this statement is true.

Other jurisdictions label these middle ground uses as "conditional" uses. This descriptive term is far more accurate. Indeed, special exception uses are conditionally permitted, assuming that the criteria set forth in Section 502.1 of the B.C.Z.R. is satisfied.

In Schultz v. Pritts, 291 Md. 1 (1981), the Court of Appeals comprehensively stated the law of special exceptions in Maryland. Although this opinion is now 14 years old, the case remains the leading authority in Maryland on this topic. In Schultz, the Court repeated the often stated principle that "(a) special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid." Pg. 11. See also Rockville Fuel and Feed Company v. Board of Appeals of Gaithersburg, 257 Md. 183 (1970).

In People's Counsel v. Mangione, 85 Md. App. 738 (1991), a case from Baltimore County in which this Zoning Commissioner participated while a member of the County Board of Appeals, the Court of Special Appeals repeated the principles set forth in Schultz. Citing Creswell v. Baltimore Aviation Services, Inc., 257 Md. 712 (1970), the Court of Special Appeals observed that a special exception use "...is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a

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zoning body must, in each case, decide under specified statutory standards whether the presumptive compatibility exists." Mangione, infra, Pg. 748. Thus in the instant case, the Baltimore County Council (the legislature) has determined that a country club (an identified special exception use) is conditionally compatible with uses permitted as of right in an R.C. zone, (e.g. a farm) provided that the zoning body (this Zoning Commissioner) decides that the specified statutory standards (Section 502.1 of the B.C.Z.R.) are satisfied.

Thus, the issue before me must be framed within the context of the holding above. Whether the Hayfields property should remain a farm is irrelevant, within the context of this case. It does not matter whether the Hayfields property represents the most significant farm in Baltimore County. I am not empowered to determine whether a farm is more preferable to a country club. This is not a "pick the best land use" test. The County Council has determined that a country club is a permissible special exception use. The property owner has proposed such a use. The test for approval of the use, and the only test, is whether the special exception criteria within Section 502.1 of the B.C.Z.R. are satisfied.

Moreover, the Petitioner, as property owner, may utilize his property in any lawful manner. The Mangione family is under no obligation to continue farming operations on this site. It may be developed with dwellings or other uses permitted as of right at the pleasure of the property owner, assuming that the development regulations and other codes which regulate same are complied with.

For this same reason, the public "need" for golf facilities is also irrelevant. Just as the Petitioner is under no obligation to utilize the property as a farm, it is not obligated to provide to the

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public a country club or other recreational facility. Thus, arguments over alternative uses and public need miss the point, at least in the context of the issue before me. Those points are better raised by public debate in the context of legislatively permitted land uses for the future of Baltimore County.

Returning to Schultz and Section 502.1 of the B.C.Z.R., it need also be observed that the impact of this proposed use must be measured in connection with its effect on surrounding uses. The Protestants' Memorandum of Law, which was submitted subsequent to the hearing, improperly characterized the Schultz test as two-fold; namely, that the special exception use need be evaluated as to potential adverse impacts on both the property itself and on surrounding properties. Although the Board of Appeals may have adopted this position in the past, I find no appellate case law supporting the Protestants' assertion that the impact on the property itself should be considered. Moreover, a reading of prior Board cases discloses that the Board primarily focused on impacts to the neighborhood.

Schultz and the cases that follow, require that this Zoning Commissioner adjudge the impacts of the use on neighboring properties, only. Again, the best land use question for this property cannot be answered in evaluating the Petition before me.

The Court of Appeals is clear on this issue. The Schultz Court reasoned "The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected..." (emphasis provided in original). Pg. 11. The Schultz Court cited a line of Maryland cases, including Rockville, infra, Turner v. Hammond, 220 Md. 41 (1973), Anderson v. Sawyer, 23 Md. App. 612 (1974), Montgomery

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County v. Merlin's Club, 202 Md. 279 (1953), and held "These standards dictate that if a requested special exception use is properly determined to have an adverse impact upon neighboring properties in the general area, it must be denied." (Emphasis added). Pg. 12.

Thus, in my view, it is clear that the impact considered must be those effects on the surrounding locale/neighborhood, and not potential impacts on the subject property itself.

This is a particularly significant point, in view of the evidence offered. As is the case with all zoning Petitions, the subject Petition was reviewed by a number of the member agencies of the Zoning Plans Advisory Committee (ZAC). This committee is comprised of a number of Departments within Baltimore County, including the Office of Planning and Zoning (OPZ), the Department of Environmental Protection and Resource Management (DEPRM), etc. These agencies review zoning petitions and submit non-binding recommendations to the Zoning Commissioner.

The comments submitted by DEPRM offer a number of recommendations and suggest that same be adopted and followed by the Developer during the course of development and operation of the golf course. These recommendations are for the purpose of minimizing environmental impacts, particularly on ground water. The Department's recommendation also observes that the Hayfields site contains prime and productive soils. The comment states that approximately 95% of the R.C. 2 zoned land on the subject property is comprised of prime and productive soils. It is noted that this site, from a soils and agricultural production standpoint, is among the best properties in Baltimore County. Based on these factors, the Department concludes that conversion of the site to a Country Club..."will result in the loss of approximately 274 acres of prime and productive agricultural land that

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has R.C. 2 zoning..." and that the property "...has an unusually high percentage of prime and productive soils relative to a sampling of farms in the County." This testimony was reinforced by several witnesses offered by the Protestants. Most particularly, testimony was received from Wayne McGinnis, a resident of White Hall. Mr. McGinnis is a long-time farmer in Baltimore County and is familiar, not only with soil conditions throughout the area, but also with Hayfields farm in particular. He offered substantial testimony regarding the Hayfields farm. His conclusions were that the Hayfields property is a particularly productive farm. He agreed with the comments noted hereinabove from DEPRM. In his view, the loss of the Hayfields farm would be a significant blow to the agricultural resources of Baltimore County. The Petitioner offered no testimony to the contrary.

The judgments offered by Mr. McGinnis and DEPRM in this regard are quite possibly correct, but miss the point as far as this special exception is concerned. Again, for reasons cited above, the test is not whether the Hayfields farm should be used as a Country Club or as a farm. The present owners of the property are under no obligation to continue farming operations. They may use their property for any permitted purpose in the B.C.Z.R. Despite what some today believe to be the over-reaching regulations of government, a property owner is still empowered to use his land as he desires. The Mangione family could no doubt stop farming operations on this property altogether. They could do nothing on the site, in which case the loss of agricultural productivity from this site would be the same as if the property were developed as a golf course.

For these reasons, as well as the holding in Schultz v. Pritts cited above, this testimony misses the mark. Again, this Zoning Commissioner is obliged to apply the test which requires examination of the

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By: M. G. G. G.

impact on the proposed use on neighboring properties, as opposed to considering the impact on the property itself.

Clearly, the factors which the Protestants want so much for me to consider are better considered by the County Council during the quadrennial zoning process. The best use of a specific property should be and is a factor which must be considered by the Council when a zoning classification is designated for a given property. The Council applied the R.C. 2 zoning designation to this property. Although such a designation fosters agricultural uses, it also permits a country club as a special exception. The Council has adopted no legislation which restricts the use of this property only to a farm. As such, despite the Protestants' assertions that the Hayfields property would be best used as a farm, the instant Petition cannot be defeated on that basis.

Returning again to the holdings in Schultz and Mangione, the nature of the impact must be considered. As succinctly stated in Schultz, "These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that a grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." Pg. 15. The key words within this holding are "unique and different". In the instant case, it is clear that a proposed country club will cause some impact on the surrounding locale. It will, no doubt, generate traffic and have some environmental repercussions. But the mere fact of these impacts is not enough to warrant denial of the special exception. Their effect must somehow be unique or different on neighboring

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6/30/95
M. Hovak
BY

properties than if the use was established elsewhere in the zone.

Two prior appellate cases illustrate this point. In Anderson v. Sawyer, 23 Md. App. 612 (1974), a Baltimore County case, the Court of Special Appeals considered a proposed special exception Petition for a funeral home. Opposing neighbors to the Petition objected to the special exception, in part, due to the inherent depressing and disturbing psychological effect of a funeral home. Quite obviously, funeral homes are not places of joy and happiness. Rather, they are places of sadness and reflection, catering to individuals who have suffered the loss of a loved one. Although it must obviously be conceded that a funeral home is inherently a depressing place, such impact, standing alone, is not sufficient to warrant a denial of a special exception. As the Court of Special Appeals noted in Anderson, this depressing psychological impact was no different at the proposed location for the special exception than elsewhere in the zone. Thus, although there might be some adverse effect, the Court of Special Appeals affirmed the granting of a special exception in that there was no evidence that the adverse impact was unique or different in that locale.

A contrary result was reached in Mangione, infra, another Baltimore County case, although the same standard was applied. This Zoning Commissioner was a member of the Board of Appeals when that case was heard, and, in fact, authored the Board's opinion in that case. Ultimately, the case was appealed to the Court of Special Appeals, which affirmed the denial of the special exception by the Board.

The salient facts in that case related to the Petitioners proposed construction of a nursing home in Towson. Clearly, the construction of such a facility would generate adverse impacts, including traffic, storm

RECEIVED
DATE 6/30/95
BY M. G. H. H.

water runoff, etc. As the Court of Special Appeals noted in its affirmation of the Board, a denial of the special exception was warranted because of the unique impact of these factors on the subject locale. The Court noted that the traffic which would be generated would overload the interior community road system designed to accommodate residential traffic. Moreover, the project would clearly exacerbate an already worsening storm water runoff situation and constitute the deepest commercial/office intrusion into the residential community of Dulaney Valley. These unique factors, the Court found, justified the denial of the Petition for Special Exception in that case.

THE APPLICATION OF SECTION 502.1:

Turning to the issue presented, this Zoning Commissioner must address each of the criteria set forth in Section 502.1 of the B.C.Z.R. That Section sets forth the following:

"Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a) Be detrimental to the health, safety, or general welfare of the locality involved;
- b) Tend to create congestion in roads, streets, or alleys therein;
- c) Create a potential hazard from fire, panic or other dangers;
- d) Tend to overcrowd land and cause undue concentration of population;
- e) Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f) Interfere with adequate light and air;
- g) Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations; nor,

ORDER RECEIVED FOR FILING

DATE

By

6/30/95
M. G. G. G.

h) be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations."

Considering each standard in ascending order of applicability to this case, the following is found:

Interfere with adequate light and air: Obviously, there will be no adverse impact measured in this manner. The golf course portion of the Country Club is an open facility. Moreover, compared with the overall size of the tract, there is little building or impermeable surface. The buildings which are proposed, are of limited height and within the tolerance of the zoning code. Thus, it is easily concluded that there will be no adverse interference with adequate light and air.

Tend to overcrowd land and cause undue concentration of population: There is likewise no conflict with this standard. Again, it is to be noted that this case is limited to the Country Club facility. The housing component of the Mangione family's grand plan is not considered in the context of this special exception request. There will not be any residential housing as part of the Country Club, with the possible exception of a caretaker's quarters. Although the public will be drawn to this facility to utilize the golfing and catering hall facilities, the concentration of population will be temporary. Given the size of the tract, I must conclude that there will be no adverse impact in this respect and that the proposed use will not tend to overcrowd land nor cause undue concentration of population.

Create a potential hazard from fire, panic or other dangers: There will be no adverse impact above and beyond that inherently associated with a Country Club under this standard. The golf course component of the Country Club itself will not generate any potential hazard from fire,

ORDER RECEIVED FOR FILING
Date 6/30/91
By M. H. H. H.

panic or other dangers. Obviously, the buildings are at risk of fire damage, however, they will be renovated in accordance with the fire code and are no more susceptible to engendering such dangers than if the building were located elsewhere in the zone. Moreover, the golf course component provides for the construction of additional ponds which will provide a ready source of water in the event of fire. There is truly no significant potential hazard from fire, panic or other dangers generated by the proposed Country Club use.

Interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences or improvements: There are no public facilities for water or sewer to the subject site, thus, there will be no adverse impact in this regard. Moreover, the Country Club facility itself will not generate students, thus, there will be no impact on schools. Potential impacts regarding transportation will be discussed hereinafter in the discussion relating to potential congestion in roads, streets, or alleys. Moreover, the private water and sewer arrangements will be discussed hereinafter.

Generally, there will be no adverse impact to that list of items contained within this requirement. Actually, the construction of the Country Club facility provides a certain public benefit in that additional public open space and recreational area is provided. Moreover, I do not believe that there will be an adverse effect on the Oregon Ridge Park nearby. There was testimony offered on this point by Polly Wirth, a long-time supporter of the Oregon Ridge Park. She outlined the history of the Park and described the activities which occur thereon. In her opinion, development of a country club on the Hayfields property would adversely affect the Park by destroying the rural ambiance of the area and disrupting

ORDER RECORDED FOR FILING

Date

By

6/30/95
M. H. Drake

the scenic view. Should the country club be prohibited because it offends some who may view same from Oregon Ridge? Is that view, in and of itself, a detriment to the Park? I believe both of these questions must be answered in the negative. Although the Oregon Ridge Park is a unique facility, I find no adverse unique effect on same will be generated by the proposed special exception use.

Moreover, my site visit to the property was helpful on this issue. Looking to the north and east from Oregon Ridge, one is not so much captivated by the openness of Hayfields as one's eye is drawn to the high-rise buildings of Hunt Valley which dominate the horizon. Compared with those structures, one cannot conclude that the conversion of the site to a golf course would destroy this supposed scenic view. Moreover, from a visual aesthetic standpoint, it would seem that a Country Club use of the subject property is more compatible to the Oregon Ridge facility than other uses (dwellings) which might be allowed on this site. Again, the large acreage of the property and the relatively low intensity of the use compared with the size of this site is convincing in considering this standard.

Be inconsistent with the impermeable surface and vegetative retention provisions of the zoning regulations: Most of the impermeable surface and vegetative retention provisions relate to the R.C. 4 zoning classification. I do not find any adverse impact in this regard. The amount of impervious surface proposed for the subject site is insignificant. There will be a limited amount of roadways, buildings, parking lots, and other areas which would generate storm water runoff. There is no evidence in the record of this case that the proposed use at this location would have any such unique effect as to impermeable surface and vegetative retention issues.

ORDER RESERVING
6/30/91
Mr. Bohach
57

Tend to create congestion in roads, streets, or alleys: As to this issue, there was expert testimony presented, which in my view, was dispositive. The Petitioner presented the testimony of John W. Guckert, a professional traffic engineer. His traffic study was submitted into evidence and has been reviewed and considered by me. Although the Protestants fear a negative potential traffic impact, I do not believe that their fears are well-founded.

Clearly, the site will create some traffic congestion. However, again referring to the holding in Schultz, infra, the test is not whether any impact will be generated, but whether the inherent effects of such impact create a unique adverse effect here.

Obviously, the R.C. zoning classification is one which encompasses many of the rural areas of Baltimore County. Owing to the character of most R.C. land, the road network within the rural areas of Baltimore County is significantly less sophisticated than in urban areas. Moreover, of all the R.C. sites in Baltimore County on which a Country Club could be located, one cannot think of a better place than the Hayfields property, from a traffic standpoint. The site immediately abuts I-83. Mr. Guckert's well-reasoned testimony was convincing that a significant majority of the traffic destined for the potential Country Club would arrive via I-83. Particularly, he opined that a full 70% of the traffic generated by this project would arrive via I-83 and/or Shawan Road to the east, under a worse case scenario. Clearly, if the Country Club was proposed for the interior of the rural valleys of the north County, the traffic impact would be significantly worse. Most visitors to the Hayfields site will not use single lane country roads and lanes to travel to Hayfields. Due to its location, although recognizing the potential generation of traffic,

I cannot conclude that such inherent effect will adversely impact the surrounding locale in a manner more significant than would be elsewhere in the zone. In my view, just the opposite finding is reached. The traffic impacts here will be lessened, owing to the site's location on the fringe of the R.C. zones which encompass the rural valleys of Baltimore County.

Be inconsistent with the purposes of the property's zoning classification or in any other way, inconsistent with the spirit and intent of these zoning regulations: This standard was the subject of a great amount of testimony and argument from both the Petitioner and the Protestants. The Petitioner urges that the proposed Country Club is appropriate at this locale. They aver that it is the perfect gateway use to the rural lands which comprise the valleys and farms of the north County. The Petitioner notes the property's strategic location adjacent to the intersection of I-83 and Shawan Road. The Mangiones observe the commercial/office/industrial uses immediately on the other side of I-83. As a cornerstone of the R.C. lands comprised in the valleys, the Petitioner argues the Country Club use fits perfectly as a transition area from the commercial/office/ industrial uses to the east and the agricultural uses to the west.

For their part, the Protestants vehemently disagree. In their view, the Hayfields site is the cornerstone of the entire valley area. They fear that if this farm is converted to a use other than agricultural, a domino-like effect will occur. Also, as indicated heretofore, they believe a farming operation is the most preferable use of this site.

The above standard found in Section 502.1.G requires the Zoning Commissioner to review the zoning regulations so as to determine whether the proposed use is consistent with the spirit and intent of same. As

DATE 6/30/95
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observed herein, the R.C. zone is a resource-conservation zone which was adopted by Baltimore County in the late 1970s. The R.C. zones were created to discourage urban sprawl, to provide a framework for planned or orderly rural development and to protect natural resources from the densities of development (See Section 1A00.2 of the B.C.Z.R.). Moreover, the R.C. 2 designation is the least intensive classification. The purpose of the R.C. 2 zone is "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." (See 1A01.1B of the B.C.Z.R.) The legislative statement of findings within the preamble to the R.C. 2 zoning classification acknowledges that Baltimore County is fortunate to have a variety of productive agricultural soil types and that the agriculture is an important and integral industry in Baltimore County. The preamble further states that "unchecked development within the agricultural areas of Baltimore County is inappropriate." Reading the above Sections alone would be persuasive in supporting a conclusion that only agricultural and related activities should occur in the R.C. 2 zone. The words and phrases used by the County Council present a powerful image of the legislature's desire to protect the agricultural resources of Baltimore County. However, the preamble of the R.C. 2 portion of the B.C.Z.R. cannot be read in a vacuum. As stated above, the Council adopted a list of uses permitted as of right or by special exception in the R.C. 2 and other R. C. zones. The Council no doubt was aware that the uses designated would come to pass in R.C. 2 zones. Dwellings are allowed as of right in an R.C. zone, as are public schools, telephone, telegraph, electric power or other lines or cables, and certain television and radio antennae. Surely, these uses are not agriculturally based, yet none the less,

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have been designated by the County Council to be permitted as of right in an R.C. 2 zone. The special exception uses also offer diverse characteristics. In addition to Country Clubs, special exception uses which are designated for the R.C. 2 zone include airports, antique shops, camps, etc. All of these uses are not agriculturally based. Thus, notwithstanding the language employed in the preamble of the R.C. 2 zoning regulations, the Council surely envisioned that non-agricultural uses would exist in the R.C. zones, by allowing such uses to be permitted either as of right or by special exception.

Thus, the Protestants' innuendo that the proposed Country Club is inherently impermissible falls short. The Petition for Special Exception for a Country Club use cannot be denied, solely because such a use is not agriculturally based. The tenor of the testimony of many of the Protestants' witnesses was that a Country Club use is inherently incompatible with agricultural uses and thus, should be denied. This point is simply not so, when one considers all of the regulations in context.

I also place great significance on the language contained within Section 1A01.2.C of the B.C.Z.R. That Section introduces the permitted uses by special exception and provides that:

"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 more appropriately used for primary agricultural uses."

The significance of this language is two-fold. First, it again enforces the conclusion reached above that the test is to determine that the proposed special exception's impact on surrounding uses as opposed to the

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BY M. G. G. G.

effect on site. The Section specifically requires the Zoning Commissioner to ascertain whether the proposed use would be detrimental to primary agricultural uses in the vicinity. Again, it need be emphasized that it is the neighborhood, not the property itself, which is at issue.

Secondly, the Council clearly anticipated circumstances where the use of the property should be considered by the hearing authority. In considering uses under "Item 24", the regulation requires the hearing authority to consider whether the use should not be "situated on land more properly used for primary agricultural uses." I attach great significance to the fact that the Council, only for the enumerated uses designated in Item 24 of the regulations, requires the Zoning Commissioner to explore the subject property itself and determine whether the site should more properly be used for agricultural purposes as opposed to the special exception uses identified. Notwithstanding this specific direction for the uses designated in Item 24, however, the Council did not issue such a mandate to this Zoning Commissioner for other special exception uses, including golf courses or country clubs. Thus, it is clear, in my view, that the issue is not whether the subject property should remain an agricultural operation.

In any event, I see no compelling evidence that a proposed country club use at this location is contrary to the spirit and intent of the zoning regulations. The Petitioner is correct when it asserts in its memorandum that the B.C.Z.R. contains no authority which can require a property owner to farm his land or use it for any directed purpose. Although the regulations speak of the need to protect the agricultural resources of Baltimore County, they designate country clubs as permissible special exception uses and, by inference, direct that the Zoning Commis-

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6/30/95
M. Good

sioner should not consider the impact on the property itself. Thus, I hold that the proposed use is not inconsistent with the purposes of the property's zoning classification, nor inconsistent with the spirit and intent of the zoning regulations.

Be detrimental to the health, safety or general welfare of the locale involved: The final standard applicable to considering this special exception is a catch-all requiring the Zoning Commissioner to generally consider any adverse impacts to the health, safety or general welfare of the locale caused by the special exception use. In this case, the impacts on the surrounding locale fall within two areas; namely, environmental and historical.

Potential environmental repercussions of the special exception use are significant and give this Zoning Commissioner great cause for concern. Nonetheless, I must consider the case in this respect based only on the testimony and evidence offered during the hearing. I must frankly express my regret that no one from DEPRM was called upon to testify. The relevant testimony and evidence which was produced can be summarized as follows:

The testimony offered by the Petitioners' witnesses was largely through Stephanie Novak Howe, a hydrologist and principal in the firm of Chesapeake Environmental Management, Inc. Her resume, qualifications and background speak for themselves and are contained within Petitioner's Exhibit 11. Ms. Howe offered extensive testimony regarding her studies and conclusions regarding the potential environmental impacts for the Hayfields Golf Course. These studies and conclusions are summarized in Petitioner's Exhibit 13, Environmental Impact Report, which contains a description of the geology and hydrology of the site, as well as a physical

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Dr. Novak

description of the property, both above-grade and below. This description was the result of field tests by Ms. Howe's firm, including borings, and a review of the geological maps maintained by Baltimore County and the Soil Conservation District, a Federal agency.

Ms. Howe's conclusions and studies speak for themselves and will not be repeated herein. Nonetheless, it is significant to note that the proposed location for the golf course is underlain by the Cockeysville Marble foundation. This marble formation is found in the southern portion of the site and the Baltimore Gneiss formation exists in the northern portion of the site. The Cockeysville Marble foundation contains a rich aquifer and is among the best sources of groundwater. As such, it can be particularly sensitive to contamination and pollution.

Nonetheless, Ms. Howe concludes that development of this site as a golf course will not cause contamination to this valuable water source. Her testimony particularly focused on what was characterized as a "relatively thick clay layer overlaying the Cockeysville Marble" which offers "a high potential to retain and enhance attenuation of golf course chemicals." Moreover, Ms. Howe relied on the golf course management plan for Hayfields (Petitioner's exhibit 14), which also was prepared by her company. She opined that the golf course management proposal, when followed appropriately, would "likely eliminate the potential for contamination."

In essence, Ms. Howe concluded that the proposed special exception would not have any adverse effects. As noted within the conclusion of her report, "The assessment of potential environmental effects of the proposed Hayfields Manor Golf Course indicate that the golf course will not have adverse impacts to the ground water, surface water, wetlands, or forest resources on the property." (Petitioner's Exhibit 13, Page 26). It

ORDER RECORDED FOR FILING
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is stated that proper management of the course will eliminate potential adverse impact on both the quality or quantity of ground water. Moreover, this expert witness indicated that surface water will not be adversely affected. Impacts to forest, wetlands, and other environmental considerations will be "predominantly positive", because of the afforestation of the site and enhancement of the wetlands area. In conclusion, this witness opined that "As a whole, the golf course environment has the potential to greatly improve the ecological setting of the site, through reduction of runoff and sediments loads to streams, the creation of productive and diverse habitats, and the replacement of widespread chemical applications (during farming operations) with controlled and precise pest management." Thus, conditioned on several rather large "ifs", the Petitioners' expert opined that the proposed use would not cause any environmental detriment to the surrounding locale, most particularly, the underlying water table.

This conclusion went uncontradicted by other testimony and evidence offered, even that submitted by the Protestants. Of particular note are the Zoning Plans Advisory Committee (ZAC) comments submitted by DEPRM. This Committee is composed of reviewing agencies of Baltimore County. Those agencies review each zoning Petition which is filed and issue recommendations to the Zoning Commissioner. Recommendations were offered from a number of agencies in this case.² Recommendations from DEPRM were received

2. The substance of these comments was disappointing. After a lengthy stream of double-speak that would make Winston Smith wince, the Office of Planning and Zoning offered this less than forceful stance: "Based upon a review of the above-mentioned case and the information provided, staff concludes that it will be incumbent upon the Zoning Commissioner to determine the appropriateness of a golf course at this particular location." DEPRM's report was likewise less than fulfilling. Although long on advice as to required testing and monitoring, it was short on opinion as to actual environmental impact.

dated May 5, 1995 and May 10, 1995. DEPRM notes that the Hayfields site is underlain by the Cockeysville Marble in the southern portion of the property, over which the golf course will be primarily located. The comment notes that Cockeysville Marble produces a high water yield, however, carries with it a higher vulnerability to ground water contamination. The comments recommend that the portion of the golf course underlain by the Cockeysville marble be minimized, but fail to go so far as to state that the golf course should not be located over the Cockeysville marble.

Most importantly, the comment neither endorses nor recommends denial of the Petition for Special Exception. Instead, the comment suggests the imposition of a lengthy list of tests, studies, and monitoring activities which must be conducted. The list, in the view of this non-hydrologist, places a severe task upon the Petitioners. The list identifies a significant series of tests and ongoing studies to insure that the groundwater is not contaminated. Apparently, DEPRM believes that through these checks and balances, the country club can be operated safely.

Ms. Howe indicated that the Petitioners will comply with DEPRM's recommendations. A supplement to DEPRM's original comment, dated May 10, 1995, concludes that "the extensive groundwater data necessary to meet DEPRM golf course guidelines and sewage disposal system data must be submitted by the Developer and approved by DEPRM as part of the development plan approval process contained in the development regulations." Approval of the special exception by this Zoning Commissioner will be conditioned on the Developer providing that data and DEPRM approving each and every environmental impact.

The Protestants produced their own expert witness, Dr. William P. Ball. Dr. Ball's credentials are impressive. He is an environmental

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engineer with a vast educational background and hands-on experience. Nonetheless, certain aspects of his testimony were troublesome in considering this issue. He has never been to the property. He has never conducted any type of test or study of the site. His testimony was based essentially upon a review of Ms. Howe's environmental impact study and the golf course management plan. He opined that the sub-surface conditions in this area are complex, a conclusion which can be reached without the benefit of a doctorate in geology. His conclusions in essence were as follows: 1) That other wells in the area could be adversely affected by the use of water to irrigate the Hayfields golf course; 2) That the clay layer will not filter the nitrates and pollutants; and 3) That the septic system may not work. Again, as is the case with DEPRM's comments, his testimony is nearly as significant for what was not said than for what was. He did not affirmatively opine that the development of the golf course would be detrimental to the surrounding locale. He was unable to definitively conclude that there would be adverse impact on surrounding wells or that the groundwater table would be adversely impacted from either a quality or quantity standpoint. In this respect, his testimony was much like that offered by the many lay witnesses. They unanimously expressed fears over contamination to wells, both from a quality and quantity perspective; however, their fears were based on layman's insight, without any understanding of the technical aspects and effects of the proposed use.

The Petitioners bear the burden to adduce testimony and evidence that the proposed special exception use meets the criteria set forth in Section 502.1 of the B.C.Z.R. In my judgment, from an environmental perspective, the burden was met, however, barely. Ms. Howe's conclusions that the golf course can be developed without adverse environmental impact

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M. Howe

were not contradicted. Neither DEPRM nor the Protestants produced persuasive or competent testimony to refute this conclusion. Thus, I am persuaded to find that there will be no adverse impact, environmentally speaking, caused by the country club. However, as is recommended by DEPRM, I will require the active participation of DEPRM in monitoring this project. All of the various studies and monitoring devices which they deem appropriate shall be followed. I will incorporate as a requirement precedent to the development of the course, those conditions and limitations as set forth in DEPRM's ZAC comments to me dated May 5, and May 10, 1995.

The other significant issue as to the impact of the use on the health, safety, and general welfare of the surrounding locale relates to the historical and architectural preservation issues. Testimony offered by the Protestants in this regard came from many of the lay witnesses, as well as Ruth Mascari, the Chairman of the Landmarks Preservation Commission. On behalf of the Petitioner, testimony was offered by Frank Gant, an architect who specializes in the preservation and restoration of historic buildings.

Guidance on this issue is found within Section 26, Article X, of the Baltimore County Code (B.C.C.), entitled Historical and Architectural Preservation. Section 26-532 of the Code provides that the purpose of that regulation is to provide for the protection, enhancement, and perpetuation of historic structures and districts. The following objectives are sought: "1) To safeguard the heritage of the County as embodied and reflected in such structures and districts; 2) to stabilize and improve property values in such districts in the County generally; 3) to foster civic pride in the beauty and noble accomplishments of the past; 4) to strengthen the economy of the County; and, 5) to promote the use of histor-

ic districts and landmarks for the education, pleasure and welfare of the residents of the County."

Ms. Mascari fell into the same trap as other Protestant witnesses during much of her testimony. When asked about the inter-relationship of the land at Hayfields and the architectural significance of the buildings thereon, she opined that "Development of this kind will absolutely destroy the relationship of that inter-relationship. The interwoven non-separable issues in this case are, you know, that the place is a farm and if you have that sort of development, it's gone and it's gone forever and you've lost that significance in the cultural and historical heritage of the County." (See Transcript of Mascari Testimony, Pg. 62).

Again, as emphasized so many times above, although these conclusions may well be true, they are not germane to the Petition for Special Exception. The loss of this property as a farm is not the issue. Unless and until Baltimore County adopts an ordinance requiring this land to remain a farm, its use is at the pleasure of the owners.

More to the point, it is the impact of the proposed special exception use which is at issue. Ms. Mascari also commented on that issue, opining that development of a country club/golf course use is entirely incompatible with the existing historic structures on the property and the historic area surrounding this site. Mr. Gant, for his part, disagrees. He believes that the buildings can be restored to recapture much of their lost 19th Century glory. He opined that redevelopment and adapted reuse of the structures presents a real opportunity to fulfill the goals and purposes of historic preservation. Specifically, restoration of the site and public use of the country club facilities will promote the use of this

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site for the education, pleasure and welfare of the residents of the County.

This is a most difficult issue. Irresponsible redevelopment of the site would be a colossal mistake. However, I do concur with Mr. Gant that responsible and wise adaptable reuse of the buildings in connection with the country club environment could foster the purposes of the historical and architectural preservation article. Based on the totality of the testimony and evidence presented, I am persuaded that the Petition for Special Exception should not be denied because of the Protestants' concerns on this issue. However, pursuant to the authority contained in Section 502.2 of the B.C.Z.R., I will restrict the relief granted to insure responsible restoration and redevelopment of the structures on site. The Petitioners' testimony was that the buildings on site will be refurbished and restored. New structures will also be built (e.g. the banquet hall facility). I will require the Developer to submit building plans and elevation drawings for any building to be erected or restored on the subject property to the Landmarks Preservation Commission for review and approval. This requirement will extend to every building ultimately planned for the site, be it existing now and being restored or be it planned as new construction. Such plans must be reviewed and approved by the Landmarks Preservation Commission as a body. No restoration or building can commence without obtaining such approval. Although this restriction may run concurrent with the authority of the Landmarks Preservation Commission, set forth in Article X of Section 26 of the Code, it shall nonetheless constitute an independent restriction on the special exception approval pursuant to Section 502.2. In my judgment it is appropriate that those individuals who comprise the Landmarks Preservation Commission exer-

cise their expertise in this field to monitor development of this site. The historic value of the area at large must be protected from irresponsible development, which is insensitive to the historic value of this property.

Identity of the Petitioner:

As noted hereinabove, the name under which the Petition was originally filed was Toll House, Inc. At the public hearing, it was discovered that the actual owner of the property is Hayfields, Inc. These are separate corporations, however, the principals of each are the same, namely, members of the Mangione family. The Protestants moved to have the Petition dismissed because of this erroneous designation of the property owner/Petitioner.

I accepted an amendment to the Petition during the course of the public hearing changing the name of the Petitioner. I do not see this error as a fatal flaw in the case. There is no prejudice to the Protestants by allowing this amendment. I will not follow form over substance on this issue. The arguments offered by counsel for the Petitioner in their Memorandum are adopted. The mis-designation on the original Petition should not operate as a bar to consideration of the merits of the special exception.

Geographic Area:

Another issue for consideration raised by the Protestants relates to the actual area of the special exception use. As noted above, Parcel A is dedicated to the country club use and is comprised of 226.44 acres. Parcel B represents the balance of the property and is proposed for residential development. The concerns raised by the Protestants specifically relates to Hole No. 8 of the golf course. As shown on the site plan, the area of the special exception includes the tee-box for Hole No. 8 and the

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actual green. However, the area between those two, over which a golfer must direct his shot, is not included within the area of the special exception. A significant portion of that area will be occupied by a pond.

The preparers of the plan apparently do not appreciate the difference in golf between an area out of bounds and a hazard within the course. As any golfer knows, a course contains definitive boundaries which are normally marked by white stakes. Those who chose to live on courses, no doubt frequently suffer the errant shots of golfers which land in their yard. In this case, a portion of the course will be bounded by residential property and on the east side by Western Run Road. Notwithstanding the fact that an occasional shot will land in those areas, they should not be considered as part of the course. They are indeed "out of bounds." However, there are areas within the course which are occupied by hazards. The 8th Hole apparently is such a site. In this instance, a golfer will be required to hit over the water to a green. The water area is obviously not a playable part of the course, yet is a part of the course nonetheless. It is a hazard and the designer of the course intentionally provided that same would come into play. For this reason, the site plan is erroneous. The plan should be amended to include all hazard areas as opposed to "out of bounds" areas as distinguished within the discussion above.

Is this error significant enough to warrant denial of the special exception? The manifest answer is no. The plan should be amended, however, to include all areas of the course (playable and non-playable) as part of the area of the special exception. I will therefore, require that the plan be amended and submitted to this Zoning Commissioner for review so as to insure that the special exception area encompasses the entire course.

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Date Mr. Novak
By

Accessory Uses:

The Protestants also raise issues regarding the proposed banquet hall facility and whether same is permitted under the B.C.Z.R. The B.C.Z.R. allow a country club use by special exception. Section 101 of the B.C.Z.R. defines a country club as "A 9- or 18-hole golf course with a club house and other appropriate facilities, which may include other recreational facilities."

The proposed country club at this location features a banquet hall. The banquet facility will seat up to 200 people and can be leased for use for wedding receptions, and other similar functions. The Protestants suggest that this is an improper use of the subject site.

I disagree. A country club is not just a golf course. The definition of the term within the B.C.Z.R. allows for "other appropriate facilities." Most country clubs in the Baltimore Metropolitan area include some type of restaurant/catering facility. The 200-seat capacity suggests that the banquet facility will be moderate in size, in keeping with the subject property and proposed use. In my judgment, the banquet facility is an appropriate accessory use to the country club.

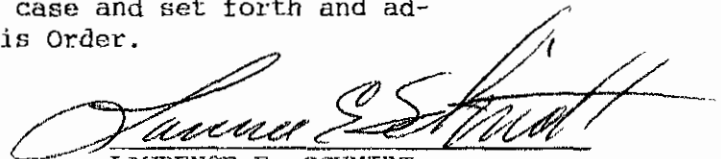
This is a difficult case. I recognize the importance which has been attached to this project. As the Court of Special Appeals observed in Cromwell, *infra*, the Zoning Commissioner is a quasi-judicial, not legislative function. My analysis of the law and its application to the facts herein leads to the inescapable conclusion that this Petition for Special Exception must be granted. The Petitioners have met their burden at law and the Protestants have failed to rebut the evidence offered in support of the request.

ORDER RECEIVED FOR FILING
Date 6/30/95
By Mr. Gosh

Pursuant to the advertising, posting of the property, and public hearing held thereon, and for the reasons set forth herein, the Petition for Special Exception shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of June, 1995 that the Petition for Special Exception for a country club, in accordance with Petitioner's Exhibit 4, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with the Zoning Plans Advisory Committee comments submitted by DEPRM, dated May 5, 1995 and May 10, 1995.
- 3) Within fifteen (15) days of the date of this Order, the Petitioners shall submit a revised site plan showing the revised special exception area consistent with the direction contained herein.
- 4) Floor plans and elevation drawings shall be submitted to the Landmarks Preservation Commission for review and approval prior to the issuance of any building permits for construction and/or renovation of same.
- 5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
6/30/95
By: [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

June 30, 1995

Scott Barhight, Esquire
Whiteford, Taylor, Preston, etc.
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

G. Macy Nelson, Esquire
Anderson, Coe and King
Suite 2000, 201 N. Charles St.
Baltimore, Maryland 21201

Kenneth T. Bosley, Esquire
P.O. Box 585
Sparks, Maryland 21152

RE: Case No. 95-308-X
Petition for Special Exception
Hayfields, Inc., Petitioner

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been granted, with restrictions, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmm
att.

cc: Ms. Ruth Mascari, Chairperson, Landmarks Preservation Commission
17710 Whiteley Road, Monkton, Md. 21111
cc: Mr. George Gavrelis, Daft-McCune-Walker, Inc. 200 E. Penna. Ave 21204
cc: Dr. Richard W. McQuaid, 1500 Harris Mill Rd., Parkton, 21120
cc: Ms. Victoria Woodward, P.O. Box 58, Upperco, Md. 21155
cc: Mr. John Bernstein, Valleys Planning, P.O. Box 5402, 21285-5402



95
IN THE MATTER OF

*

BEFORE THE

HAYFIELDS, INC.

*

ZONING COMMISSIONER

PETITION FOR SPECIAL EXCEPTION *

OF BALTIMORE COUNTY

FOR COUNTRY CLUB

*

CASE NO. 95-308-X

*

* * * * *



PETITIONER'S MEMORANDUM

The Petitioner, Hayfields, Inc., by its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, hereby submits this Petitioner's Memorandum in Support of the Petition for Special Exception for Country Club, in lieu of final argument, and states as follows:

STATEMENT OF THE CASE

The Petitioner filed its Petition for Special Exception for Country Club on or about March 3, 1995. By letter dated April 17, 1995, counsel for the Petitioner filed an amended Site Plan. The Zoning Commissioner held his hearings on May 9, 11, 17, 18, 19 and 24, 1995. The final amended Site Plan was introduced as Petitioner's Exhibit 4.

The Petition for Special Exception for Country Club is one of many steps which will be taken by the Petitioner to achieve approval for the golf course residential community it envisions. The Special Exception does not request approval for the residential component of the community. In an ancillary case, a Petition for Reclassification has been filed before the County Board of Appeals for Baltimore County to rezone approximately 69 acres of the RC-2 portions of the property to RC-4.

Since the requested country club is permitted by special exception in both RC-2 and RC-4 zones, the Zoning Commissioner has original and exclusive jurisdiction over the Petition for Special Exception for Country Club.

The Petitioner is only seeking the relief requested, namely, a special exception for a country club. If variances are required in the future as a result of the Petition for Reclassification, then and only then will the Petitioner seek any necessary variances. The Petitioner acknowledges that the proposed project is subject to the Development Regulations and will need development plan approval. However, the Petitioner is not seeking development plan approval at this time.

THE WITNESSES

The Petitioner presented five witnesses. These included a representative of the Petitioner, Mr. John Mangione and four expert witnesses. The pertinent testimony for each of the Petitioner's witnesses is summarized below:

John Mangione. Mr. Mangione, the project manager for the Hayfields Manor Country Club and residential community presented the project. The Petition for Special Exception proposes a semi private country club with several ancillary uses. The country club includes an 18 hole golf course, practice range, pro shop, maintenance areas, club house, pool and tennis facilities. The golf and club house activities will be open to the public. The pool and tennis facilities will be restricted to members and owners of residential lots. Country club members will receive some additional prefer-

ential treatment regarding utilization of the golf facilities. Members of the public will be able to utilize the golf facilities for appropriate fees.

Mr. Mangione described the property and the vicinity through the use of an aerial photograph (Petitioner's Exhibit 1) and a site constraints map (Petitioner's Exhibit 2). The project was described through the use of an overall plan for the Hayfields Manor Country Club and residential community (Petitioner's Exhibit 3) and the rendered special exception site plan (Petitioner's Exhibit 4). Mr. Mangione also described in some detail the club house campus, modifications to the existing historic structures and additional buildings through Petitioner's Exhibits 5, 6A, 6B, 6C, 7A, 7B, and 7C.

The process for the development of the project was also described. Considerable time was spent working with Baltimore County Department of Environmental Protection and Resource Management (DEPRM) and the identification of all applicable environmental constraints by Daft-McCune-Walker, Inc. (DMW). Mr. Gant, an architect with considerable experience in historic preservation, performed an exhaustive study of the existing historic structures prior to development of the golf course plan and residential community. With the necessary base information at hand, Mr. Ault designed the golf course layout and DMW designed the residential components. Ms. Hau, of Chesapeake Environmental Management, oversaw the development of a golf course management plan to ensure proper operation of the golf course facility.

John W. Guckert. Mr. Guckert, a traffic engineer, analyzed the traffic impact of the proposed special exception for the Hayfields golf course community, testified regarding these impacts and introduced his traffic impact analysis (Petitioner's Exhibit 9). Mr. Guckert's analysis was clear and simple. The Hayfields development is not located in a deficient traffic shed. As a result of the excellent road system servicing the site (I-83 and Shawan Road) and the excellent location of the site adjacent to the north-west quadrant of I-83 and Shawan Road, the Hayfields country club will have no adverse traffic impact.

It is especially important to note that Mr. Guckert's analysis revealed that only between six percent and eighteen percent of the expected traffic will come from the west along Shawan Road. The balance of the traffic is expected to come from the I-83/Shawan Road interchange. Even assuming a thirty percent volume of traffic from the western approach, Mr. Guckert's analysis indicates no adverse traffic impact.

Stephanie Hau. Ms. Hau, an expert hydrogeologist and environmental scientist, testified regarding her environmental impact analysis of the Hayfields Manor Country Club. Ms. Hau has considerable experience in the environmental impacts of golf course facilities having studied numerous facilities in the Piedmont area of Maryland.

Ms. Hau presented her environmental impact report (Petitioner's Exhibit 13) and a variety of visual exhibits (Petitioner's Exhibits 12A through 12O) to discuss and explain the details of her environmental impact report. The environmental impact analysis provided an exhaustive review of potential impacts to the water resources

(quality and quantity), existing forests, existing wetlands and also discussed likely environmental enhancements.

In conclusion, Ms. Hau unequivocally stated that there will be no adverse environmental impact as a result of the proposed country club. In fact, Ms. Hau went on to say on pages 26 and 27 of the environmental impact report that “as a whole, the golf course environment has the potential to greatly improve the ecological setting of the site, through reduction of runoff and sediments, loads to streams, the creation of more productive and diverse habitats, and the replacement of wide spread chemical applications with controlled and precise pest management.”

Ms. Hau’s opinions in the environmental impact report were based upon the proper implementation of the golf course management plan created for the Hayfields Manor Country Club (Petitioner’s Exhibit 14). This golf course management plan presents an exhaustive set of standards and requirements for the critical issues relative to integrated pest management, best management practices, environmental monitoring and quality assurance.

Although many of the site plan details for the country club and golf course will be resolved during the development plan process, the Petitioner has studied all of the potential environmental effects in advance and has created a golf course management plan to fully address each of the potential impacts.

Frank Gant. Mr. Gant, an architect who has received numerous awards for his efforts in historic preservation, testified regarding the adaptive reuse of the existing

historic features of the site. There are seven historic structures on the property listed on the final Baltimore County Landmarks Preservation List. Mr. Gant studied the history and condition of each of these structures in detail. Mr. Gant has designed the adaptive reuse of each of these structures to integrate them into the active functions of the country club clubhouse campus.

Mr. Gant is aware of the “appropriateness standard” found in Baltimore County Code Section 26-547 as applied by the Baltimore County Landmarks Preservation Commission (LPC). Mr. Gant is also familiar with the Secretary of the Interior’s standards (Petitioner’s Exhibit 16) which are applied by the LPC in determining the appropriateness of adaptive reuse of historic structures.

Mr. Gant made two critical points during his testimony. First, the proposed adaptive reuse of the existing historic structures must be presented to the LPC for their review and approval pursuant to the Baltimore County Code. Second, in Mr. Gant’s expert opinion, the proposed renovations and additions to the existing historic structures are appropriate under the LPC standards. In fact, Mr. Gant strongly indicated that the renovation of the structures will bring out many hidden details of historic significance, celebrate the historic architectural features of the structures and open to the public for enjoyment historic structures which are now secluded in private .

George Gavrelis. Mr. Gavrelis, an expert in planning and zoning, testified with regard to the special exception requirements of the Baltimore County Zoning Regulations. With full knowledge of the plan and testimony of the various experts, Mr.

Gavrelis opined unequivocally that each and every requirement for the special exception for the country club has been met by the proposed plan. Mr. Gavrelis heavily relied upon the location of the proposed country club at the edge of the agricultural community immediately adjacent to the excellent transportation infrastructure of I-83 and Shawan Road. The proposed country club will have a beneficial recreational impact and provide a pleasing visual gateway in a manner that will have no adverse impact on the neighbors or the agricultural uses in the vicinity.

The Protestants provided the testimony of thirteen laywitnesses, four experts (Messrs. McGinnis, Bosley, Ball and Ms. Mascari) and Mr. Jeff Long of the Baltimore County Office of Planning and Zoning. The pertinent testimony of each of these witnesses is summarized below:

Laywitnesses. None of the laywitnesses provided any actual evidence of adverse impact of the proposed country club on their respective residences or the surrounding vicinity. Each of them testified to unsubstantiated fears regarding wells, visual impacts, traffic impacts, etc. However, in no case was persuasive testimony offered that any of the special exception requirements have not been met.

Perhaps the most interesting testimony of all of the laywitnesses came from Ms. Elizabeth Fenwick. Ms. Fenwick testified that if the traffic impacts from the Hayfields Manor Country Club and residential community are significant enough, she will convert the family owned Shawan Farms from its current agricultural use to resi-

dential development. Apparently, the Protestants believe that the threat proposed by Ms. Fenwick is evidence of an adverse impact of the proposed country club on the agricultural uses in the vicinity. However, the expert testimony of Mr. Guckert clearly indicates that there will be no such adverse traffic impact and Shawan Farms can continue in agricultural uses until the Fenwick family determines it appropriate to cash out on their investment for residential development. Obviously, the Fenwick's residential development could occur with or without the existence of the Hayfields Manor Country Club.

Kenneth Bosley. Mr. Bosley was accepted as an expert "farmer". Mr. Bosley offered no testimony of any adverse impacts and offered no evidence that the proposed country club at this particular location would have any greater impact than would be ordinarily expected from a country club.

Wayne McGinnis. Mr. McGinnis was also accepted as a farmer expert. Mr. McGinnis spent considerable time estimating the productivity of the Hayfields Farm. However, through evidentiary ruling, the Zoning Commissioner made it clear that removing the agricultural acreage of the Hayfields Farm from active productive use was irrelevant to the special exception criteria. There is no legal requirement for the property owner to actively farm the property. Rather, the special exception requirements relate to impacts on agricultural uses in the vicinity.

The impacts of several uses (golf course, residential development, etc.), on farming were also discussed. Mr. McGinnis clearly testified that every golf course or

residential use has an adverse impact on any neighboring agricultural activity. The only distinction that Mr. McGinnis made on relative impacts related to a series of "intense" activities like grain operations, cattle operations and dairy farms. However, according to Mr. McGinnis, there are no such intense operations in the vicinity of the proposed country club.

Dr. William Ball. Dr. Ball, an environmental engineer, testified to rebut several of the assertions of Ms. Hau. Dr. Ball focused on several minor assumptions made by Ms. Hau regarding the proposed septic systems and wells for the proposed country club. However, Dr. Ball did not testify that there would be any adverse impact as a result of the country club. Most importantly, with regard to those areas which gave him concern, septic systems and wells, Dr. Ball admitted that there would be additional detailed study and analysis in the normal course of development and that applicable State and local permits would have to be issued prior to utilization of the property as a country club.

Ruth Mascari. Ms. Mascari, the chair of the LPC, was accepted as an expert in historic preservation. Ms. Mascari's opinions, although admittedly based upon only a " cursory " review of several exhibits presented by Mr. Mangione at a single LPC meeting, offered extraordinary opinions regarding the impact of the proposed country club on the existing historic structures. Ms. Mascari basically testified that there was virtually no appropriate use of the Hayfields property other than continued agricultural activities and low density residential. Ms. Mascari also testified that the only

appropriate use of the historic structures was for a farm museum or continued residential use.

It is interesting to note that Ms. Mascari, although the chair of the LPC, seemed to misunderstand the limitations imposed upon the powers of the LPC by the Baltimore County Code. Several times during her testimony she testified that the LPC was allowed to regulate any activity happening on or around the site that might have in the LPC's opinion an adverse impact on the site.

Most importantly, Ms. Mascari testified that development of the golf course on the site would be "absolutely abysmally detrimental to the cultural historical heritage for the citizens of the County". Further, she testified that "the impact of this sort of development . . . would be colossally detrimental". Her opinions were based upon the removal of farming activity and additions to the historic buildings that would destroy forever their historic character. See attached pages 60-63 of Ms. Mascari's testimony.

The foundation of Ms. Mascari's testimony relates to the termination of farming and changes to the historic structures. With regard to the termination of farming, no governmental authority has the power to require continued farming activities on the site. Whether the farm continues is irrelevant to the special exception. Second, if the LPC determines it inappropriate to modify the existing structures as proposed, then the adaptive reuse suggested by the Petition will not be permitted.

Ms. Mascari preemptively offered her personal views as to the proposed changes to the historic structures. These views are premature and inappropriate since the detailed drawings necessary for submittal to the LPC have not been presented and the LPC has not been asked to review such renovations and additions at this point in time. Hopefully, Ms. Mascari, as chair of the LPC, will be able to review the appropriate documents at the appropriate time and render a good faith decision based upon the information presented to the LPC.

Jeff Long. Mr. Long, a member of the Office of Planning and Zoning who participated in the preparation of the recommendation of the Planning Office, also was called as a witness by the Protestants. Mr. Long did little more than confirm that the Planning Office did not recommend approval or denial and suggested that the decision should be made by the Zoning Commissioner.

DISCUSSION OF ISSUES

There are four significant legal issues raised by the evidence before the Zoning Commissioner. They are as follows:

1. Whether the country club meets the special exception requirements;
2. Whether the proposed activities are consistent with the definition of a country club;
3. Whether the name of the Petitioner can be amended; and
4. Whether the Chester Haven case applies.

Special Exception Requirements

Baltimore County Code Section 502.1 contains eight criteria which must be met before a special exception can be granted. Since these criteria are so well known to the Zoning Commissioner, they will not be repeated here in their entirety. Additionally, the following test found in Shultz v. Pritts, 291 Md 1 (1981) applies:

“We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”
291 Md at 22, 23

The Baltimore County Zoning Regulations also contain a special standard of review for special exceptions in the RC-2 zone. Section 1A01.2.C permits special exceptions in any RC-2 zone provided the Zoning Commissioner finds that “the use would not be detrimental to the primary agricultural uses in its vicinity.” This section must be read in light of the purposes of the RC-2 zone to “foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.” BCZR Section 1A01.1.B

The unequivocal testimony of each of the experts offered by the Petitioner supports the assertion that there will be no adverse impact as a result as a result of the proposed country club. Mr. Guckert testified to the minimal traffic impacts. Ms. Hau testified to no environmental impacts, and actually opined that there would be

environmental enhancement created by the proposed use. Mr. Gant testified that the proposed modifications to the historic structures would be done in an appropriate fashion. Finally, Mr. Gavrelis offered detailed testimony regarding compliance with each of the special exception requirements.

In opposition to the special exception, the Protestants basically assert the environmental sensitivity of the Cockeysville Marble, the historic significance of the Hayfields Farm and the agricultural productivity of the Hayfields Farm. In no case was any of the evidence sufficient to indicate an adverse impact.

With regard to the Cockeysville Marble, Ms. Hau testified that the implementation of the golf course management plan would establish practices to assure no environmental impact. However, if there is an occurrence inconsistent with the golf course management plan, then the significant clay layer above the aquifer will significantly deter any potential adverse impact. Just as was the case with those portions of the Caves Valley Golf Course underlain by Cockeysville Marble, the Hayfields golf course can be developed and operated without significant adverse environmental impact on the Cockeysville Marble aquifer.

With regard to the historic significance of the Hayfields Farm, there appears to be significant confusion on the part of the Protestants and Ms. Mascari regarding the appropriate application of the standards and the powers of the LPC to the proposed country club. The Petitioner does not have to continue farming the Hayfields property. The farm is not on the Baltimore County Landmarks Preservation list. The LPC does

not restrict activities other than modifications to the exteriors of existing structures. As long as the LPC approves the renovations to the historic structures, which Mr. Gant stated were appropriate, then the project can proceed as proposed.

As to the removal of a productive farm from active agricultural use, the Zoning Commissioner has already ruled during the hearing that removal of farming activity is not relative to the special exception. The principle concern of the Protestants seems to be the change of use of the Hayfields' property from a farm to any other use. Although this concern may be laudable, the current owner is not obligated to maintain a farm in agricultural use. The Protestants want the Hayfields' property to continue as a farm. There is simply no legal requirement or basis to support this position.

Amendment to Petitioner's Name

During Mr. Mangione's testimony, the foundation was laid to explain the Petitioner's Motion to Amend the Petition to change the name of the Petitioner from Toll House, Inc. to Hayfields, Inc. Mr. Mangione offered unrefuted testimony that Toll House, Inc. took title to the property and that subsequent to the transaction the corporate name was changed to Hayfields, Inc.

Protestants made a Motion to Dismiss based upon this request to correct the petition documents. The Zoning Commissioner indicated that he would defer his decision until after the Protestants were afforded an opportunity to provide evidence of prejudice and to allow both the parties to argue the merits of their respective motions in

writing. During the hearing, no evidence whatsoever was introduced by any witness to indicate prejudice.

The general rule is that amendments to pleadings should be freely allowed in order to promote justice so that cases would be tried on their merits rather than upon the niceties of pleadings. Crowe v. Houseworth, 272 Md. 481 (1974). The test used in applying the standard is whether the substantial rights of the parties have been affected and the parties have been prejudiced by the amendment. Cherry v. Brothers, 306 Md. 84 (1986).

In the instant case there is no prejudice to the Protestants for the requested name change for the Petitioner. In fact, the original named Petitioner, Toll House, Inc., is the same corporation, with a name change. The same corporate entity holds title to the subject property. The mere formality of a corporate name change is the only event which has occurred.

Country Club

The definition of a country club found in BCZR Section 101 is clear and unambiguous:

"A 9- or 18- hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities."

The proposed special exception obviously includes an eighteen-hole golf course. The existing historic mansion is proposed to be established as a clubhouse with an additional banquet facility. All of the structures and activities proposed within the special

exception area (pool, tennis courts, practice range, maintenance areas, parking areas, pro shop, etc.) are facilities customarily incidental to country clubs throughout Baltimore County. The proposed activities are all normal in scope and are well integrated into the site plan. The proposed banquet addition, which causes so much consternation in the Protestants, is only a 5,000 square foot addition to the existing 9,000 square foot mansion.

The Protestants seem to be concerned about the public nature of the proposed country club. Most country clubs in Baltimore County are private. However, to suggest that making a country club public is inappropriate under the definition of country club in the Zoning Regulations is wholly unsupportable. There is no legal requirement that country clubs be private and that they exclude the use and enjoyment of their facilities to private members.

Chester Haven

In Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 653 A.2d 532, 103 Md. App. 324 (1995) the Court of Special Appeals affirmed a decision of the Queen Anne's County Circuit Court affirming the denial by the Queen Anne's County Board of Appeals of appellants' request for a conditional use and for several variances. The appellants attempted to avoid the specific conditions listed in the Queen Anne's County Ordinance by requesting a variance. The Court of Special Appeals agreed with the Board of Appeals and Circuit Court because the conditional use could not be granted unless all of the express conditions necessary to obtain a

conditional use were met. Since there was no evidence that the appellant could obtain a “use” variance, and since the application on its face did not meet the conditions precedent for the grant of a conditional use, the appellants’ application must have been denied.

In the instant case, there are no conditions imposed by the Baltimore County Zoning Regulations on the granting of the special exception for a country club other than those enumerated in Section 502.1 and Section 1AO1.2.C. The Petitioner is not seeking a variance from any of these conditions. In fact, the Petitioner asserts that each of these conditions have been met.

The Protestants are confusing the concept of conditions for uses and “use” variances with the bulk regulations of the Baltimore County Zoning Regulations. In response, first and foremost, there is no evidence in the record that any variances are required by the proposed site plan. However, even assuming that such variances are required, they would be variances to the bulk regulations, not use variances.

In stating that the denial of the conditional use was legally correct, the Court of Special Appeals stated as follows:

“Given the failure of the request for a variance, it was impossible for appellants to comply with the specific conditions with which the ordinance required compliance before a grant of a conditional use could be made, even if such conditions could legally be avoided by variance. Thus, in addition to failing to meet the general conditions necessary for the approval of a conditional use, appellants also failed to meet the specific conditions.”

103 Md. App. at 339

The Chester Haven decision, although representing sound legal analysis, is inapplicable to the instant case. There are no specific conditions for the special exception for a country club other than those previously identified. The Petitioner has not sought a variance of those requirements, and in fact asserts that it meets each and every requirement of Sections 502.1 and 1AO1.2.C.

CONCLUSION

The Petitioner asserts that all of the special exception requirements have been met. The Protestants are opposed to the conversion of the Hayfields Farm to any other use. Fortunately for the Petitioners, the Baltimore County Council has already decided the key policy question in Petitioner's favor. Country clubs are permitted by special exception in all of the RC-2 zones as long as the requirements of Shultz v. Pritts, Section 502.1 and Section 1AO1.2.C have been met. The Petitioner's case meets the required burden of proof. The Protestants have not offered any legally relevant testimony to prove that any of these requirements have not been met.

When one examines the proposed location of the Hayfields Manor Country Club, it is hard to imagine a better location within any of the RC-2 zoned lands of Baltimore County. The proposed site is immediately adjacent to I-83. The views to the east are dominated by the offices, hotels, manufacturing facilities, warehouses and retail establishments associated with the Hunt Valley business community. Users of the country club will be able to gain access to the site with little or no impact on surrounding uses.

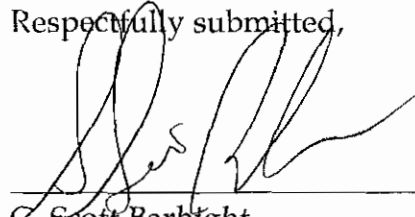
The golf course management plan and the requirements of DEPRM and the State of Maryland will ensure the environmentally safe operation of the golf course.

The only neighboring agricultural use, the Tillman Farm to the west, will not be adversely impacted. The predominant adjoining use is that of single family rural residential development. There is no proof that there will be any visual or environmental impact on these neighboring residences. If this country club were in the middle of the valley, in the heart of the agricultural preservation area, rather than on the edge adjacent to I-83 and the single most intensive employment area of Baltimore County, one could better understand the Protestants' opposition. The excellent location of this golf course leaves Protestants with the ridiculous argument that the development of the Hayfields property as proposed will act as the catalyst for a domino effect that will sweep through the valleys creating a cancer of development and the destruction of every farm. It is difficult to understand how this project, on the very edge of the RC-2 zoned areas, would have a greater impact than if it were located elsewhere in the zone.

Every special exception use has associated with it certain impacts which the County Council understood. It is these impacts which separate the uses permitted as a matter of right from those permitted by special exception. As long as the adverse impacts inherently associated with a special exception use are no worse at a particular location than you would ordinarily expect, the special exception must be granted. In the instant case, the impacts associated with the Hayfields Manor Country Club are clearly no greater than one would ordinarily expect, irrespective of its location.

Therefore, the Petitioner respectfully requests that the Zoning Commissioner grant the Petition for Special Exception for Country Club.

Respectfully submitted,

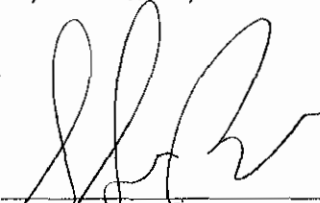
A handwritten signature in black ink, appearing to read 'G. Scott Barnhart', written over a horizontal line.

G. Scott Barnhart
Whiteford, Taylor & Preston, LLP
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050

Attorney for Petitioner, Hayfields, Inc.

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 1995, a copy of the Petitioner's Memorandum was mailed first class, postage prepaid to G. Macy Nelson, Anderson, Coe & King, Suite 2000, 201 N. Charles Street, Baltimore, MD 21202, and Mr. Kenneth T. Bosley, Box 334, Cockeysville, MD 21030.



G. Scott Barhight

50533

12 1 many years, how many hours? What have you done?

2 A. Starting back in '87 I have made myself familiar
3 with the site itself, and also the history of the site by
4 research and interview into the agricultural activities
5 that occurred there, the people who lived there who did
6 these activities in the agricultural arena. I have
7 visited the site many times under different owners. I
8 have generally become very familiar with the history of
9 this particular site.

10 Q. Based on all of the work that you've done and
11 based on your training and experience as someone
12 interested in historical preservation, do you have an
13 opinion as to the effect, if any, of the proposed golf
14 course and country club at Hayfields on the heritage of
15 Baltimore County?

16 A. In my opinion, development of the golf course on
17 this site would be absolutely abysmally detrimental to the
18 cultural and historical heritage for the citizens of this
19 county.

20 Q. And on what do you base that opinion, Ms.
21 Mascari?

12 1 A. Because the significance of the site as
2 prescribed by the commission, when it could have chosen
3 any of the five criteria, chose agriculture as the
4 significance of this site. And, therefore, the impact of
5 this sort of development which we're using as a general
6 term would be colosally detrimental.

7 Q. What will it do in your opinion specifically, and
8 how is it detrimental? What do you --

9 A. Well, if you have a golf course, you don't have a
10 farm. If you have a golf course, you have additions to
11 historic buildings that will destroy forever their
12 historic character. If you have a golf course, you have
13 determined that the rural nature, which is also mentioned
14 in the significance, is no longer there.

15 Q. But when you viewed the cultural heritage of the
16 county, the adverse effect on it in the face of this
17 proposed golf course, if it's built, what will that
18 development do to the interrelationship of the land at
19 Hayfields -- of the interrelationship of the land and
20 agricultural significance of that land with the buildings?

21 A. Development of this kind will absolutely destroy

12 1 the relationship of that. The interwoven, nonseparable
2 issues in this case are, you know, that the place is a
3 farm, and if you have that sort of development, it's gone
4 and it's gone forever and you've lost that significance in
5 the cultural and historical heritage of the county.

6 MR. NELSON: Would you please give me a moment,
7 Mr. Commissioner.

8 Q. Just let me follow up. Assuming hypothetically
9 that the buildings as they are now were not changed and
10 were kept in pristine, immaculate condition as they are
11 now, hypothetically. That's proposed, but hypothetically
12 if that were the case and there was a 18-hole golf course
13 surrounding those buildings, do you have an opinion in
14 that scenario as to whether or not the change of the use
15 of the land in that manner, the construction of a golf
16 course around the hypothetically pristine building would
17 have an adverse effect on the cultural heritage of the
18 county?

19 A. Without question. There would be the farming
20 atmosphere, the rural atmosphere which we have determined
21 is the significance, the agricultural significance of this

12 1 site would be gone. And, therefore, you've destroyed the
2 intent of the local listing and also the register listing,
3 the national register. We would lose our premier
4 agricultural site.

5 It's actually almost physically a cornerstone, if
6 you look at the map. It is a cornerstone.

13 7 Q. Let me move on, Ms. Mascari, to the National
8 Register of historic districts.

9 THE COMMISSIONER: Mr. Nelson, how much longer
10 are you going to be on direct? The witness has indicated
11 she might be getting a parking ticket from one of
12 Baltimore County's finest.

13 (Discussion off the record.)

14 Q. Let me move now to the National Register of
15 Historic Districts. You've shared with us earlier this
16 morning what the National Register of Historic Districts
17 is. Is there a historic district -- or is the Hayfields
18 farm part of a historic district?

19 A. Yes.

20 Q. Where is the historic district?

21 A. Western Run. Well, as far as historic

In re: Petition for

*

Case Number:

Special Exception

*

95-308-X (Item 302)

Tollhouse, Inc.

*

* * * * *

**PROTESTANTS' MEMORANDUM IN OPPOSITION
TO PETITION FOR SPECIAL EXCEPTION**

INTRODUCTION

This case involves a proposed golf course primarily in an RC 2 zone. The Petitioner, Hayfields, Inc., seeks approval of a Special Exception to build and operate a country club with an 18 hole golf course, restaurant, and banquet facilities ("Country Club") on approximately 226 acres of a 475 acre farm. The tract lies at the northwest corner of the intersection of Interstate 83 and Shawan Road, and on the edge of the County-designated Agricultural Preservation Area. There was uncontradicted evidence as to the high productivity of the soils of the farm and of surrounding properties, the historic importance both of the tract and of the buildings, the fact that the farm is the cornerstone of a National Historic Register District which encompasses an entire farming valley, and the location of the farm in close proximity to areas of intense development and development pressure.

Protestants oppose the Petition for Special Exception to construct a Country Club with a banquet hall. BCZR 1A01.2.C.10 does not permit a Country Club and banquet hall as a Special Exception in an RC 2 zone.¹ Even if the applicable regulations permitted in some circumstances a Country Club and banquet hall, Petitioner has failed to meet its burden of proof during the

¹ Virtually of all the proposed Country Club, Restaurant, and Banquet Hall are in the RC 2 zone. Only a small portion of the proposed Special Exception is in the RC 4 zone. BCZR 1A03.3, like BCZR 1A01.2.C.10, does not permit a Country Club, Restaurant and Banquet Hall in a RC 4 zone.

hearing. Further, the Petitioner may not meet its burden by showing that some other agency, such as DEPRM or the Landmarks Preservation Commission, might evaluate aspects of this proposed project at a later date. Although the Landmarks Preservation Commission in accordance with its traditional role as an advisor to OPZ and the Planning Board was asked to comment on the Hayfields proposal, it has no jurisdiction over anything but changes to the buildings on the landmarks list. Therefore, the Zoning Commissioner is the only person who has the authority to evaluate whether the proposal will have adverse effects relating to the historical significance of the land. The Petitioner has a legal obligation at this stage of the process to meet its burden.

The County Council implemented the RC 2 zone to preserve productive farmland. The County Council also decided to permit in this zone in limited circumstances, country clubs, but not banquet halls, by Special Exception. The Zoning Commissioner can reconcile the purpose of the RC 2 zone - preservation of productive farmland - with the intent of the Special Exception provision for a country club by permitting the construction of country clubs only on RC 2 land which is not especially productive. This analysis permits a balance to be struck between the purposes of the RC 2 zone and the provision that permits a country club by Special Exception.

ARGUMENT

I. THE TEST FOR A SPECIAL EXCEPTION: THE PETITIONER MUST PROVE THAT THE COUNTRY CLUB WOULD HAVE NO ADVERSE EFFECT ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION IRRESPECTIVE OF ITS LOCATION WITHIN THE ZONE.

The Petitioner has the burden of proving that the Country Club will be (1) consistent with the purposes of the property's zoning classification, (2) absolutely consistent with the spirit and

intent of the regulations, and (3) will not be detrimental to the health, safety, or general welfare of the locality involved. BCZR Section 502.1; *See, People's Counsel v. Mangione*, 85 Md. App. 738, 743 (1991). The Petitioner must prove that there are no facts and circumstances about the particular use proposed at the particular location that would lead to "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981). The Zoning Commissioner should deny the Petition because the Petitioner has failed to meet this burden.

The spirit and intent of the RC zones in general and the RC 2 zone in particular are unequivocal. The County Council has recognized "that Baltimore County is ... endowed with a variety of very productive agricultural soils which should not be lost... to development" and "that continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area." BCZR 1A01.1A. "It is the purpose of the Resource Conservation Zones to ... protect both natural and man-made resources from the compromising effects of specific forms and densities of development. BCZR 1A00.2C. The purpose of the RC 2 zone specifically is "...to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County." BCZR 1A01.1B.

The general welfare of the locality involved is a broad category which includes the fertility of the soil, the historical significance of the farm, and the importance of Hayfields Farm as a firm bulwark against the intense development on the eastern side of the farm.

II. THE CONSTRUCTION OF A COUNTRY CLUB AT HAYFIELDS WILL HAVE ESPECIALLY ADVERSE EFFECTS RELATED TO THE PROPERTY ITSELF ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION IRRESPECTIVE OF ITS LOCATION WITHIN THE ZONE.

Both the BCZR and *Schultz v. Pritts*, 291 Md. 1 (1981) require the Zoning Commissioner to consider the quality and unique characteristics of the land itself that might be converted to the Special Exception use. The County Council has recognized “that continued urban intrusion into productive agricultural areas not only **destroys the specific area upon which the development occurs** but is incompatible with the agricultural use of the surrounding area.” (Emphasis added.)

BCZR 1A01.1A. Similarly, the *Schultz* court stated:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22-23. The *Schultz* rule applies to the property itself and other properties in the vicinity or neighborhood. Courts have applied it to neighboring properties, but have never limited it to just those properties. Both the Deputy Zoning Commissioner and the Baltimore County Board of Appeals (William T. Hackett, Lawrence E. Schmidt, and Patricia Phipps) followed the County regulations and applied the *Schultz* rule to the property itself *In the Matter of Meadowcliff, a New Covenant Church for a Special Exception to Permit a Church and Accessory Parsonage*, Case No. 85-132-X. *Meadowcliff* concerned a proposed church at Belfast Road and Interstate 83 on RC 2 prime and productive land. The land was located within the same historical district as Hayfields Farm and, like Hayfields, was at the edge of at the Agricultural Preservation District.

Deputy Commissioner Jung denied the Petition for Special Exception for the church in an RC 2 zoned area designated as “a historical district with no structures larger in scale than residences or farm buildings and no parking lots....” On appeal, the Board of Appeals denied yet again the Special Exception because the petitioner planned to build the church and parsonage on prime agricultural land in the RC 2 zone. The Board reasoned:

There was significant testimony that this parcel of R.C. 2 land is in fact prime agricultural land and, as such, the Board believes that it should be protected from the inroads of development and therefore maintained in an agricultural manner consistent with the spirit and intent of R.C.2 zoning. A legislative history of B.C.Z.R. 1A01.2.c...mandates that uses proposed within an R.C. zone should support agricultural purposes. From the testimony and evidence received, we find as a fact that, if the proposed special exception were granted the proposed use would not support agriculture both on-site and in the vicinity....

The Board of Appeals used similar reasoning *In the Matter of the Application of Hilbert F. Criste for a Special Exception*, Case No. 90-477-SPHX. In that case, the Board of Appeals approved a Special Exception for a church on RC 2 land where the development plan “provided for the protection of prime and productive agricultural soils...” Opinion of Board at 10. The development plan placed “church building and parking lot in the least desirable soils...” and provided that the “remaining site would be assigned to agricultural or open space uses by way of legally enforceable documents.” *Id.* at 8, 7. These rulings explicitly relied upon the intrinsic qualities of the property itself for which the Special Exceptions were sought. These rulings were also consistent with the *Schultz v. Pritts* rule that a Special Exception should be denied if the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone.

The Petitioner presented absolutely no evidence that Hayfields Farm was a normal farm just like most other farms in the RC 2 zone in Baltimore County. In fact, there was uncontradicted evidence that Hayfields Farm itself is unique because of the extraordinary fertility of its soil, its large size, the paramount historical significance of the farm, and its location at the highly critical corner of the Agricultural Preservation District. Virtually no other farm in Baltimore County can match the fertility of Hayfields' land. No other farm land in the county is as historically significant as Hayfields with or without its historic buildings. Finally, no farm in Baltimore County acts as much as a bulwark against intense development pressure as does Hayfields. The conversion of Hayfields Farm to a Country Club will have adverse effects above and beyond those inherently associated with this type of use elsewhere in the RC 2 zone, on land which is not as fertile and historic, and which does not serve as such an important barrier to development. Protestants do not argue that the Petitioner cannot build a golf course anywhere in the RC 2 zone. Rather, Protestants take the correct position that the Petitioner can only obtain a Special Exception for land which is not as fertile and historic as Hayfields, and which is not an important barrier to development in the Agricultural Preservation District.

Protestants respectfully request that the Zoning Commissioner deny the Request for Special Exception because it will have a uniquely detrimental effect arising from the conversion of this unique land to a Country Club.

III. THE PETITIONER HAS FAILED TO MEET ITS BURDEN THAT THE CONSTRUCTION OF A COUNTRY CLUB WILL NOT HAVE ADVERSE EFFECTS ON THE NEIGHBORHOOD ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH SUCH A SPECIAL EXCEPTION IRRESPECTIVE OF ITS LOCATION WITHIN THE ZONE.

The Petitioner must also prove that the proposed Country Club will not have an adverse effect on property in the neighborhood which is unique and different from that inherently associated with such a use irrespective of its location within the zone.

The Petitioner failed to do this. For example, Ruth Mascari, Chairwoman of the Baltimore County Landmarks Commission, testified to the unique historical significance of both the land and the buildings at Hayfields. In fact, the Landmarks Commission minutes describe the farm as “the premier agri-history monument of Baltimore County.” It was Ms. Mascari’s uncontradicted testimony that the conversion of this monument to a golf course would have an especially adverse effect on the National Register Historic District of which Hayfields is the cornerstone.

Additionally, Protestants’ expert witness, Dr. William Ball, testified that no one can reasonably conclude that the main irrigation well for the golf course will have no effect on the nearby drinking wells for the Greencroft community. Lester Conley, the representative of the Greencroft community, testified that the water supply in the Greencroft wells was already marginal. The water supply in the community has decreased in the twenty years that he has lived there.

Although the Protestants do not have the burden of proof, they proved that the construction of the Country Club at Hayfields Farm would, because of its uniqueness, adversely affect the neighborhood more than the construction of a country club on other RC 2 land in the county. The construction of the Country Club is detrimental to the health, safety, or general welfare because the farm is the flagship historic farm in the county and because the farm itself is the cornerstone of the Western Run-Belfast National Register District. Preservation of historic

districts promotes, of course, the general welfare. Maintaining the integrity of the District is vital to its historic importance and significance. *See, Faulkner v. City of Chestertown*, 290 Md. 214 (1981).

The use of the proposed Country Club will without a doubt be especially detrimental to the primary agricultural uses in the vicinity. BCZR 1A01.2C. Jeff Long of the Office of Planning and Zoning testified that no other parcel in the RC 2 zone was subject to more development pressure than Hayfields. The proposed Country Club will especially exacerbate this already intense pressure on the fragile eastern edge of the Agricultural Preservation District because Hayfields is the key property on the edge of that District, and because it is a very large, visible property. Development of Hayfields Farm will imperil continued agricultural use in the vicinity. The adverse impact is greater than the impact of the development of another golf course elsewhere in the county because of the location, size and stature of Hayfields Farm.

Protestants respectfully request that the Zoning Commissioner deny the Request for Special Exception because Petitioner has failed to meet its burden.

IV. PETITIONER DOES NOT HAVE STANDING TO SEEK A SPECIAL EXCEPTION BECAUSE IT DOES NOT OWN THE LAND THAT IS THE SUBJECT OF THE SPECIAL EXCEPTION.

Toll House, Inc. does not have standing to petition for a Special Exception. It is not an existing corporation and is not the owner of Hayfields Farm. Protestants respectfully request that the Zoning Commissioner dismiss the Petition because Toll House, Inc. does not exist and, therefore, does not have standing. Maryland law supports the dismissal of the Petition where the Petitioner is not an existing corporation. In *Parkside Terrace Apartments, Inc. v. Lindner*, 252 Md. 271 (1968), Parkside Terrace Apartments, Inc. ("Parkside") filed articles of dissolution on

November 2, 1963. Several months later Parkside sued Lindner. The Court of Appeals affirmed the directed verdict for Lindner because Parkside filed suit after it was effectively dissolved. Similarly, in *Atlantic Mill and Lumber Realty Co. v. Edward Keefer, et al.*, 179 Md. 496 (1941) the plaintiff, Atlantic Mill and Lumber Realty Co., Inc., filed a mechanic's lien. Later the plaintiff amended the pleadings to reflect that the correct name of the plaintiff was Herman M. Meyer, trading as the Atlantic Mill and Lumber Company. It was undisputed that charter of Atlantic Mill and Lumber Realty Co., Inc. was forfeited. The Court of Appeals affirmed the dismissal of the claim because Atlantic Mill and Lumber Realty Co., Inc. did not have standing to bring the case because it was not in existence at the time suit was filed and because the amended claim with the correct party was not timely.

The Protestants respectfully request that the Zoning Commissioner dismiss the Petition because the named Petitioner has no standing. The Petitioner's error in selecting the identity of the Petitioner is a jurisdictional one that cannot be cured. If the true owner of the property wants to seek a reclassification, it should file a new petition properly in its name.

V. THE BCZR DO NOT PERMIT EITHER THE CONSTRUCTION OF A BANQUET HALL IN AN RC 2 ZONE OR A GOLF COURSE ON LAND THAT IS NOT THE SUBJECT OF A SPECIAL EXCEPTION.

Petitioner incorrectly relies on BCZR 1A01.2.C.10 in its improper effort to obtain a Special Exception for the Country Club and banquet hall. That section only permits "Golf courses or country clubs" by special exception. It does not permit a banquet hall. The BCZR does not define a Banquet Hall, but it does define a Catering Hall as "a facility or part of a facility used regularly for serving beverages and food to groups which reserve the **facility for banquets** or gatherings before the day of the event...." (Emphasis added.) BCZR 101. The definition of a

Country Club does not include a banquet hall. A Country Club is limited to a "9- or 18- hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities." BCZR 101. Indeed, the County Council recognized the singular inappropriateness of a Catering Hall in rural zones and only permitted it in R.A.E. zones which "provide for development of elevator-apartment buildings at moderate density." BCZR 200.1A This express prohibition against Catering Halls or banquet halls in the RC zones is especially relevant in this case where Petitioner seeks to construct a banquet hall capable of handling two functions a day with 200 guests at each function. Indeed, John Mangione testified that the Petitioner will seek to use the banquet hall for commercial purposes as much as possible.

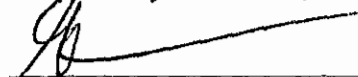
Since the Country Club and banquet hall are inextricably intertwined, the Protestants respectfully request that the Zoning Commissioner deny the request for Special Exception.

The Zoning Commissioner should also dismiss the Petition for Special Exception because a portion of the golf course is on land that is not the subject of a Special Exception. The Petitioner's maps establish that the land between the eighth tee and the eighth hole is not within the boundary of the Petition for Special Exception. The Protestants respectfully request that the Zoning Commissioner deny the request for Special Exception because not all of the golf course is within the boundary of the Petition.

CONCLUSION

For all the reasons set forth above, Protestants respectfully request that the Zoning Commissioner deny the Petition for Special Exception.

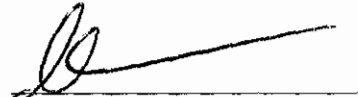
Respectfully Submitted,



G. Macy Nelson
Anderson, Coe and King
Suite 200
201 North Charles Street
Baltimore, Maryland 21201
410-752-1630
Attorney for Protestants

CERTIFICATE OF SERVICE

I hereby certify in this 13th day of June, 1995, I mailed by first class mail, postage prepaid, a copy of Protestants' Memorandum in Opposition to Petition for Special Exception to G. Scott Barhight, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515 and Kenneth T. Bosley, P.O. Box 585, Sparks, Maryland 21152.



G. Macy Nelson

CASE NO. 95-308-X

Toll House, Inc. - Petitioner (Hayfields)

NW/s Western Run Road, c/l Shawan Road
1,780' N/w of c/l I-83

8th Election District Appealed: 7/10/95



Petition for Special Exception

95-308-X
to the Zoning Commissioner of Baltimore County

for the property located at 301 Western Run Road

which is presently zoned RC-4 and RC-2

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Exception under the Zoning Regulations of Baltimore County, to use the

a country club

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

I, or we, agree to pay expenses of above Special Exception 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/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.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

G. Scott Barhight
(Type or Print Name)

Signature

Suite 400

210 W. Pennsylvania Avenue 832-2050

Address Phone No.

Towson

MD

21204

City

State

Zipcode

Legal Owner(s):

Toll House, Inc.

(Type or Print Name)

Signature Director

John M. Manzione

(Type or Print Name)

Signature

1205 York Road

Address

Phone No.

Lutherville, MD 21093

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

G. Scott Barhight

Name 210 W. Pennsylvania Avenue

Towson, MD 21204

332-2050

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Description

95-308-X

To Accompany Petition for Special Exception

226.441 Acre Parcel

Part of Toll House, Incorporated Property

North Side of Shawan Road, West of Western Run Road

Eighth Election District, Baltimore County, Maryland



Daft McCune Walker, Inc.

200 East Pennsylvania Avenue

Towson, Maryland 21286

410 296 3333

Fax 296 4705

A Team of Land Planners,

Landscape Architects,

Engineers, Surveyors &

Environmental Professionals

Beginning for the first in the centerline of Shawan Road (30 feet wide) at a point distant 1780 feet, more or less, as measured northwesterly along said centerline of Shawan Road from its intersection with the centerline of the Baltimore Harrisburg Expressway (I-83), thence leaving said point of beginning and binding on said centerline of Shawan Road the three following courses and distances, viz: (1) North 70 degrees 17 minutes 24 seconds West 873.42 feet, thence (2) North 69 degrees 44 minutes 49 seconds West 713.63 feet, and thence (3) North 70 degrees 45 minutes 49 seconds West 950.24 feet, thence leaving said centerline, and running the twenty-nine following courses and distances, viz: (4) North 02 degrees 28 minutes 49 seconds West 2204.40 feet, thence (5) South 72 degrees 07 minutes 25 seconds East 385.07 feet, thence (6) North 08 degrees 33 minutes 28 seconds East 281.31 feet, thence (7) South 73 degrees 49 minutes 02 seconds East 336.92 feet, thence (8) South 65 degrees 23 minutes 05 seconds East 423.13 feet, thence (9) North 26 degrees 02 minutes 32 seconds East 222.09 feet, thence (10) North 00 degrees 08 minutes 32 seconds West 283.57 feet, thence (11) North 83 degrees 30 minutes 45 seconds West 66.58 feet, thence (12) North 18 degrees 26 minutes 02 seconds East 119.69 feet, thence (13) North 79 degrees 15 minutes 02 seconds East 660.53 feet, thence (14) South 07 degrees 03 minutes 48 seconds West

95-308-X

32.22 feet, thence (15) South 87 degrees 59 minutes 23 seconds East 635.70 feet, thence (16) North 31 degrees 15 minutes 33 seconds East 159.54 feet, thence (17) North 80 degrees 57 minutes 35 seconds East 198.47 feet, thence (18) North 71 degrees 18 minutes 32 seconds East 223.33 feet, thence (19) South 85 degrees 51 minutes 27 seconds East 144.47 feet, thence (20) South 23 degrees 12 minutes 23 seconds East 83.89 feet, thence (21) South 83 degrees 52 minutes 14 seconds East 113.86 feet, thence (22) South 27 degrees 59 minutes 14 seconds East 107.33 feet, thence (23) South 83 degrees 52 minutes 14 seconds East 72.77 feet, thence (24) North 50 degrees 52 minutes 05 seconds East 119.94 feet, thence (25) South 80 degrees 51 minutes 54 seconds East 42.51 feet, thence (26) South 07 degrees 47 minutes 23 seconds East 402.73 feet, thence (27) South 08 degrees 45 minutes 19 seconds West 431.55 feet, thence (28) South 04 degrees 36 minutes 10 seconds East 363.44 feet, thence (29) South 45 degrees 56 minutes 37 seconds West 72.50 feet, thence (30) South 25 degrees 58 minutes 05 seconds East 217.72 feet, thence (31) North 81 degrees 33 minutes 08 seconds East 309.66 feet, and thence (32) South 09 degrees 25 minutes 26 seconds East 256.20 feet to a point in the center of Western Run Road (40' wide), thence binding on said centerline (33) South 05 degrees 49 minutes 10 seconds East 702.87 feet, thence leaving said centerline (34) South 84 degrees 10 minutes 50 seconds West 14.26 feet to the westernmost side of said Western Run Road, thence binding on said westernmost side the twenty-four following courses and distances, viz: (35) South 30 degrees 27 minutes 28 seconds West 51.95 feet, thence (36) South 05 degrees 49 minutes 10 seconds East 25.85 feet, thence (37) Southeasterly by a line curving to the right with a radius of 957.26 feet for a distance of 107.14 feet (the arc of said curve being subtended by a chord bearing South 02 degrees 36 minutes 46 seconds East 107.09 feet), thence (38) South 13 degrees 14 minutes 08 seconds West 189.80 feet, thence (39) Southwesterly by a

95-308-X

line curving to the right with a radius of 934.26 feet for a distance of 139.82 feet (the arc of said curve being subtended by a chord bearing South 16 degrees 18 minutes 52 seconds West 139.69 feet), thence (40) South 26 degrees 57 minutes 01 second West 46.68 feet, thence (41) Southwesterly by a line curving to the right with a radius of 950.26 feet for a distance of 232.04 feet (the arc of said curve being subtended by a chord bearing South 30 degrees 36 minutes 39 seconds West 231.44 feet), thence (42) South 26 degrees 00 minutes 41 seconds West 36.04 feet, thence (43) South 36 degrees 40 minutes 35 seconds West 212.64 feet, thence (44) South 37 degrees 51 minutes 00 seconds West 250.16 feet, thence (45) South 58 degrees 50 minutes 08 seconds West 37.00 feet, thence (46) South 39 degrees 54 minutes 25 seconds West 70.00 feet, thence (47) South 36 degrees 29 minutes 20 seconds West 83.75 feet, thence (48) Southwesterly by a line curving to the right with a radius of 230.17 feet for a distance of 228.00 feet (the arc of said curve being subtended by a chord bearing South 68 degrees 16 minutes 21 seconds West 218.79 feet), thence (49) North 74 degrees 56 minutes 15 seconds West 34.24 feet, thence (50) North 85 degrees 41 minutes 41 seconds West 121.32 feet, thence (51) South 81 degrees 44 minutes 55 seconds West 42.59 feet, thence (52) South 61 degrees 55 minutes 10 seconds West 70.68 feet, thence (53) South 44 degrees 21 minutes 49 seconds West 34.91 feet, thence (54) South 62 degrees 18 minutes 29 seconds West 45.34 feet, thence (55) North 73 degrees 47 minutes 48 seconds West 125.26 feet, thence (56) North 79 degrees 44 minutes 09 seconds West 119.91 feet, thence (57) South 89 degrees 18 minutes 16 seconds West 53.40 feet, and thence (58) South 19 degrees 51 minutes 54 seconds West 14.25 feet to the point of beginning, containing 267.246 acres, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

Saving and excepting, from the above described parcel of land a 40.805 acre parcel of land being more particularly described as follows: and shown as Part of Parcel B, on a plan to accompany a petition for special exception for a country club, Hayfields:

Beginning for the same at a point situate South 82 degrees 05 minutes 57 seconds East 50.50 feet from the end of the 10th line or North 00 degrees 08 minutes 32 seconds West 283.57 foot line of the above described parcel, thence running the thirty-three following courses and distances, viz: (1) North 80 degrees 44 minutes 54 seconds East 570.61 feet, thence (2) North 88 degrees 02 minutes 15 seconds East 463.88 feet, thence (3) South 66 degrees 20 minutes 28 seconds East 100.84 feet, thence (4) South 89 degrees 08 minutes 15 seconds East 99.13 feet, thence (5) North 03 degrees 07 minutes 44 seconds East 121.06 feet, thence (6) North 31 degrees 15 minutes 33 seconds East 55.63 feet, thence (7) South 83 degrees 33 minutes 40 seconds East 121.20 feet, thence (8) North 06 degrees 26 minutes 20 seconds East 99.78 feet, thence (9) North 76 degrees 32 minutes 45 seconds East 88.59 feet, thence (10) North 71 degrees 18 minutes 32 seconds East 235.78 feet, thence (11) South 85 degrees 51 minutes 27 seconds East 128.26 feet, thence (12) South 23 degrees 12 minutes 23 seconds East 63.92 feet, thence (13) South 11 degrees 50 minutes 37 seconds West 138.17 feet, thence (14) South 83 degrees 52 minutes 14 seconds East 279.80 feet, thence (15) North 47 degrees 24 minutes 28 seconds East 104.95 feet, thence (16) South 03 degrees 44 minutes 48 seconds West 261.76 feet, thence (17) South 08 degrees 17 minutes 20 seconds West 323.37 feet, thence (18) South 04 degrees 13 minutes 28 seconds West 187.17 feet, thence (19) South 08 degrees 41 minutes 55 seconds East 159.68 feet, thence (20) South 10 degrees 02

95-308-X

minutes 40 seconds West 216.38 feet, thence (21) North 76 degrees 27 minutes 48 seconds West 221.84 feet, thence (22) South 88 degrees 19 minutes 32 seconds West 276.88 feet, thence (23) North 82 degrees 28 minutes 28 seconds West 202.81 feet, thence (24) North 61 degrees 26 minutes 38 seconds West 252.01 feet, thence (25) South 57 degrees 20 minutes 25 seconds West 255.94 feet, thence (26) North 86 degrees 00 minutes 58 seconds West 101.97 feet, thence (27) North 01 degree 04 minutes 45 seconds West 112.53 feet, thence (28) North 65 degrees 22 minutes 00 seconds West 109.54 feet, thence (29) North 33 degrees 38 minutes 31 seconds West 144.88 feet, thence (30) North 71 degrees 18 minutes 59 seconds West 245.01 feet, thence (31) North 33 degrees 19 minutes 45 seconds West 82.70 feet, thence (32) North 72 degrees 40 minutes 29 seconds West 410.39 feet, thence (33) North 00 degrees 08 minutes 32 seconds West 276.64 feet to the point of beginning , containing 40.805 acres, more or less. The area of land being Petitioned for Special Exception is 226.441 acres.

February 28, 1995

Project No. 93005 (L93005.1)



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

P5/308-X

District: 8th

Date of Posting: 4/7/95

Posted for: Special Exception

Petitioner: Toll House, Inc.

Location of property: 301 Western Run Rd.

Location of Signs: Facing roadway, on property being zoned

Remarks: _____

Posted by: W. J. [Signature]

Signature

Date of return: 4/14/95

Number of Signs: 1

Rm. 118, Old Courthouse.

Special Exception for a
country club.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handi-
capped Accessible; for special ac-
commodations Please Call
887-3353.

(2) For information concern-
ing the File and/or Hearing, Please
Call 887-3381.
3/300 March 23.

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

No. 075620

DATE 7-14-95 ACCOUNT R-001-6150

AMOUNT \$ 285.00

RECEIVED FROM: ANDERSON, COE AND KING

FOR: APPEAL ZONING COMMISSIONERS

DECISION OF HAYFIELDS 301 WESTERN RUN
ROAD.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

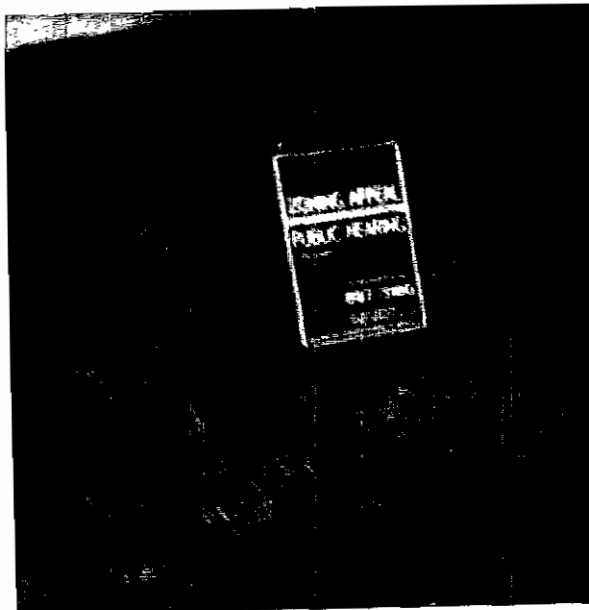
RECEIVED
COUNTY BOARD OF APPEALS

95 JUL 28 AM 10:13

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-308-X

District 8th Date of Posting 7/21/95
Posted for: Appeal
Petitioner: Tall House Inc.
Location of property: NW 1/4 Astor Rd at Shawan Rd
Location of Signs: Facing the way on property being appealed for zoning
Remarks: _____
Posted by M. Stealy Date of return: 7/28/95
Signature
Number of Signs: 1





Baltimore City
**Zoning Administration &
Development Management**
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date 4/17/95

Account: R-001-6150

Number 95-308-X

DROP-OFF ---- NO REVIEW

#110 - REVISIONS ----- \$100.00
(Revised Plans)

Toll House, Inc.

301 Western Run Road (Hayfields)

Original Review by CAM

Attorney: G. Scott Barhight

Check from Whiteford, Taylor & Preston

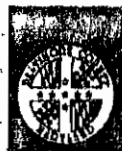
01A01#0054#11CHRC

\$100.00

RG COLD#14AMD4-18-95

Please Make Checks Payable To: Baltimore County

Cashier Validation



Baltimore County
**Zoning Administration &
Development Management**
711 West Chesapeake Avenue
Towson, Maryland 21204

receipt

95-308-X

Account: R-001-6150

Number 302

CAM

Date 5 March 95

Toll House, Inc. - 501 WESTERN RUN ROAD

050 - 300.00

080 - 35.00

\$335.00

RECEIVED

BY: [Signature]

Please Make Checks Payable To: Baltimore County

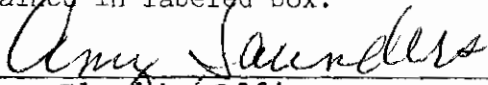
Cashier Validation

1. Valleys Planning Council et al
2. People's Counsel for B.C.
"TITION OF: 3. Dr. Richard McQuaid, et al
~~4. Hayfields, Inc.~~

CIVIL ACTION # 3-C-96-8878

IN THE MATTER OF TOLL HOUSE, INC.
/Hayfields

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS
all contained in labeled box.


Clerk's Office

ate: 10/30/96

TO: PUTOXENT PUBLISHING COMPANY
March 23, 1995 Issue - Jeffersonian

Please forward billing to:

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue #400
Towson, MD 21204
410-832-2050

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-308-X (Item 302)
301 Western Run Road
c/l Shawan Road, 1780' NWly of c/l I-83
8th Election District - 3rd Councilmanic
Legal Owner(s): Toll House, Inc. (aka Hayfields)

HEARING:

DAY 1: TUESDAY, MAY 9, 1995 AT 9:00 A.M. IN ROOM 118, OLD COURTHOUSE.
DAY 2: WEDNESDAY, MAY 10, 1995 AT 9.00 A.M. IN ROOM 118, OLD COURTHOUSE.
DAY 3: THURSDAY, MAY 11, 1995 AT 9.00 A.M. IN ROOM 118, OLD COURTHOUSE.

Special Exception for a country club.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

March 13, 1995

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-308-X (Item 302)
301 Western Run Road
c/l Shawan Road, 1780' NWly of c/l I-83
8th Election District - 3rd Councilmanic
Legal Owner(s): Toll House, Inc. (aka Hayfields)

HEARING:

DAY 1: TUESDAY, MAY 9, 1995 AT 9:00 A.M. IN ROOM 118, OLD COURTHOUSE.
DAY 2: WEDNESDAY, MAY 10, 1995 AT 9.00 A.M. IN ROOM 118, OLD COURTHOUSE.
DAY 3: THURSDAY, MAY 11, 1995 AT 9.00 A.M. IN ROOM 118, OLD COURTHOUSE.

Special Exception for a country club.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: Toll House, Inc./John Mangione/1205 York Road/Lutherville MD 21093
G. Scott Barhight, Esq./210 W. Pennsylvania Ave. #400/Towson MD 21204
Macy Nelson, Esq./Anderson, Coe & King/201 N. Charles St. #2000/Baltimore MD 21201

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 25, 1996

NOTICE OF ASSIGNMENT /Days #5 & #6

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH 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. 95-308-X

TOLL HOUSE, INC. -Petitioner /HAYFIELDS
NW/s Western Run Road & Shawan Road @ its
intersection with I-83 (301 Western Run Rd)
8th E; 3rd C

SE -Country club in R.C. 2 and R.C. 4 zones.
6/30/95 -Z.C.'s Order in which Petition for
Special Exception was GRANTED.

ASSIGNED FOR

FRIDAY, FEBRUARY 9, 1996 at 10:00 a.m. /Day #5
THURSDAY, FEBRUARY 15, 1996 at 10:00 a.m. /Day #6

cc: G. Scott Barhight, Esquire	Counsel for Petitioner
Toll House, Inc.	
c/o John M. Mangione	Petitioner
Joseph LaVerghetta, Esquire	
George Gavrelis	Daft-McCune-Walker, Inc.
People's Counsel for Baltimore County	Appellant
George A. Nilson, Esquire	Counsel for Appellants /Protestants
John Bernstein, Executive Director	
Valleys Planning Counsel	Appellants /Protestants
Dr. Richard W. McQuaid	
Kenneth T. Bosley, Esquire	
Leslie M. Pittler, Esquire	
Ruch Mascari	Landmarks Preservation Commission
Virginia Woodward	
Pat Keller, Planning Director	
Lawrence E. Schmidt	
Docket Clerk /PDM	
Arnold Jablon, Director /PDM	
Virginia W. Barnhart, County Attorney	

Kathleen C. Bianco
Administrative Assistant





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

February 15, 1996

NOTICE OF ASSIGNMENT /Day #7

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH 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. 95-308-X

TOLL HOUSE, INC. -Petitioner /HAYFIELDS
NW/s Western Run Road & Shawan Road @ its
intersection with I-83 (301 Western Run Rd)
8th E; 3rd C

SE -Country club in R.C. 2 and R.C. 4 zones.
6/30/95 -Z.C.'s Order in which Petition for
Special Exception was GRANTED.

*See Amended
Notice 3/18/96 -
adding 4/30/96
as add'l
date.*
ASSIGNED FOR:

TUESDAY, APRIL 16, 1996 at 10:00 a.m. /Day #7

cc: G. Scott Barhight, Esquire
Toll House, Inc.
c/o John M. Mangione
Joseph LaVerghetta, Esquire
George Gavrellis

Counsel for Petitioner

Petitioner

Daft-McCune-Walker, Inc.

People's Counsel for Baltimore County

Appellant

George A. Nilson, Esquire
John Bernstein, Executive Director
Valleys Planning Counsel

Counsel for Appellants /Protestants

Appellants /Protestants

Dr. Richard W. McQuaid
Kenneth T. Bosley, Esquire
Leslie M. Pittler, Esquire
Ruch Mascari
Virginia Woodward
Pat Keller, Planning Director
Lawrence E. Schmidt
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Landmarks Preservation Commission

Kathleen C. Bianco
Administrative Assistant





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

March 18, 1996

AMENDED 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 RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), BOARD'S RULES OF PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. 95-308-X

TOLL HOUSE, INC. -Petitioner /HAYFIELDS
NW/s Western Run Road & Shawan Road @ its
intersection with I-83 (301 Western Run Rd)
8th E; 3rd C

SE -Country club in R.C. 2 and R.C. 4 zones.
6/30/95 -Z.C.'s Order in which Petition for
Special Exception was GRANTED.

This matter is scheduled for hearing day #7 on April 16, 1996; this Amended Notice will add April 30, 1996 as an additional date, to be used as necessary toward the completion and conclusion of this matter; and has been

ASSIGNED FOR:

TUESDAY, APRIL 16, 1996 at 10:00 a.m. /Day #7 and
TUESDAY, APRIL 30, 1996 at 10:00 a.m. /as needed

cc: G. Scott Barhight, Esquire
Toll House, Inc.
c/o John M. Mangione
Joseph LaVerghetta, Esquire
George Gavrelis

Counsel for Petitioner

Petitioner

Daft-McCune-Walker, Inc.

People's Counsel for Baltimore County

Appellant

George A. Nilson, Esquire
John Bernstein, Executive Director
Valleys Planning Counsel

Counsel for Appellants /Protestants

Appellants /Protestants

Dr. Richard W. McQuaid
Kenneth T. Bosley, Esquire
Leslie M. Pittler, Esquire
Ruth Mascari
Virginia Woodward
Pat Keller, Planning Director
Lawrence E. Schmidt
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Landmarks Preservation Commission

Kathleen C. Bianco
Administrative Assistant



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

May 8, 1995

G. Scott Barhight
210 W. Pennsylvania Ave., Suite 400
Towson, Maryland 21204

RE: Item No.: 302
Case No.: 95-308-X
Petitioner: Toll House, Inc.

Dear Mr. Barhight:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approving agencies, has reviewed the plans submitted with the above referenced petition. Said petition was accepted for processing by, the Office of Zoning Administration and Development Management (ZADM), Development Control Section on March 3, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties; i.e., zoning commissioner, attorney, petitioner, etc. are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.", is written over the typed name.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director May 5, 1995
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson 
Development Coordinator, DEPRM

SUBJECT: Zoning Item #302 - Hayfields (Golf Course and Country Club)
Hunt Valley, Maryland
Zoning Advisory Committee Meeting of March 13, 1995

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Development of the property must comply with Regulations for Forest Conservation.

Development of the property must comply with DEPRM's golf course guidelines.

Submit a formal surface water monitoring protocol that outlines baseline and post-construction chemical, physical, and biological sampling.

A preliminary water quality concept plan for all tees and greens that includes locations and typical designs for the various methods to be used must be submitted.

A stream depletion analysis must be conducted, which demonstrates that stream and wetland hydrology will not be significantly altered by groundwater withdrawals for irrigation purposes.

Ground Water Management

The Hayfields special exception request is considered here relative to ground water issues.

The Hayfields site is underlain by Cockeysville Marble in the south and Baltimore Gneiss in the north. The high permeability of the weathered marble is directly related to its high water yield (and its concurrent high value as a water source.) However, the higher permeability is also related to a higher vulnerability of the aquifer to ground water contamination. The County's 1993 Ground Water Management and Protection Strategy (which was approved as an amendment to the Master Plan) identified Cockeysville Marble as the most sensitive hydrogeologic setting in the Baltimore County Piedmont area.

Since the construction of a golf course at Hayfields would be accompanied by pesticide and fertilizer applications (i.e., potential ground water contaminants), and given the relatively high aquifer vulnerability of the marble, I recommend that the portion of the golf course underlain by Cockeysville Marble be minimized.

The information listed below is required for evaluation of the special exception request. The required submittals are in the DEPRM "Environmental Guidelines for the Design and Maintenance of Golf Courses - Section 2: Ground Water Protection, and "Appendix II: Ground Water Monitoring Protocol." These guidelines are part of the above-referenced Ground Water Strategy. A hydrogeologist familiar with Piedmont ground water conditions should perform the required work.

- Site map(s) at 1 inch = 200 feet scale should be provided. The following information is needed:

- existing and proposed Hayfields wells
- existing, adjacent domestic wells
- top of well casing elevations to 0.01 ft.
- proposed golf course layout
- geologic outcrops, contacts and faults
- proposed test pit locations
- potentiometric contours:
 - pre-aquifer test (static)
 - at maximum drawdown in aquifer test

- Geologic logs should be provided for all wells installed. Geologic cross-sections showing the lithology and static water levels should be constructed.

- Aquifer tests are required on all proposed irrigation wells. Details are as follows:

- Well siting and aquifer test design should be coordinated with the writer.
- A minimum of two observation wells is required for aquifer testing.
- The aquifer test analysis should include an evaluation of the pre- and post-development flow conditions, the calculation of the aquifer coefficients, a long-term drawdown prediction, and an analysis of the impact of irrigation on adjacent wells.

- A site water balance which evaluates gains and losses to the ground water system is required. The analysis should incorporate the following: annual pumpage; irrigation needs for greens, tees, fairways, and roughs; irrigation needs during the grow-in period (which are typically 50 percent higher than usual needs); non-irrigation water uses; a ground water recharge estimate; and impervious area estimate; and a comparison of the pre- and post-development water balance.

- The potential stream depletion by irrigation withdrawals should be analyzed.

- Baseline ground water monitoring is required. Details are as follows:

- A QA/QC plan is required.
- Four consecutive quarters of ground water monitoring is required, using eight site wells.
- Five wells in the Cockeysville Marble and three wells in the Baltimore Gneiss are required.
- The analytes are nitrate, alkalinity, hardness, pH, temperature, specific conductivity, and a list of pesticides representative of prior agricultural land use (to investigate the susceptibility of the aquifer.)
- Static water levels should be measured in all site wells quarterly in conjunction with the sampling.
- A rain gauge should be established at the site for use during the baseline year, and thereafter.

- A preliminary design for the pesticide storage area must be provided. The pesticide storage area should have no floor drains. The preliminary design must include a contingency plan for the response to a pesticide spill. To characterize the geologic materials around and beneath the building, three soil borings should be completed to bedrock, with continuous standard penetration test soil sampling, and soil description by the Burmister and Unified methods. Finally, the pesticide storage area should not be located over Cockeysville Marble.

- At tees and greens (where chemical application is heaviest) the maximum high water table and the bedrock must be at least four feet below the post-construction ground surface; field verification is required. The preliminary design of underdrains in irrigated areas should be provided. At each tee and green, two eight-foot deep test pits should be made. In each pit, the following are required:

- soil description with the Burmister and Unified systems
- in-situ permeability tests of the A and B soil horizons
- sampling and analysis for total organic carbon of soils, at 6 inches below the A horizon
- grain size analyses of samples from the A and B horizons

- Preliminary designs of lakes and ponds, which are potential recharge areas to the ground water, are required. Included should be synthetic liners, berms, and permeability specifications for the clay parts of liners. Submittals to the DEPRM Storm Water Management Section relating to lake and pond design should also be provided to the Ground Water Management Supervisor.

- An integrated pest management (IPM) plan is required. The plan should include the following:

- types of grasses to be planted in tees, fairways, roughs
- chemicals to be used, and information for each:
 - octanol/water partitioning coefficient
 - absorption data
 - degradation products
 - commercial name(s)
 - active ingredients
 - half-life
 - MSDS sheet
 - federal drinking water standard
 - toxicity
 - mobility
 - detection limit
 - laboratory analytical method
- application rates per episode, per year, and per chemical

- A plan for operational monitoring of soil and ground water quality, and ground water quantity, must be prepared. The monitoring should include the following:

- A QA/QC plan and written field protocols are required.
- Soils at one third of the greens and tees are to be sampled for the IPM pesticide list, in each round (in a rotating fashion) in triannual rounds.
- A network of nine monitoring (not domestic) wells should be established, as follows:
 - One well will be at a key location downgradient of the pesticide storage area.
 - There will be four interior wells.
 - There will be four perimeter wells.
- Triannual water quality monitoring of the interior wells and the pesticide storage area well is required.
- Annual water quality monitoring of the perimeter wells, after the autumn ground water recharge has been confirmed by the water level monitoring, is required.
- Well samples are to be analyzed for nitrate, alkalinity, hardness, pH, temperature, specific conductivity, and the list of pesticides in the IPM plan.

- Maximum tolerable drawdowns based on the aquifer test data and the Theis equation will be established. During the grow-in period and the first operational year, a continuous water level recorder should be employed at a key monitoring well (selected based on the aquifer test), to assess drawdown. Thereafter, continuous, manual, monthly water level monitoring of this observation well would be sufficient, if excessive drawdowns are not observed.

- Water levels in the whole well network should be measured triannually, manually.

- The relationship between the IPM plan and the operational monitoring should be as follows:

- Since the purpose of the operational monitoring is to provide an "early warning system" to guard against possible ground water contamination, the owner should agree to perform the operational monitoring for as long as the golf course uses fertilizers and pesticides.

- A new compound added to the IPM application list should also be included in the IPM analyte list, starting with the next sampling round. A compound deleted from the application list should remain as an analyte for at least one year, or longer, if there are detections for that compound.

- DEPRM Ground Water Management should be notified of any soil or ground water sampling at least two weeks before the fieldwork.

- If IPM analytes are detected in a well in two consecutive events, the owner should agree to do the following:

- resample the well(s) within 30 days
- stop/shift chemical applications
- delineate the lateral/vertical extent of contamination
- initiate corrective action/remediation

- Quarterly reports should be submitted to DEPRM Ground Water Management, and include the following information:

- actual, and predicted, chemical applications
- water level data
- hydrographs from the continuous water level recorder
- copies of actual lab sheets
- cumulative summary tables (water levels, lab results, detection limits, daily precipitation)
- dBase files of the same summary tables (provide a disk)
- changes to the IPM plan, chemicals applied, or operational monitoring

- DEPRM Ground Water Management should be copied on correspondence with the State concerning ground water quantity.

- Finally, all information generated by the monitoring will be available for review by members of the public.

A meeting is recommended, at which we could agree on a scope for the required investigations with the developer's hydrogeologist.

Agricultural Preservation Program

Re: Impact review of Petition for Special Exception #302 Golf Course and County Club (Hayfields) on RC 4 Conservancy Area.

The proposed residential development for the RC 4 portion of this site is dependent on the disposition of the request for rezoning. However, in the review of the Special Exception, it is necessary to indicate that only passive recreational uses are permitted in the Conservancy Area. Golf holes and accessory golf facilities (i.e. maintenance sheds or golf cart paths) are not considered by DEPRM to meet the intent of passive recreational activities.

Re: Impact review of Petition for Special Exception #302 Golf Course and Country Club (Hayfields) on prime and productive soils and agricultural resources.

OVERVIEW:

This review examines the onsite agricultural characteristics of this farm, the offsite characteristics of the area and the comparative value of this farm property to other farms in the County. The primary sources of information were mapped information, reports, site visits and personal experience working with farm properties in the County.

The Hayfields farm property is 474 acres in size. There are approximately 296 acres of land zoned Resource Conservation Agriculture (RC 2) and 178 acres of land zoned Resource Conservation Watershed (RC 4). The farm is located within a County Master Plan designated Agricultural Preservation Area.

The submitted proposal is for a golf course and country club. The Special Exception request does not indicate any residential development in the RC 2 zone. The proposed location of the golf course and country club is for all practical purposes totally within the RC 2 zoned portion of this farm property. Because of this, the following review focuses on the RC 2 portion of the property.

ONSITE AGRICULTURAL CHARACTERISTICS:

The onsite characteristics of this farm property which were evaluated include the amount of prime and productive soils, type of soils, crop production capability, improvements related to agriculture, current use and historic features. Where appropriate the evaluation includes a comparison of this farm's characteristics to other farmland in the County.

Prime and Productive Soils The amount of prime and productive soils on this property was determined by the use of a planimeter to calculate the different soil types on a soil overlay map submitted by the applicant. The acreage information used in the table below is derived from this methodology. The total acreage of RC 2 as determined by this method was found to be 288 acres which is eight acres less than that on the submitted plan. This difference is not significant for the purposes of this general analysis of the soils.

Prime and productive soils are defined within the Baltimore County Zoning Regulations as soils rated Capability Class I, II and III in the Baltimore County Soil Survey. The Capability Class is a general indicator of the value of the land for agricultural production. The Classes range from Class I to Class VIII with Class I ranked most highly. The Capability Class is a general indicator of the value of the land for agricultural production. It does not take into account all the individual characteristics of a specific site but is useful for general predictability about suitability for agricultural use.

As the table below indicates, approximately 95% of the RC 2 zoned area of this farm is mapped as Class I, II and III, which are designated as prime and productive soils. Seventy percent of these soils are classified as Class I and II and 25% Class III. The soils on the remaining 5% of the RC 2 area are of limited agricultural value due to either steepness or lack of productivity.

As a comparison of the meaning of the percentage of Class I, II and III soils, the 30 farms which applied for sale of an agricultural easement in January 1995 were evaluated for prime and productive soils. The 288 acre portion of Hayfields zoned RC 2 would have received 170 points out of 200 for soils. The average score out of 200 for the 30 farms applying was 91 points. Only two farms scored higher than 170 points on soils, and one of these was 35 acres in size and the other 90 acres in size.

Capability Class and Acreage

Soil Type	I	II	III	IV	VI	VII
HaA	21.7					
HaB2		149.5				
HaC2			22.1			
Cu		10.7				
GnB		2.6				
GcB2		22.1				
GcC2			37.3			
GcD3					.4	
McD3					6.8	
MdE					5.0	
MhE					.3	
BaB					1.0	
Total	17.6	184.9	72.2		13.2	.3
Percent	6.1%	64.2%	25.1%	----	4.6%	----

A similar evaluation system to determine the general predicted value of soils for agricultural production is the U.S. Department of Agriculture, Soil Conservation Service ranking of Prime Soils and Soils of Statewide Significance. These designations are used for federal requirements for environmental impact review. The ranking system is very similar and in fact the County's designation of Class I, II and III capabilities was in part derived from this system. This system ranks the soils predicted to have the highest value for agriculture as Prime and those next in importance for agriculture as Soils of Statewide Significance. This evaluation indicates that 70% of the RC 2 area is ranked as Prime Soils and 25% of the soils are Soils of Statewide Significance.

Soil Association The specific soils of the RC 2 area include representatives of basically two soil associations. Approximately 67% of the area is mapped Baltimore-Conestoga-Hagerstown Association and 26% is mapped Manor-Glenelg Association. The high percentage occurrence of the Hagerstown Association is due to the fact that this site is in a limestone valley. Reflecting that these valleys are uncommon in Baltimore County, this soil association occurs in only 8% of the County. The Manor-Glenelg Association, on the other hand, is a predominant soil occurring in about 53% of the County.

According to the Soil Survey the Hagerstown series soils are predicted to be characterized as very deep, well drained, nearly level to moderately sloping soils of the limestone valleys on the Piedmont Plateau. The soils are fairly easy to farm. The pH is nearly neutral and the soils have a high available moisture capability with the only important limitation being the erosion hazard in sloping areas.

Predicted Crop Yields Another predicted estimate of the productivity is the estimated average per acre yields which are listed in the Soil Survey. These numbers are of relative value only as the specific site conditions and individual management have a great influence on the actual production. For corn production, the Soil Survey indicates that Hagerstown Class I and II soils are in the top 10% of the 196 soil types in the County. For the production of hay and pasture, however, these soils are even better suited. No other soils have predicted yields that exceed these soils for hay and pasture.

Existing Agricultural Use This property has been improved for agricultural use, receives a preferential assessment for agricultural use and has been principally leased for grain production. According to a report by Daniels (1994), there is substantial competition for rental ground among farmers and the grain industry appears to be fairly stable. The corn, soybean and small grain industry is estimated to be a \$10 million dollar industry in the County (Baltimore County Agricultural Land Preservation Certification Report Fiscal Years 1993-1994).

Agricultural Improvements The agricultural improvements on the property are not related to the current leased operation for crop production. According to the plan submittal, the agriculturally related buildings include a tenant dwelling, manager's dwelling, barns and a silo. Depending on the condition of these buildings, they could be useful for the support of an owner farmed operation.

Other Factors As has been stated by the Baltimore County Landmarks Commission, this property has a significant agricultural history. For the specifics of that history, please refer to the reports and findings of that Commission.

OFFSITE CHARACTERISTICS:

Offsite conditions were evaluated to characterize the agricultural activity of the area and the existence of any special or unique farming operations of the area which might be impacted by this proposal.

Adjacent uses The adjacent uses were determined by site visits to the property and review of mapped information. The property extends from Shawan Road north and east to I-83. The property surrounds an area of low density residential uses located along Western Run. To the south of Shawan Road, the land use is low density residential.

Immediately adjacent to the property on the west, which has soils similar to this property, the land use is predominantly agriculture. This use continues along the north side of Shawan Road nearly to Cuba Road. The principal agricultural use on these properties is for production of corn, soybeans, small grains and hay.

This farm and the adjacent farms are the most easterly extent of an agricultural valley which extends almost to Glyndon. The valley broadens and shrinks in width and opens up to its greatest expanse in the vicinity of Tufton and Worthington Roads. The principal agricultural operations in this area is the pasturing, training, breeding, raising and stabling of horses. This area is the site of the annual Maryland Hunt Cup.

Intensive farm operations It was not observed that there were any special or unique agricultural operations immediately adjacent to this property. No special support structures or intensive operations such as grain dryers or intensive or sensitive animal production operations which represent substantial capital investment are adjacent. In addition, this property is not adjacent to a farm which is used for the central base for widespread agricultural operations.

Other considerations No adjacent properties have placed their farms in either the Maryland Agricultural Land Preservation Program or Maryland Environmental Trust.

SUMMARY:

(1) Once converted to a golf course it is unrealistic to assume that the land will ever be utilized again for the production of agricultural products. For this reason, the proposal will result in the loss of approximately 274 acres of prime and productive agricultural land that has RC 2 zoning, which is intended for continued use for agricultural purposes.

(2) The RC 2 area on this farm has an unusually high percentage of prime and productive soils relative to a sampling of farms in the County.

(3) There are no highly capitalized agricultural operations immediately adjacent to this farm which would be impacted by this proposal nor is the property immediately adjacent to any Maryland Environmental Trust or Maryland Agricultural Land Preservation Easements or Districts.

(4) This farm is connected to adjacent farms with similar suitability for agriculture. As a whole these areas are defined by being part of a limestone valley, and limestone valleys occur with limited frequency in Baltimore County.

(5) This property is currently leased for the production of crops such as corn and soybeans. The grain industry is a stable and vital component of the Baltimore County agricultural industry.

(6) Large blocks of land are valuable for cropland and retain potential for more intensive agricultural operations.

JLP:VK:SM:WL:sp

HAYFIELD/DEPRM/TXTSBP

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Director 
Office of Planning and Zoning

DATE: May 4, 1995

SUBJECT: 301 Western Run Road

INFORMATION:

Item Number: 302

Petitioner: Toll House, Inc.

Property Size: 226.4 acres

Zoning: RC-2 & RC-4

Requested Action: Special Exception

Hearing Date: / /

Based upon a review of the applicant's request for a special exception for a country club, staff offers the following:

Master Plan:

The subject site is located along three designated scenic routes. There are expansive views offering broad vistas across the site, focused views directed toward the historic structures, and views which are more enclosed by the topography along Western Run Road. The Northern Sector Development Policy Plan identifies a significant view along Western Run Road.

The Hayfields property is located at a "gateway" which marks the transition from the high-density urban character of Hunt Valley into the sweeping agricultural perspectives which are located west of Interstate 83.

Site Description:

The site is improved with the historic Hayfields mansion, associated outbuildings and active agricultural fields.

The Hayfields mansion and six of its outbuildings have been placed on the Baltimore County Landmarks List. The Hayfields farm is also an important part of the Western Run and Belfast Road District (a component of the National Register of Historic Places).

The applicant should demonstrate to the satisfaction of the Zoning Commissioner how the Hayfields Farm will be preserved as a result of the proposed development.

Properties in the Vicinity:

The site is bordered on the north by unimproved property; on the south by a large tract, rural-residential development; on the east by I-83 and various office uses; and, for the most part, by agricultural uses on the west.

Zoning History:

1976- As a result of a larger issue which established the R.C. zones in Baltimore County, the subject property was reclassified to R.C. 4 and R.C. 5 (see Issue No. 3-088).

1980- Former owner requested D.R. zoning, and as a consequence of the D.R. request on the R.C. 5 portion of the site was reclassified to R.C. 2 (see Issue No. 3-044).

1984- Existing zoning retained by the County Council (see Issue No. 3-176).

1988- Existing zoning retained by the County Council (see Issue No. 3-308).

1992- Existing zoning retained by the County Council (see Issue No. 3-178).

1995- The applicant filed a petition to reclassify 68.9 acres of land zoned R.C. 2 to R.C. 4. The County has not supported the petition for a rezoning of the property, and the Planning Board recommended the existing zoning be retained on February 16, 1995. Hearing dates for the consideration of the reclassification petition by the Board of Appeals are set for June 1, 6, 14, and 20, 1995.

Analysis of the Special Exception:

The Maryland Court of Special Appeals has outlined in the case Cochran v. Criste a review of the standard that must be met in order to grant a special exception.

The Order cites Schultz v. Pritts, indicating that "Special exception uses, as part of the comprehensive zoning plan, share the presumption that they are in the interest of the general welfare of the public." In Schultz v. Pritts, the Court of Appeals explained the standards for judicial review of a grant or denial of a special exception use:

The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.

Further, to meet the presumption that a special exception should be granted, evidence must be produced that the particular use at the particular location would not have any "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

• Recommendation:

Based upon a review of the above-mentioned case and the information provided, Staff concludes that it will be incumbent upon the Zoning Commissioner to determine the appropriateness of a golf course at this particular location.

Prepared by:

Jeffrey W. Long

Division Chief:

Gary L. Kerns

PK/JL

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: March 20, 1995
Zoning Administration and Development Management

FROM: *RWB* Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for March 20, 1995
Item No. 302

The Developers Engineering Section has reviewed the subject zoning item. This site is subject to Landscape Manual review comments from the Development Review process.

RWB:sw



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

4-25-95

Ms. Joyce Watson
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: +302 (CAM)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

Ronald Burns, Chief
Engineering Access Permits
Division

BS/

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 03/10/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: TOLL HOUSE INC.

LOCATION: CENTERLINE SHAWN RD., 1700' NWLY OF CENTERLINE I-83
(301 WESTERN RUN RD.)

Item No.: 00P Zoning Agenda: SPECIAL EXCEPTION

Gentlemen:

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

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

RECEIVED
MAR 14 1995

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102P

cc: File



BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: March 3, 1995

TO: Hearing Officer

FROM: Catherine A. Milton
Planner I, ZADM

SUBJECT: Item #302
301 Western Run Road

The property in question is subject in zoning reclassification case #CR-95-138. The reclassification request did not include a request for the special exception. This case, which is the request for special exception, does not include the necessary requests for variance. The plan indicates that the variance requests will be applied for at the time of the development plan process.

Additionally, the petitioner is aware that the area indicated on the plan as "possible future practice holes" is not covered by this special exception request and that if that area is used to support dwellings or any other uses in the future, it may not be used for the practice holes.

CAM:scj

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon, Director
TO ZADM Date May 5, 1995
John F. Weber, Director
FROM Department of Recreation and Parks *John F. Weber*
Hayfields - Request for Special
SUBJECT Exception for Golf Course Development

This Department has reviewed the Hayfields Request for Special Exception (for Golf Course Development). Our review focused on the issue of whether the development of a golf course in an agricultural preservation area represented an appropriate land use. Preliminarily, it should be noted that there is a deficiency of public golf courses in Baltimore County. Further, public golf course facilities enhance the quality of life for the County's overall citizenry and also provide a positive economic impact.

Essentially, it is this Department's judgement that the development of a golf course in an agricultural preservation area may be an appropriate land use. Additionally, we feel that a properly designed and operated course could preserve the rural and aesthetic integrity of the landscape and be congruous with agricultural use.

Thank you for your attention in this matter.

JFW:mft

c: Hon. Lawrence Schmidt, Zoning Commissioner



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE



TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

May 10, 1995

FROM: J. Lawrence Pilson *JLP*
Development Coordinator, DEPRM

SUBJECT: Zoning Item #95-308-X - Hayfields (Golf Course and Country Club)
Zoning Advisory Committee Meeting of May 1, 1995

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Development of the property must comply with Regulations for Forest Conservation.

Typical designs and locations must be identified for the water quality management facilities for each tee and green.

A stream depletion analysis must be completed.

The development of the golf course must comply with the monitoring protocols outlined in DEPRM's golf course guidelines.

Also, refer to comments dated May 5, 1995, which still apply.

Ground Water Management

According to Maryland Department of Environment (MDE) design criteria, anticipated sewage flows for this facility will exceed 5,000 GPD. This being the case, in addition to comments dated May 5, 1995, the following comments also apply to this site.

Soil tests will be required to determine if soils are suitable to accommodate a design of an onsite sewage disposal system that will serve 200 people.

Prior to approval of the Development Plan, the Master Water and Sewer Plan must be amended to inventory the system under the multi-use category.

Maryland Department of the Environment will require a Groundwater Discharge Permit. Design restrictions for sewage disposal systems must be met and concurrent MDE approval of the development plan is required.

Agricultural Preservation Program

Comments dated May 5, 1995 are unchanged by this revision.

General Comment

A clarification is provided for the comments dated May 5, 1995. The extensive groundwater data necessary to meet DEPRM Golf Course Guidelines and the sewage disposal system data must be submitted by the developer and approved by DEPRM as part of the Development Plan approval process contained in the Development Regulations. If the Zoning Commissioner has specific questions or requests specific submittals from the developer, please contact the Director's Office at extension 3733.

JLP:VK:SM:RP:WL:JD:sp

HAYFIEL2/DEPRM/TXTSBP

BALTIMORE COUNTY, MARYLAND

SUBJECT: CONCEPT PLAN COMMENTS
FROM: PDM - ZONING REVIEW

CPC DATE: 10/16/95
9:00 a.m., Room 123

PROJECT NAME: Hayfields

PLAN DATE: 9/25/95

LOCATION: NWC Shawan Road
and Interstate 83

REV.:

DISTRICT: (X) COMPLIANCE WITH COMMENT CHECKED
(O) NON-COMPLIANCE IS CIRCLED
PROPOSAL: 40 Single Family Lots & (BA) BE ADVISED (NOT NECESSARY FOR CONCEPT
(1) 18-Hole Golf Course PLAN APPROVAL, BUT MUST BE ADDRESSED
PRIOR TO FINAL ZONING APPROVAL)

ZONING CASES: CR-95-138 & 95-308-X ADDITIONAL COMMENTS ADDED LAST BY PLAN DATE

The plan has been reviewed by the staff at this level of detail and not enough basic information has been supplied to determine general compliance with the Baltimore County Zoning Regulations (BCZR); HOWEVER, CERTAIN CONFLICTS WHICH ARE CAPITALIZED IN THESE COMMENTS WILL NOT ALLOW ZONING APPROVAL OF FUTURE PLANS UNLESS THEY ARE CLEARLY RESOLVED TO SATISFY BCZR AND ZOPM REQUIREMENTS. The following comments are generalized for the concept plan and they do not identify all details and inherent technical zoning requirements necessary in order to determine final compliance with these regulations. The intent of the developer must be clear on the plan, including any previous and proposed zoning hearing requests. The following comments will be up-dated and, if necessary, supplemented when the following information has been supplied to this office and included on the plan:

Concept Plan Comments:

1. The last revised plan for the special exception, as well as the original special exception, was dropped-off for filing by the attorney/petitioner without a final filing review by staff. The plans/revisions were accepted with the understanding that all zoning issues/filing requirements would be addressed. As with all petitions/plans filed with this office, it is the final responsibility of the petitioner to make proper application, address any zoning conflicts and, if necessary, to file revised petitions.
2. The proposed golf course use was granted in special exception case #95-308-X and is subject to the final zoning hearing outcome. Single family residential uses are permitted as of right, subject to the BCZR and zoning policy compliance. THE PROPOSED (5) RESIDENTIAL DWELLINGS/LOTS IN THE R.C.-2 WERE NOT ON THE LAST APPROVED ZONING CASE SITE PLAN ON FILE WITH CASE #95-308-X. CLARIFY IF THESE ARE LOCATED WITHIN THE GOLF COURSE SPECIAL EXCEPTION AREA AND IF SO, RESOLVE THE PLAN DISCREPANCY AND CLARIFY HOW THE RESIDENCES MAY BE INCLUDED IN THE LIMITS OF THE GOLF COURSE SPECIAL EXCEPTION AND RESOLVE SECTION 102.2, BCZR, AND ZONING OFFICE POLICY MANUAL NONCOMPLIANCE, I.E., THE 226 +/- ACRE GOLF COURSE SPECIAL EXCEPTION AREA AS DESCRIBED IN THE ZONING DESCRIPTION MAY NOT BE USED TO SUPPORT RESIDENTIAL DWELLINGS. CORRECT CALCULATIONS ACCORDINGLY BY REMOVING THESE 5 LOTS FROM ALL PLAN NOTES AND CALCULATIONS. Show and label the limits of the special exception area. A zoning FDP is required for final zoning approval.

(OVER)

3. For all reviews, the zoning staff must receive a copy of the most recent plans (in case #CR-95-138 [documented reclassification] and #95-308-X) under consideration by the Board of Appeals (or other court) for comparison purposes. BE AWARE THAT ALL PLANS MUST AGREE AND FINAL PLAN APPROVALS ARE SUBJECT TO THE OUTCOME OF THE ZONING PUBLIC HEARINGS. BE AWARE THAT ANY ACTIONS REQUESTING APPROVALS FOR ZONING ARE UNDERTAKEN AT THE OWNERS OWN RISK UNTIL THIS IS RESOLVED.
4. Final reviews (starting now) must be on plans at a scale no smaller than 1" = 100' for all areas proposed for development.
5. Since this plan is now approved under the zoning commissioner's order in case #95-308-X, compliance with all restrictions must be clearly shown. This includes restriction #3 requiring submittal of a revised site plan. Confirm compliance and dates. No site plan post-dating the June 30, 1995 order is included in the zoning file being reviewed by the staff. Staff will require that the applicant provide a duplicate copy of this plan for zoning review/comparison.

Future Development Plan Comments (at this level of detail):

6.
 - A. The garage (building #8) and the use (accessory structure? principal building?), height, location in yard area and distance between structures must be shown clearly and any zoning noncompliance must be resolved, possibly by additional zoning hearings.
 - B. Dimension all building setbacks to property lines, street centerline, and between building setbacks. Show all lot sizes in acreage. Show all front building orientations. Number all lots. THERE ARE 2 LOTS IN THE R.C.-4 ZONE WITHOUT NUMBERS SHOWN AS "OPTIONAL", THESE MAKE A TOTAL OF 37 LOTS WHICH ARE NOT ALLOWED WITHIN THE MAXIMUM 35 LOT DENSITY LIMITS. REMOVE THEM FROM THE PLAN.
7. In the R.C.-4 zone, show (dimensioned setback) maximized building envelopes per Section 1A03.4.B.2 and individual lot coverage maximums per Section 1A03.4.B.3 and clearing maximums per Section 1A03.5.D.4.F. Confirm that the conservation area shown on the plan is the 70% conservancy area, as referenced in Section 1A03.4 (BCZR).
 - A. State if Western Run is or is not an arterial roadway; if it is, comply with the additional setback requirements of Section 1A03.4.B.2.C.
 - B. Provide confirmation of Performance Standards compliance in Section 1A03.5.
8. Provide accurate gross and net area calculations in compliance with the following: net area = the entire overall tract/ownership area (excluding any existing public street right-of-ways; gross area = the net area plus 1/2 of the tract boundary street right-of-way that the property is not denied access to, up to a maximum of 30 feet (see Zoning Policy RSD-3).

Use the gross area in the density calculation, clearly indicating the source of the additional calculated area over and above the net area.

CONCEPT PLAN COMMENTS

PROJECT NAME: Hayfields

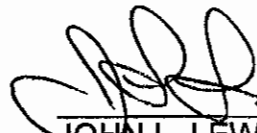
CPC DATE: 10/16/95

PAGE 3

Note on the plan under the density calculation: "This property as shown on the plan has been held intact since 1979 for the R.C.-2 area, 1975 for the R.C.-4 area. The developer's engineer has confirmed that no part of the gross area of this property as shown on the plan has ever been utilized, recorded or represented as density or area to support any off-site dwellings". If any adjacently owned property has been subdivided after this date, show this area as part of the overall tract boundary and adjust density calculations accordingly. If this cannot be stated, provide detailed density utilization information since these dates on an overall density plan to show compliance with zoning policy 1A01.3.B.1, page 1A-10 (ZOPM).

9. Dimension on the plan print and note that all driveways and parking aisles will comply with Section 409.4 of the Baltimore County Zoning Regulations (BCZR). Driveways - 12 ft. wide for one-way and 20 ft. wide for two-way traffic (Section 409.4.C, BCZR). 90 degree parking angle requires 22 ft. for one or two-way aisles. Provide a dimensioned parking space/aisle detail on the plan. Note that all parking, maneuvering and aisle areas will be paved (indicate type) and permanently striped. Label proposed curbs and/or parking wheel stops on the plan.
10. Provide an engineering scale elevation on the plan of all existing and proposed free-standing signs clearly indicating the type, height, dimensions, square footage, single or double-face and illumination. All signs must be keyed to their existing or proposed location on the plan print and enough detail must be shown to determine compliance with the Baltimore County Zoning Regulations (BCZR), Section 413.1 and all zoning sign policies or a zoning variance is required.

Final zoning approval is contingent first upon all plan comments being addressed on the development plan; secondly upon the final resolution of all comments; and finally the inclusion of the Final Development Plan (FDP) checklist information being included on the building permit site plans.



JOHN L. LEWIS
Planner II

JLL:scj

c: zoning case #95-308-X
zoning case #CR-95-138

Inter-Office Correspondence

SUBJECT: Toll House, Inc. /Hayfields - Case No. 95-308-X

1. Protestants' Memorandum in Opposition to Petition for Special Exception filed by George A. Nilson, Esquire.
2. People's Counsel's Hearing Memorandum filed by Peter Max Zimmerman and Carole S. Demilio.
3. Hearing Memorandum in Support of Petition for Special Exception filed by G. Scott Barhight, Esquire, on behalf of Petitioner, Hayfields, Inc.

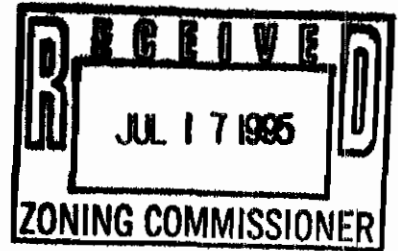
Should you have any questions regarding the above, please call me.

Attachments

7/24/95
8

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

July 13, 1995



TO: Mr. Lawrence E. Schmidt
Zoning Commissioner

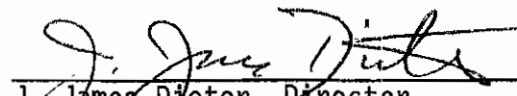
FROM: J. James Dieter

SUBJECT: Petition for Special Exception
Hayfields Property

After reviewing your Order of June 30, 1995 regarding the Hayfields Property Special Exception request, I feel some response from this Department is necessary.

You indicated that "potential environmental repercussions" were a cause of great concern for you. If you will review the addendum to our extensive written comments forwarded on May 10, 1995, you will see that DEPRM offered to clarify any information upon your request. I am not aware that you ever took us up on the offer. Additionally, your comment expressing "regret" that no one from DEPRM was called upon to testify could be construed to imply that we were unwilling to attend the hearing. As you are well aware, staff do not attend these hearings unless subpoenaed. I suspect the petitioner did not intentionally subpoena DEPRM personnel since they had prepared answers to our comments but did not submit (and still haven't) the data to us for review. I can only suppose that the opponents were waiting to subpoena staff during the Appeals process. At any rate, I stand by my quote when asked why we didn't testify--"Nobody asked!"

The second area of contention involves the "lack" of recommendations. I find it interesting that you spend a good deal of time addressing the "farming" issue and you dismiss the potential incompatibility of a golf course with agricultural uses. It appears that any recommendation from DEPRM would have gone unheeded in this area. When you are faced with the thorny issue of geology (Cockeysville Marble), you then would like the safety of a DEPRM recommendation. In fact, the petitioners did not provide enough data to make a viable recommendation, hence the need for so "lengthy" tests, studies and monitoring activities. DEPRM does not have the statutory authority to ask for this at the Special Exception Hearing. We can, however, withhold approvals as part of the Development process. Again I question why the Zoning Commissioner did not ask for clarification if he was so distressed.


J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:pmf

c: Mr. Merreen E. Kelly

3/23/01
70 NCR
for file
To: Queen
File
Zouin

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

95-308

TO: Arnold Jablon, Director
Permits and Development Management

DATE: March 22, 2001

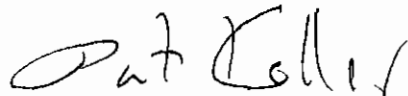
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Planning Board's Decision – "Hayfields Manor"
(PDM # VII-661)

By unanimous vote in the meeting on March 15, 2001, the Baltimore County Planning Board decided that, in accordance with the February 20, 2001 report and request from the Landmarks Preservation Commission, the Planning Board's revised decision regarding the previously-approved Development Plan for "Hayfields Manor" (PDM # VII-661), pursuant to the Board's authority under County Code Section 26-208(c), is that:

1. The existing Note 38 on the Plan shall be deleted; and
2. A new note 38 shall be added to the Plan requiring that "Dwellings constructed on lots 36, 37, 38, and 39 shall be subject to the standards and procedures specified in the document entitled 'Hayfields Design Guidelines (10/1/99)' that are being applied by Hayfields, Inc., to all other residential lots in the development; and
3. The Director of Permits and Development Management is requested to arrange for the implementation of this decision either by approval of a Plan refinement through the Development Review Committee or by action of the Hearing Officer to order the amendments.

The purpose of this memo is to request your assistance in arranging for the appropriate action pursuant to paragraph three of the Board's decision. Enclosed is a copy of the Landmarks Preservation Commission's report and accompanying documents. Please contact Tim Dugan (ext. 3495) if you need additional information.



Arnold F. 'Pat' Keller, III

AFK:TD:rlh

Enclosure

c: John Mangione

BALTIMORE COUNTY, MARYLAND

INTRA-OFFICE CORRESPONDENCE

TO: Baltimore County Planning Board **DATE:** February 20, 2001

FROM: Kimberly Abe, Administrative Secretary
Landmarks Preservation Commission

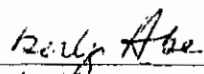
SUBJECT: "Hayfields"

At the December 14, 2000 meeting of the Landmarks Preservation Commission (LPC), Mr. John Mangione presented a request on behalf of Hayfields, Inc., for consideration of alternative means for complying with one of the conditions specified by the Planning Board in conjunction with the approval of the development plan for the Hayfield residential and golf course development.

Background information on the origin of the Planning Board's action in 1996, and the procedural alternatives, is provided in the attached December 14, 2000 memo from the Office of Planning.

Responding to Mr. Mangione's request, the LPC established a customary Technical Committee to consider the matter and meet with the applicant. The report from the Committee, chaired by Mr. Arthur Rogers, is also attached to this memo.

In the LPC's meeting on February 8, 2001, the Committee's report was accepted by unanimous vote to constitute a request and recommendations from the Commission to the Planning Board.



Kimberly Abe

KA:rlh

Attachments

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Landmarks Preservation Commission

DATE: December 14, 2000

FROM: Office of Planning

SUBJECT: Process for approval of building designs at Hayfields

The former "Hayfields" farm north of Shawan Road and west of I-83 contains the Hayfields mansion and six other structures designated on the Baltimore County Final Landmarks List. Thus, the project for residential and golf course development of the property "involved" these structures and was referred to the Baltimore County Planning Board in accordance with Section 26-207 (a)(3) of the Development Regulations.

Among the decisions on the project rendered by the Planning Board was a requirement, as now recorded in Note 38 on the development plan, that:

38. Dwellings constructed on lots 36, 37, 38, and 39 shall have their exterior design approved the Landmarks Preservation Commission prior to the issuance of building permits. In addition, dwellings on these lots shall not be sited on the topographic ridge and shall be provided with vegetation buffering to shield the view of those homes from Shawan Road. See Board of Appeals order dated August 6, 1996, for clarification.

Because the law also specifies that the Planning Board's decision "is binding upon the hearing officer and shall be incorporated as a part of the Hearing Officer's final action on the plan," the note on the plan governs the future issuance of building permits. Undoubtedly, the uncertainty of obtaining design approval could affect the marketing of these lots to prospective purchasers, but the requirement could only be changed by the Planning Board (in conjunction with the Hearing Officer).

Independently of Note 38, Hayfields, Inc., has prepared "Hayfields Design Guidelines (10/1/99)" to govern the design of the dwellings to be built throughout the development (including lots 36 through 39). By his November 7, 2000 letter, Mr. John Mangione has requested discussion with the Commission on ways by which his company's Guidelines might be used in meeting the requirement for approvals by the LPC.

County law (Section 26-538) is unambiguous that "action may be taken only upon affirmative vote of at least seven (7) commissioners." In reviewing the draft of the Commission's proposed by-laws, the Office of Law confirmed that this rule would prevent the delegation of approval authority even to a Technical Committee" of less than seven commissioners.

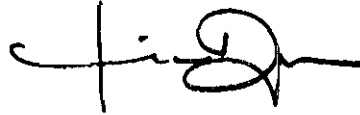
To: Landmarks Preservation Commission

Date: December 14, 2007

Page Two

Thus, the clearest practical alternative, within the constraints of the seven-votes rule and the mandatory effect of the Planning Board's decision, would be for the LPC to relinquish its approval/disapproval authority by asking the Planning Board to establish an alternative approval process consistent with the Planning Board's original intent (possibly incorporating the LPC's expertise in an advisory role).

Technically, this would also require the formality of an amendment to Note 38 on the development plan, but that should not be a problem if the Commission, the Board, and developer all agree.

A handwritten signature in black ink, appearing to read 'Tim Dugan', written over a horizontal line.

Tim Dugan, ACIP
Chief, Planning Services

TD:rlh

Report of the Technical Committee on "Hayfields"

The Technical Committee established by the LPC on 12/14/00 met with Mr. John Mangione at 5:00 on 1/22/01. The members present were Mr. Rogers (Chair) and Messrs. Emerick, Hill and Kelly. Kimberly Abe and Tim Dugan also attended.

All of the Committee members had visited the site for first-hand familiarity with the visual characteristics involved in Mr. Mangione's request. After thorough discussion, all of the members agreed that there did not seem to be any particular likelihood of significantly improved results from having the LPC approve the exterior design of the houses to be built on lots 36, 37, 38 and 39. This conclusion was based upon (i) the visual prominence of the houses recently built along the north side of the Hayfields private road (lots 27 through 34); (ii) the likelihood that the future residents on lots 37, 38 and 39 (and/or the golf course's management) would plant additional vegetative screening to enhance the privacy of those dwellings; (iii) the sufficiency of the design covenants (as submitted by Mr. Mangione) if also applied to the lots in question; and (iv) the distances from the lots to Shawan Road and to the property's Landmark structures.

The Committee agreed unanimously to recommend that the LPC ask the Planning Board to be allowed to relinquish the approval authority delegated to the Commission by order of the Planning Board in Note 38 on the approved development plan for Hayfields; the Board should, instead, require that the four lots also be subject to the developer's design covenants applicable to all of the other lots in the Hayfields development..

Procedural note: If the Committee's position is accepted by the Commission, the matter will be forwarded for the Planning Board to begin its deliberations in the meeting on 3/1/01. If approved by the Board, it would then be an administrative decision by the Director of Permits and Development Management as to whether or not there would need to be the formality of an amendment to the development plan (possibly through the DRC process).

ARN:TD:td

PETITION PROBLEMS - AGENDA OF 3/13/95

#296 - JLL

1. No printed or typed title for person signing for person signing for Warren Group.
2. No authorization for person signing for Warren Group.

#297 - JLL

1. No authorization for person signing for Bell Atlantic.

#298 - JLL

1. Need power of attorney statement for personal representative.
(See JLL's note to the hearing officer.)

#302 - CAM

1. No telephone number for legal owner.
2. Plan is too large to be microfilmed. (Should not be larger than 24" x 36")
3. Receipt was not given to petitioner.

#303 - JJS

1. No authorization for person signing for American PCS.
2. No authorization for person signing for Longview Executive Park.

HAYFIELDS MANOR

FDP Comments
10/30/96

1. Number lot 35 and state the area.
2. Remove old lot lines from lots 36 and 37 and correct acreage.
3. As stated in the DPC and HOH comments: Certain structures are not designated for use/setback in key plan sheet; therefore, no review is possible and zoning non-compliance is probable. All buildings not accessory to a residence are principle structures, subject to all principle and between building setbacks as required by Section 102.2 (BCZR). This note concerns the 3 structures in the country club complex in the western area. Dimension all building setbacks to property lines and between building setbacks. Clarify and show zoning compliance or include in required zoning actions. Show all front building orientations.
4. In the R.C.-4 zone, show (dimensioned setback) maximized building envelopes per Section 1A03.4.B.2. (BCZR) and individual lot coverage maximums per Section 1A03.4.B.3. (BCZR). Dimension lot lines. 50-foot setbacks are required from any agricultural (R.C.-4) land to be used for farming.
5. State if Western Run is, or is not, an arterial roadway. If it is, comply with the additional setback requirements of Section 1A03.4.B.2.C. (BCZR).
6. Provide confirmation of performance standards compliance in Section 1A03.5. (BCZR).
7. Note that all parking, maneuvering, and aisle areas will be permanently striped. Label proposed curbs and/or parking wheel stops on the plan.
8. Show, in heavy outline, and label the limit of the special exception/special hearing area for the golf course and explain the plan area disagreement with the zoning description as stated elsewhere in these comments.

HAYFIELDS MANOR

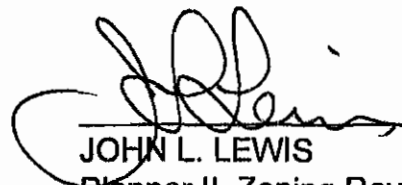
FDP Comments

10/30/96

Page 2

9. Provide an engineered scaled elevation on the plan of all existing and proposed free-standing signs, clearly indicating the type, height, dimensions, square footage, single or double-face, and illumination. All signs must be keyed to their existing or proposed location on the plan print and enough detail must be shown to determine compliance with Section 413.1 (BCZR) and all zoning sign policies or a zoning variance is required.
10. It is the responsibility of the developers engineer to keep the zoning, development plans, and FDPs in agreement. One apparent problem is that the zoning description area of 271.52 acres is less than that shown in the development plan notes: 273.1 in R.C.-2 and 3.5 in R.C.-4.
11. Final zoning approvals are subject to the hearing outcomes (now on appeal).

Return a copy of these comments with the revised FDP.



JOHN L. LEWIS
Planner II, Zoning Review

JLL:scj

c: zoning case #CR-95-138
zoning case #95-308-X
zoning item #348

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
301 Western Run Road, c/l Shawan Road,	*	ZONING COMMISSIONER
1780' NWly of c/l I-83, 8th Election	*	OF BALTIMORE COUNTY
District, 3rd Councilmanic	*	CASE NO. 95-308-X
Toll House, Inc. (aka Hayfields)	*	
Petitioner	*	
* * * * *		

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of March, 1995, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IN THE MATTER OF
HAYFIELDS, INC.
PETITIONER/HAYFIELDS
NW/S WESTERN RUN ROAD &
SHAWAN ROAD @ ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8th E; 3rd C

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: 95-308-X

* * * * *

AFFIDAVIT OF SERVICE

I, JULIE D. WRIGHT, being duly sworn, depose and say:

1. I am over the age of eighteen (18) years and I am competent to testify to the matters set forth herein. The information contained in this Affidavit is based upon my personal knowledge and is true and correct.

2. I hereby certify, on the 11th day of April, 1996, that I personally served the original Writ of Summons upon JOHN W. MCGRAIN, Executive Secretary, Landmarks Preservation Commission.

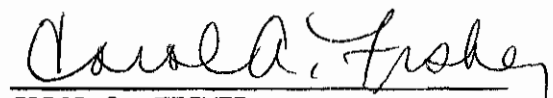
1/11/96


JULIE D. WRIGHT

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
301 Western Run Road, c/l Shawan Road,	*	COUNTY BOARD OF APPEALS
1780' NWly of c/l I-83	*	OF BALTIMORE COUNTY
8th Election District, 3rd Councilmanic	*	CASE NO.: 95-308-X
TOLL HOUSE, INC.		
Petitioners		
* * * * *		

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on the 19th day of January, 1996 I served copy of the attached Subpoena upon RUTH MASCARI, Maryland Employment Management Agency, 2 Sudbrook Lane East, Baltimore, MD 21208, by mailing copy of said Subpoena to the aforesaid address via Certified Mail. Said Subpoena directed said witness to personally appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, January 25, 1996, at 10:00 a.m. in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.



CAROL A. FISHER
Legal Secretary II
People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

IN THE MATTER OF
THE APPLICATION OF
TOLL HOUSE, INC. (HAYFIELDS)
NORTHWEST SIDE WESTERN RUN ROAD
AND SHAWAN ROAD AT ITS INTERSECTION
WITH I-83 (301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 95-308-X

* * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on 1/18/98,
I effected service of process by personally serving a Subpoena upon
Steve Mogilnicke, Geohydrologist at Bureau of Water Quality and
Resource Management, DEPRM, 401 Bosley Avenue, Suite 416, Towson,
MD 21204, to appear before the County Board of Appeals of
Baltimore County.

I further certify that I am over the age of 18 and am not
a party to this action.

I solemnly affirm under penalty of perjury that the
contents of this Affidavit are true and correct to my knowledge.

J [Signature]
(signature)
Name: John Bernier
Firm: Valley Planning Council
Address: 212 Washington Ave
Towson MD 21204

IN THE MATTER OF
THE APPLICATION OF
TOLL HOUSE, INC. (HAYFIELDS)
NORTHWEST SIDE WESTERN RUN ROAD
AND SHAWAN ROAD AT ITS INTERSECTION*
WITH I-83 (301 WESTERN RUN ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE
* COUNTY BOARD OF APPEALS
OF
* BALTIMORE COUNTY
* CASE NO. 95-308-X

* * * * *

S U B P O E N A

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, January 25, 1996 at 10:00 a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Steve Mogilnicki
Geohydrologist

Address: Bureau of Water Quality and
Resource Management, DEPRM
401 Bosley Avenue, Suite 416
Towson, MD 21204

Requested by:

George A. Nilson
NAME: George A. Nilson
FIRM: PIPER & MARBURY L.L.P.
410-539-2530

ADDRESS: Charles Center South
36 S. Charles Street
Baltimore, MD 21201-3018

The witness named above is hereby ordered to so appear before the County Board of Appeals.

Kathleen D. Bianco
County Board of Appeals of
Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION *
301 Western Run Road, c/l Shawan
Road, 1780' NWly of c/l I-83 *
8th Election District, *
3rd Councilmanic *

BEFORE THE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

TOLL HOUSE, INC. (aka Hayfields) *
Petitioners

CASE NO.: 95-308-X

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to personally appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, January 25, 1996, at 10:00 a.m. in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: RUTH MASCARI
Maryland Employment Management Agency
2 Sudbrook Lane East
Baltimore, MD 21208

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests () the Sheriff, (X) Private Process Server, to issue the Summons set forth herein.

Karman C. Benson

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Cost: \$ _____ }
Summoned: _____, 19____ } SHERIFF OF BALTIMORE COUNTY
Not Served: _____, 19____ }

1996 JAN 31 AM 7:55

IN THE MATTER OF
HAYFIELDS, INC.
PETITIONER/HAYFIELDS
NW/S WESTERN RUN ROAD &
SHAWAN ROAD @ ITS
INTERSECTION WITH I-83
(301 WESTERN RUN ROAD)
8th E; 3rd C

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: 95-308-X

* * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: John W. McGrain
Executive Secretary
Landmarks Preservation Commission
Office of Planning
401 Bosley Avenue
Room 406
Towson, Maryland 21204

YOU ARE HEREBY COMMANDED TO: () Personally appear;
() Produce documents and/or objects only; (X) Personally appear and produce
documents or objects;

**in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland
21204 on Tuesday the 16th day of April, 1996, at 10:00 a.m.**

YOU ARE COMMANDED TO produce the following documents or
objects:

1. Any and all records, including but not limited to minutes and handwritten
notes, of the Landmarks Preservation Commission concerning:
 - a. Hayfields Reclassification Petition; Case No: 3-95-008791;
 - b. Hayfields Special Exception for Country Club; Case No: 95-308-X;
 - c. Hayfields Concept Plan and/or Development Plan; PDM File No.
VIII-661

Subpoena requested by:

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204

Attorney for Hayfields, Inc.

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.


County Board of Appeals of
Baltimore County

IN RE: PETITION FOR

SPECIAL EXCEPTION

TOLL HOUSE, INC.

*

*

*

*

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 95-308

* * * * *

SUBPOENA

TO: Mr. Rory Loberg
245 Shawan Road
Hunt Valley, Maryland 21030

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 118, Court House, Towson, Maryland

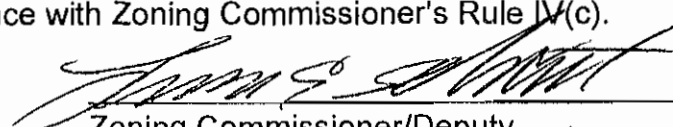
and to bring

on the 9th, 11th or 17th day of May, 1995, regarding the above captioned case for the purpose of testifying at the request of the Petitioner.


JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).


Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 5/2/95

IN RE: PETITION FOR

SPECIAL EXCEPTION

TOLL HOUSE, INC.

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 95-308

* * * * *

SUBPOENA

TO: Mr. Jerry Smith
213 International Circle
Hunt Valley, Maryland 21030

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 118, Court House, Towson, Maryland

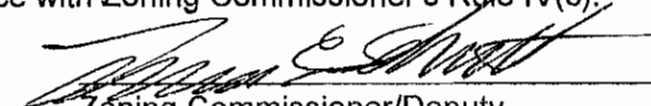
and to bring _____

on the 9th, 11th or 17th day of May, 1995, regarding the above captioned case for the purpose of testifying at the request of the Petitioner.


JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).


Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 5/2/95

IN RE: PETITION FOR

SPECIAL EXCEPTION

TOLL HOUSE, INC.

*

BEFORE THE

*

ZONING COMMISSIONER

*

OF BALTIMORE COUNTY

*

CASE NO. 95-308

* * * * *

SUBPOENA

TO: Mr. Ray White
2004 Greenspring Drive
Timonium, Maryland 21093

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 118, Court House, Towson, Maryland

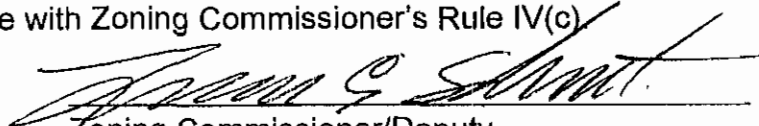
and to bring _____

on the 9th, 11th or 17th day of May, 1995, regarding the above captioned case for the purpose of testifying at the request of the Petitioner.


JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c)


Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 5/2/95

IN RE: PETITION FOR

SPECIAL EXCEPTION

TOLL HOUSE, INC.

*

BEFORE THE

*

ZONING COMMISSIONER

*

OF BALTIMORE COUNTY

*

CASE NO. 95-308

* * * * *

SUBPOENA

TO: Ms. Kaye Einbrod
10710 Beaver Dam Road
Hunt Valley, Maryland 21030

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 118, Court House, Towson, Maryland

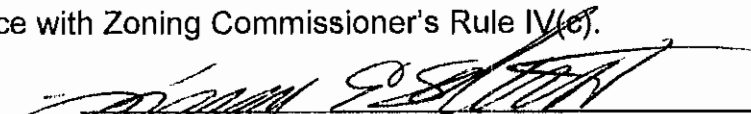
and to bring

on the 9th, 11th or 17th day of May, 1995, regarding the above captioned case for the purpose of testifying at the request of the Petitioner.


JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).


Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued:

5/2/95

IN RE: PETITION FOR

SPECIAL EXCEPTION

TOLL HOUSE, INC.

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 95-308

* * * * *

SUBPOENA

TO: Mr. Russell Chesebrough
221 International Circle
Hunt Valley, Maryland 21030

You are hereby summoned and commanded to be and appear personally before
the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room
118, Court House, Towson, Maryland

and to bring _____

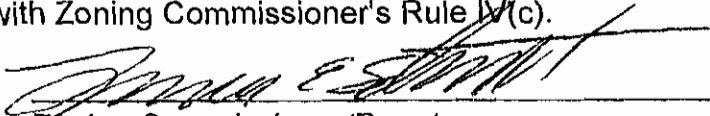
on the 9th, 11th or 17th day of May, 1995, regarding the
above captioned case for the purpose of testifying at the request of the
Petitioner.



JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).



Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 5/2/95

IN RE: PETITION FOR
SPECIAL EXCEPTION
TOLL HOUSE, INC.

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 95-308

* * * * *

SUBPOENA

TO: Mr. Ken Kitlas
Hunt Valley Mall
Hunt Valley, Maryland 21030

You are hereby summoned and commanded to be and appear personally before
the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room
118, Court House, Towson, Maryland

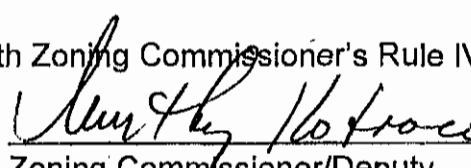
and to bring

on the 9th, 11th or 17th day of May, 1995, regarding the
above captioned case for the purpose of testifying at the request of the
Petitioner.


JOSEPH C. LAVERGHETTA, ESQUIRE

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).


Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: 5/5/95

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

CASE NUMBER

C985683

Pltff:

In the matter of

Deft:

EVAN SHIFREN

I am hereby removing the Exhibits/Transcripts from the Circuit Court
for Baltimore County. I represent the Pltff/Deft. _____.

Print Name _____

Signature _____

Date _____



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

7/10/95
8

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 10, 1995

Arnold Jablon, Director
Zoning Administration and Development
Management Office
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL EXCEPTION
301 Western Run Road, c/l Shawan Road,
1780' NWly of c/l I-83, 8th
Election District - 3rd Councilmanic
TOLL HOUSE, INC., Petitioner
Case No. 95-308-X

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the order dated June 30, 1995 of the Baltimore County Zoning Commissioner in the above-entitled case.

In this connection, please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Scott Barhight, Esquire

G. Macy Nelson, Esquire

RECEIVED

JUL 10 1995

ZADM

Baltimore County Government
Department of Permits and Licenses



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3610

July 19, 1995

Mr. Scott Barhight, Esq.
Whiteford, Taylor, Preston, etc.
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

Mr. Kenneth T. Bosley, Esq.
P.O. Box 585
Sparks, MD 21152

RE: Petition for Special Exception
301 Western Run Road, c/l Shawan Road
1780' NWly of c/l I-83
8th Election District
3rd Councilmanic District
Toll House, Inc., Petitioner
Case No. 95-308-X

Dear Mr. Barhight and Mr. Bosley:

Please be advised that an appeal of the above-referenced case was filed in this office on July 10, 1995 by G. Macy Nelson, Esquire, Anderson, Coe, and King on behalf of The Valley's Planning Council and by Peter Max Zimmerman, People's Counsel. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3353.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arnold Jablon", is written over a horizontal line.

ARNOLD JABLON
Director
Department of Permits and
Development Management

AJ:nmn

cc: Ms. Ruth Mascari
Mr. George Gavrelis
Dr. Richard W. McQuaid
Ms. Victoria Woodward
Mr. John Bernstein
People's Counsel



APPEAL

Petition for Special Exception
Hayfields
NW/8 Western Run Road
c/1 Shawan Road, 1,780 ft N/W of c/1 I-83
8th Election District - 3rd Councilmanic District
Toll House, Inc., Petitioner
Case No. 95-308-X

Petition for Special Exception

Description

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Aerial photo of site and area
2 - Site constraints map
(As per Scott Barhight, Esq., 3 - Hayfields Manor Golf Club
1 - 7C are in 4 - Site plan with current revisions 5/95
the Board of 5 - Clubhouse Campus
Appeals.) 6-A - 6-B - Club House and Maneion
7-A - 7-C - Mees Hall (Pro Shop)
8 - Master Plan for golf course
9 - Traffic impact analysis by Wes Quokert
10 - Recreation and Parks A Plan for the 1990's
11 - Hau Resume
12-A - 12-0 - Hau maps
13 - Environmental Impact Report
14 - Golf Course Management Plan
15 - Letter to Property Owner from J. Rodney
Little dated March 13, 1979
16 - Secretary of the Interior's Standards

Protestant's Exhibits: 1 - Kenneth T. Bosley's Entry of Appearance
dated May 8, 1995
2 - Motion to Dismiss Letter to Lawrence E.
Schmidt from Kenneth T. Bosley dated
May 10, 1995
3 - Recommended Areas of Critical State
Concern Map
4 - Petitions in Opposition to the Proposed
Rezoning and Golf Course at Hayfields
5 - Hobiltzell's statement (At BOA, as per Scott Barhight.)
6 - Inventory Form for State Historical
Site Survey
7 - Inter-Office Memorandum to
William T. Hackett dated March 6, 1995
8 - Map National Register
9 - Nomination form for National Register of
Historic Places
10 - Curriculum Vitae of William Parks Ball
11 - Land Use Plan

Plan to Accompany a Petition for Special Exception, Rev. 4/17/95

Inter-Office Memorandum to the Hearing Officer from Catherine A. Milton
dated March 3, 1995

Petitioner's Memorandum
Protestant's Memorandum
22 Executive Letters of Response

One Letter of Support

131 Letters of Opposition

11 Miscellaneous Letters

Zoning Commissioner's Order dated June 30, 1995

Notice of Appeal received on July 10, 1995 from G. Macy Nelson,
Anderson, Coe and King on behalf of The Valley's Planning Council and
Peter Max Zimmerman, People's Counsel.

cc: Mr. Scott Barhight, Esq., Whiteford, Taylor, Preston, etc.,
500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204
G. Macy Nelson, Esq., Anderson, Coe and King, Suite 2000,
201 N. Charles Street, Baltimore, MD 21201
Kenneth T. Bosley, Esq., P.O. Box, 585, Sparks, MD 21152
Ms. Ruth Mascari, Chairperson, Landmarks Preservation Commission,
17710 Whiteley Road, Monkton, MD 21111
Mr. George Gavrelis, Daft-McCune-Walker, Inc., 200 E. Pennsylvania
Avenue, Towson, MD
Dr. Richard W. McQuaid, 1500 Harrie Mill Road, Parkton, MD 21120
Ms. Victoria Woodward, P.O. Box 58, Upperco, MD 21155
Mr. John Bernstein, Vallaya Planning, P.O. Box 5402,
Towson, MD 21285-5402
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, Permits and
Development Management

8/11/95 -Letter from G. Scott Barhight, Esquire, requesting at least 6 days for hearing before the Board on this matter.

9/22/95 -Notice of Assignment for hearing scheduled for five hearing days: Wednesday, January 3; Thursday, January 4; Wednesday, January 10; Thursday, January 11; and Thursday, January 18, 1996, all commencing at 10:00 a.m.:

G. Scott Barhight, Esquire
Toll House, Inc.
c/o John M. Mangione
George Gavrelis
People's Counsel for Baltimore County
G. Macy Nelson, Esquire
John Bernstein, Executive Director
Valleys Planning Counsel
Dr. Richard W. McQuaid
Kenneth T. Bosley, Esquire
Ruch Mascari
Virginia Woodward
Pat Keller, Planning Director
Lawrence E. Schmidt
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

10/05/95 -Pursuant to telephone calls with Mr. Nelson's office (awaiting letter from Mr. Nelson indicating that he will not be participating in this matter), Mr. Barhight's office, and Mr. Nilson's office (awaiting entry of appearance from him), and due to schedule conflict for Mr. Nilson, an Amended Notice of Assignment will be sent to parties reflecting a change in dates: deleting 1/03/96 and 1/04/96; adding 1/24/96 and 1/25/96; case now to begin on Wednesday, January 10, 1996. Upon receipt of written confirmation of above change in counsel, amended notice will be sent.

10/20/95 -Pursuant to telephone calls with counsel, and confirmation of (1) Macy Nelson to strike his appearance; (2) George Nilson to enter his appearance; and (3) availability of counsel on dates chosen, Amended Notice of Assignment sent to parties, dates scheduled as follows: Wednesday, 1/10/96; Thursday, 1/11/96; Thursday, 1/18/96; Wednesday, 1/24/96; and Thursday, 1/25/96 (total of 5 hearing days). Mr. Nilson's entry of appearance and request to strike appearance from Mr. Nelson is in process of signature and will be sent to Board as soon as signature complete, per Messrs. Nelson and Nilson.

10/26/95 -Letter dtd 10/16/95 from George Nilson, Esquire, entering appearance on behalf of Appellants; G. Macy Nelson withdrawing.

1/09/96 - Day #1 POSTPONED via telephone conversations with Counsel (Barhight, Nilson and Zimmerman) due to inclement weather conditions. Will attempt to begin hearing this case on Thursday, January 11, 1996 at 10:00 a.m. Appropriate message left for callers at 887-3180.

1/10/96 -File updated as noted above. Copies of Notice as amended to be provided to Counsel 1/11/96.

1/25/96 -Notice of Assignment for Days #5 and #6 sent to parties; Friday, February 9, 1996 at 10:00 a.m. and Thursday, February 15, 1996 at 10:00 a.m. Added Joseph V. LaVerghetta, Esquire, and Leslie M. Pittler, Esquire.

2/15/96 -Notice of Assignment sent to parties; scheduled for Day #7 on Tuesday, April 16, 1996 at 10:00 a.m. Earlier date will be given consideration should such date become available prior to 4/16/96, with sufficient time for notification, and upon confirmation of availability of Board members and parties.

Memos filed with Board prior to beginning of today's hearing re "Country Club" issue from People's Counsel; S. Barhight; and G. Nilson. Note that Mr. Nilson's attachments to his Memo (lettered A through I) are also to be included in the Board's record as Protestant's Exhibits 23 through 31.

3/15/96 -T/C w/S. Barhight; unrelated matter scheduled for 4/30/96 to be withdrawn and dismissed; Mr. Barhight confirmed availability of counsel for 4/30/96 as additional date for Hayfields. Will assign this date and send notice upon receipt of letter of withdrawal of appeal in said unrelated matter. (Board's availability confirmed for 4/30/96 -R.K.L.)

3/18/96 -Receipt of letter from S. Barhight regarding 4/30/96 and ultimate availability of same for completion of Hayfields. Amended Notice sent to parties, adding Tuesday, April 30, 1996 /as needed for this matter.

4/10/96 -Letter from P. Zimmerman (addressed to both CBA and ZC) --regarding this matter and relationship to Development Plan /SPH & Var scheduled for May hearing dates before the Zoning Commissioner. Requesting conference with CBA in this regard.

- Advised CF for PMZ - there would be no meeting prior to scheduled hearing date of 4/16/96; Board will await response from S. Barhight; will review and determine any issues re this letter prior to start of hearing on Tuesday, 4/16/96.

4/16/96 -At close of Day #7 - Board requested memos be filed by April 25, 1996, to be reviewed before final hearing day on 4/30/96:

Memorandum filed by S. Barhight 4/25/96
Memorandum filed by P. Zimmerman 4/25/96
Memorandum filed by G. Nilson 4/25/96

Note: Per L. Pittler
4/26/96 - he will
file no memo
in this matter.

4/30/96 - Board convened; open deliberation as to Motion to Dismiss; unanimous ruling resulted in which Motion was DENIED. Board to deliberate on merits of this case on Thursday, May 9, 1996; Notice of Deliberation to be sent.

- Notice of Deliberation sent to parties; scheduled for open deliberation on Thursday, May 9, 1996 at 10:00 a.m. Cy to R.K.L.

5/09/96 -Deliberation completed. Granted special exception with restrictions; appellate period to run from date of issuance of written Opinion and Order and not date of deliberation. (R.K.L.)

No. 95-308-X

Petition for Special Exception filed by G. Scott Barhight, Esquire, on behalf of Toll House, Inc., to use
301 Western Run Road as a country club.

May 9 Hearing held on Petition by the Zoning Commissioner (Day 1).
May 10 Hearing held on Petition by the Zoning Commissioner (Day 2).
May 11 Hearing held on Petition by the Zoning Commissioner (Day 3).

June 30 Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED with restrictions.

July 10 Notice of Appeal filed by G. Macy Neleon, Esquire, on behalf of the Valleys Planning Council, Inc., Lynn Hastings, Dan and Joanne Timmel, Theodore and Ingrid Baramki, Robert and Shirley Mand, Marguerite Hastings and Dr. Constantine and Nancy Chilimindris.

July 10 Second Notice of Appeal filed by People's Counsel for Baltimore County.

October 26 Letter requesting Board to enter of the appearance of George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al., and to withdraw the appearance of Macy Nelson, Esquire.

January 11, 1996 Hearing held before the Board (Day #1).
January 18 Hearing held before the Board (Day #2).
January 24 Hearing held before the Board (Day #3).
January 25 Hearing held before the Board (Day #4).
February 9 Hearing held before the Board (Day #5).

Protestants' Memorandum in support of previously made oral motion to dismiss the Petition for Special Exception submitted by George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al.

Memorandum of Law RE "Country Club" submitted by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc.

People's Counsel's Memorandum on the Issue of Country Club filed by Peter Max Zimmerman and Carole S. Damilio.

February 15 Hearing held before the Board (Day #6).
April 16 Hearing held before the Board (Day #7).

April 25 Memoranda filed by counsel as requested by the Board to be reviewed before final hearing day on April 30, 1996:

Protestants' final Memorandum filed by George A. Nilson, Esquire on behalf of the Valleys Planning Council, Inc., et al; (also filed Rule 8 materials for Greencroft Community Association).

People's Counsel's Hearing Memorandum filed by _____ Peter Max Zimmerma and Carole S. Damilio.

Hearing Memorandum in Support of Petition for Special Exception filed by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc.

April 30 Hearing concluded before the Board of Appeals (Day 8).

May 9 Deliberation conducted and completed by the Board.

August 6 Opinion and Order of the Board in which the Petition for Special Exception was GRANTED with restrictions.

August 30 Petition for Judicial Review filed in the Circuit Court for Baltimore Co. by George A. Nilson, Esquire, on behalf of the Valleys Planning Council, Inc., et al (Copy of Petition received by CBA from CCT on 9/4/96).

September 3 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County. (Copy of Petition received by CBA from CCT on 9/16/96).

Third Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Dr. Richard McQuaid, et al. (Copy of Petition received by CBA from CCT on 9/16/96).

September 5 Certificate of Notice sent to interested parties (for first Petition)

September 5 Fourth Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire, on behalf of Hayfields, Inc. (inadvertently docketed as a separate Civil Action No. 3-C-96-9081.)

Hayfields

No. 95-308-X

September 18 Second Certificate of Notice (for second and third Petitions) sent to interested parties.

September 18 Certificate of Notice (for fourth Petition under 3-C-96-9081) sent to interested parties.

September 20 Motion to Transfer Case No. 03-C-96-9081 to Case No. 03-C-96-8878, filed by G. Scott Barhight, Esquire, in order that only one Record of proceedings before the County Board of Appeals including the transcript shall be required to be transmitted.

October 18 Response to Petition for Judicial Review filed by the Valleys Planning Council, People's Counsel for Baltimore County, and Dr. Richard McQuaid, et al received from G. Scott Barhight, Esquire for Hayfields, Inc.

October 24 Motion to Consolidate Civil Action No. 03-C-96-8878 and Civil Action No. 03-C-96-9573, filed by G. Scott Barhight, Esquire, pursuant to Maryland Rule 2-503 which permits consolidation of actions which involve "a common question or law or fact or a common subject matter."

October 25 Order granting Motion to Transfer filed by G. Scott Barhight, Esquire, issued by CCT (Lawrence R. Daniels, Judge)

October 30, 1996 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

June 7, 1997 ✓ E Order issued by the CCT for Balto. Co.; decision of the CBA is AFFIRMED (James T. Smith, Jr., J)

July 2 ✓ Notice of Appeal filed in the CSA by G. Scott Barhight, Esq., on behalf of Hayfields, Inc. (Consolidated Cases 3-C-96-8878 and 3-C-96-9573).

August 27, 1998 ✓ E Opinion issued by the CSA; Judgment of the CCT is REVERSED in part and AFFIRMED in part; case is REMANDED to the CCT with instructions to REMAND the case to CBA for further action consistent with this opinion (Murphy, Salmon, Rhodes, JJ).

October 15 ✓ E Order issued by the CCT; case is REMANDED to the CBA for further action consistent with the Opinion of the CSA (James T. Smith, Jr., J).

11/10/98 -Notice of Deliberation sent to parties; upon review of file exhibits and testimony Board will convene to deliberate matter pursuant to remand order. K.L.

Thursday, November 19, 1998 at 9:30 a.m.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

May 3, 1995

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 West Pennsylvania Avenue
Towson, MD 21204-4515

RE: Preliminary Petition Review (Case #95-308-X)
Legal Owner: Toll House, Inc.
301 Western Run Road (Hayfields)
8th Election District

Dear Mr. Barhight:

At the request of the attorney/petitioner, the above referenced revisions were accepted for filing without a final filing review by the staff. The revisions were accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed no unaddressed zoning issues and/or incomplete information. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Milton", is written over a horizontal line.

Catherine A. Milton
Planner I

CAM:scj

Enclosure (receipt)

c: Zoning Commissioner



Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



August 23, 1995

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

Mr. A.M.S. deLange
Sagamore Forest
5 Trighton Court
Reisterstown, Maryland 21136

RE: Hayfields - Case No. 95-308X

Dear Mr. deLange:

Thank you for your letter dated July 31, 1995 regarding the above case.

Unfortunately, I am not in a position to re-consider my decision in this regard. The matter has been appealed by the Valleys Planning Council and others to the Baltimore County Board of Appeals. The Board will conduct a new hearing and render its decision. I urge you to fully participate in that process.

Rather than responding to your letter point by point, I refer you to my 34 page written opinion which was issued in this case. As you may know, the hearing on this matter took nearly a full week and I devoted considerable time and effort to an analysis of the issues presented. Needless to say, the matter need be decided based on the zoning regulations lawfully adopted by Baltimore County and the laws which construe same. Whether one is pro-development or anti-development is a gross oversimplification of the issues presented.

Thank you for your thoughts and interest. Please do not hesitate to contact me should you have any further questions or comments.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", with a long horizontal flourish extending to the right.

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

April 17, 1995

(410) 887-4386

G. Macy Nelson, Esquire
Anderson, Coe & King
201 N. Charles Street, Suite 2000
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL EXCEPTION
Tollhouse, Inc. (aka Hayfields)
Case No. 95-308-X

Dear Mr. Nelson:

In response to your letters of April 11th and 12th, 1995, and Mr. Scott Barhight's letter of April 13, 1995, concerning scheduling constraints in the above-captioned matter, the following comments are offered.

Although appreciative of your dilemma, I am unable to grant a continuance of the above-captioned matter. The reasons for my decision in this respect are many. First, as both you and Mr. Barhight point out, the dates assigned to this case were agreed upon by all Counsel some months ago. As important, I have personally already been assigned to hear other zoning cases in May. Additionally, the availability of Mr. Barhight and his witnesses and clients may not accommodate a reconsideration. However, as I discussed with you and Mr. Barhight by conference call some weeks ago, I do have a conflict on Wednesday, May 10, 1995. My recollection was that Counsel were to get back to me about that conflict, however, to this point I have not heard from you.

In an effort to accommodate you somewhat and to resolve the scheduling conflict which we previously discussed, the matter will be heard in accordance with the following schedule: The first hearing date will be Tuesday, May 9, 1995; there will be no hearing on May 10, 1995, which will give you an additional date to prepare. The second hearing date will be Thursday, May 11, 1995. If a third day is necessary, the case will be reconvened and hopefully completed on Wednesday, May 17, 1995. By spreading out the hearing in this fashion, you will be given additional time to prepare your presentation, particularly since Mr. Barhight, in representing the Petitioner, has the burden of going first. Moreover, following this schedule will insure that the case is completed in a relatively timely fashion, which should address Mr. Barhight's concerns.

Should you have any questions on the subject, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LFS:bjs

CC: G. Scott Barhight, Esquire
Case File





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 10, 1996

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Room 49 Old Courthouse
400 Washington Avenue
Towson, MD 21204

Lawrence E. Schmidt, Esquire
Baltimore County Zoning Commissioner
Room 118 Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: HAYFIELDS, INC.
Case No. 95-308-X heard before the
County Board of Appeals on (Day 1
through Day 6) January 10, 11, 18,
& 24, 1996, February 9 & 15, 1996;
Scheduled for hearing before the
County Board of Appeals (Days 7 & 8)
April 16 and 30, 1996

AND

Case Nos. VIII-661 / 96-347-SPHA
Scheduled for hearing before the
Zoning Commissioner/Hearing Officer
May 8, 9, 10, 14, and 15, 1996

Dear Chairman Schuetz and Commissioner Schmidt:

The enclosed notice of hearing before the Zoning Commissioner in Case Nos. VIII-661 / 96-347-SPHA on May 8, 9, 10, 14, and 15, 1996 has come to our attention. Petitioner seeks development approval and amendment to a special exception for 40 single family lots and an 18-hole golf course on 474.4 acres. The amendment includes a number of variances.

At present, there is a de novo special exception hearing pending at the County Board of Appeals for the country club (including golf course). In effect, there is no approved special

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Lawrence E. Schmidt, Esquire
Baltimore County Zoning Commissioner
April 10, 1996
Page Two

exception, and it is obvious that the special exception and variances must be considered in conjunction rather than in piecemeal fashion. The special exception with variances case appears as a new case with new parameters. The interrelationship between the special exception and variances must be evaluated, as the former often depends on the latter or are intertwined. See Umerley v. People's Counsel, ___ Md.App. ___ (March 1, 1996). Moreover, we now know the site plan accompanying the special exception petition pending before the County Board of Appeals is obsolete and appears effectively to violate BCZR 500.2.a and 500.9.

This raises serious questions as to what should be done with the CBA proceedings. There have been six days of testimony, but on a petition which turns out to be incomplete. Clearly the special exception (even if it were otherwise approvable) cannot be granted without concomitant review of the variances.

There is yet another complication. As John Lewis, Planner in the Department of Permits and Development Management observes in his recent comment (enclosed), the development project density is calculated using property allocated to the country club (golf course) special exception area. This alone disqualifies all of the above petitions. In the alternative, it requires elimination of the country club, the relevant lots, or some part of both.

In summary, we now have several new problems:

1. The existence of specific variance requests not included on the site plan before the CBA.
2. The combination of the variances with the special exception.
3. The utilization of the same property both for special exception and density calculation.
4. The procedural tangle of different cases pending at both the Commissioner/Hearing Officer level and at the Board of Appeals level.

We suggest a conference at the County Board of Appeals to discuss the impact of the May, 1996 Zoning Commissioner/Hearing Officer hearing on the pending CBA proceedings.

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Lawrence E. Schmidt, Esquire
Baltimore County Zoning Commissioner
April 10, 1996
Page Three

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/caf
Enclosures

cc: G. Scott Barhight, Esquire
George Nilson, Esquire
Leslie M. Pittler, Esquire
John Lewis, PDM
John Bernstein, VPC
Kenneth Bosley

DEVELOPMENT PLAN HEARING

Project Number: VIII-661

Project Name: Hayfields Manor

Location: NWC Shawan Road and Interstate 83

Acres: 474.4

Developer: Hayfields, Inc.

Proposal: 40 single family lots and one 18-hole golf course

and

CASE NUMBER: 96-347-SPHA (Item 348)

401 Western Run Road

NW/intersection Shawan Road and Interstate 83

8th Election District - 3rd Councilmanic

Legal Owner: Hayfield, Inc.

Special Hearing to approve an amendment to previously approved plan 95-308-X.

Variance to permit existing silo adjacent to Building Ten to have a height of 50 feet in lieu of the required maximum height of 35 feet, to permit existing silo in R.C.-4 conservation area to have a height of 50 feet in lieu of the required maximum height of 35 feet, to permit the Hayfield's Mansion to have a height of 42 feet in lieu of the maximum permitted 35 feet, to permit the distance between Buildings Two and Six to be 50 feet, in lieu of the required 70 feet, to permit the distance between existing Buildings Six and Eight to be 3 feet in lieu of the required 70 feet, to permit the distance between existing Buildings Four and Eight to be 65 feet in lieu of the required 70 feet, and to permit the distance between Buildings Three and Five to be 50 feet in lieu of the required 70 feet.

HEARING: WEDNESDAY, MAY 8, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

THURSDAY, MAY 9, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

FRIDAY, MAY 10, 1996 at 9:00 a.m. in Room 106, County Office Building.

TUESDAY, MAY 14, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

WEDNESDAY, MAY 15, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION /Motion to Dismiss

IN THE MATTER OF: Toll House, Inc. /Hayfields
Case No. 95-308-X

DATE : April 30, 1996 @ 10:00 a.m.

BOARD /PANEL : Robert O. Schuetz (ROS)
Kristine K. Howanski (KKH)
Lawrence M. Stahl (LMS)

SECRETARY : Kathleen C. Bianco
Administrative Assistant

Those present included G. Scott Barhight, Esquire, on behalf of Petitioner, and Joseph LaVerghetta, Esquire; George Nilson, Esquire, on behalf of Protestants; Kenneth Bosley, Esquire; and Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate Motion to Dismiss.

ROS: Good afternoon, ladies and gentlemen. The purpose of this afternoon's proceeding in what I'll call Part I will be the deliberation of the Motion to Dismiss brought by Protestants on our opening day and through opening statement by Mr. Nilson, and ultimately buttressed by Memorandum, and opposing counsel's Memorandum and argument.

Before we proceed, I wanted to make a few statements about the case, as well as the process. First of all, I wanted to say that of all of the cases I've had the privilege to sit on, this is by far one of the best cases to have had that privilege because of the manner in which the material was presented. My predecessor, Mr. Hackett, used to like to coin the phrase "separate the chaff from the wheat. There's not a lot of chaff in this case. There was a tremendous amount of information. You only have to measure the transcript to understand the amount of information to be considered. What you have done, as a group and individually, has been a very difficult task, I'm sure; trying on the part of both the Protestants and the Petitioner. I suspect that no matter what the Board finds, time will continue to march on. And so, what you've have to do has probably been difficult collectively and individually. What the General Assembly has decided in what the Board has to do in open deliberations is in no way less difficult, and in some ways, more so, because of the manner in which issues have to be couched.

Having said that, I do caution everyone that the Board does endeavor to comply fully with the requirements of the open meetings law. A record is being kept by the Board's secretary

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

for the purpose of exhibiting that compliance, and to provide assistance to the Board in drafting its Opinion and Order. Having said all that, it's time to get to the matter at hand, that being the Motion of Mr. Nilson and the Protestants.

I think we've all said that the matter has a threshold issue - whether or not the Board is to consider this proposal a country club. I think that Mr. Zimmerman stated it very aptly in his earlier comments that it's extremely difficult to separate the issues in terms of construction of definition of a country club as opposed to the merits of the case. What has happened is, in a manner of speaking, putting the cart before the horse, but in this case, it's necessary that the horse be walking backwards so that the horse is still driving the cart. What I'm saying is it will be difficult to talk about the definition of a country club without talking about the merits. Hence, my earlier comments, that we essentially consider this a continual process of deliberation in that we are going to allow additional comments in rebuttal of each other's memorandum once and if we get to the merits of the case.

Country club, and I'll state this just for the purpose of the hearing, is defined in the General Provisions of the Baltimore County Zoning Regulations and reads:

A 9 or 18-hole golf course with a clubhouse and other appropriate facilities, which may include other recreational facilities (see Section 406A).
[Bill No. 62, 1978.]

Having been referred to 406, 406.1 concerns golf driving ranges; 406A speaks to tennis facilities. And then lists 406A.1, 2, 3, 4, 5 and 6 concerning appearance and so forth. We have excellent memorandums from both sides on this particular issue, and I think this was the main reason we sought getting additional comments today concerning the definition issue, and one of the questions is whether or not that definition of country club is in fact ambiguous or unambiguous. I wrestled with this particular issue for the better part of a month and came to a conclusion last night. A country club on its face is defined as having a 9 or 18-hole golf course with a club house and other facilities. On its face, it's unambiguous; question is "appropriate facilities which may include other recreational facilities." In that particular part of the definition, it indicates other recreational facilities, and reference to 406A. I believe that if the Council had meant to restrict other recreational facilities to only include tennis and not to include pools, for example, and other types of uses, it simply would have said it may include tennis courts. It would have stopped

right there.

I agree with Mr. Barhight when he looks at term country club and tennis clubs, etc., as in Bill 62-78 and obvious open-mindedness with which the Council viewed country clubs as opposed to other facilities. But we are still left with the question as to what is appropriate as to other facilities. During the testimony brought by Mr. Mangione, we had questions regarding types of membership and whether or not the country club can include different types of memberships; whether public, private or semi-private. I don't believe the Council has decided that issue specifically except for other types of clubs, and has therefore maintained an open position regarding country clubs, leaving it to the Board by its insertion into the zoning regulations the possible uses described in a country club petition under a special exception, to be able to limit its possible uses and intensity of uses under the terms of 502.1, and I think the Council was wise in that decision because they recognized that, while Code and zoning regulations may have been considered to be correct, I think they recognized that they are not omniscient and that the future cannot be foretold by the Council, but they must provide flexibility to allow the Board, as the trier of facts, to be able to decide what is "appropriate facilities."

Therefore, it's my belief that the threshold issue of whether or not this particular petition meets the definition of country club is in and of itself unambiguous in that we have a clubhouse plan, a planned golf course, and planned other facilities. And that, therefore, on its face, the Petitioner does meet the definition requirement. When we get to the issue of merits of the case, I think that it's within the Board's authority, and the Board is charged with the responsibility of placing whatever limits there may be if in fact the Board decides that a special exception should be granted; I believe that was forethought of Council when they drafted definition of country club.

I agree with Mr. Barhight's assessment that we are reviewing a country club and evaluating the impact of other appropriate uses as a condition of approval. We are not here reviewing 10 or 12 principal uses, and the Board has a tremendous amount of latitude when reviewing those proposed uses, imposing whatever restrictions it deems necessary. I don't need to recite 502.2 for everybody. I believe that, having said all of that, I've pretty much covered all there is to be covered in my belief that they meet the threshold definition of country club, and I will say this also -- that although I made up my mind on the matter last night, I came here this morning with a completely open mind on the matter simply because it is that one issue of

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

ambiguity as it relates to the word "appropriate." I will hear from my colleagues.

KKH: I'm still not done.

LMS: I know where I'm going. I generally begin an open deliberation with comments about the process. Rob has already made the Board's position clear. I'm not a fan of the open deliberation process. Nevertheless, it is the process we have and I don't think it's going to get in the way of this particular deliberation. Suffice it to say that my only comment will be that our brethren upstairs would not limit themselves to the degree they limit us. Having said that, I came here this morning not really determined how I would go -- all four or five counsel crystallized direction for me. And I appreciate Mr. Zimmerman's always cutting to the quick; comments that we need to keep focused; well-taken comment.

We have a question of statutory definition. The statute, as Rob has gone through, is clear. That word "appropriate" is again where we wind up, and I understand Mr. Nilson's comments three months ago regarding this Motion, and his questions about it's usefulness at this stage; yet nevertheless it's still part of these proceedings. I think that's where we find ourselves. The issues of this Motion are clear. Definition does in fact cover, in terms of definition, the proposal that is being made by Petitioners; whether or not the things that are in it, the banquet facilities, cocktail lounge, residential facilities, and again we have discussed the airport that could conceivably be part of it, are all accoutrements and facilities that have been made part of this process. I think the discussion that crystallizes it is the one that is in 62-78, and I think in terms of statutory evaluation, they did have the opportunity to be specific about some things and in fact were. Having had that opportunity, they then went ahead in the same legislation and were general. Indicates intent on their part that they were unable or unwilling or determined it was not in best interest to be more specific.

Having said that, and since we are not in the deliberation of the 502 issues, and without letting any cats out of the bag, because I am really undecided as to those issues, that the inclusion of the facilities and the manner in which they are to be operated, whether public, semi-private, etc., may not in fact be the petard upon which this project is ultimately hoisted, but for purposes of this Motion, I feel that the Petitioners do fall within the definition of country club; they are in essence setting the agenda of the 502 discussion

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

in terms of whether we think that, in terms of all the testimony, evidence and exhibits, those additional uses are in fact those that would allow it to be continued by special exception, need to be excluded or sink the entire project. That's a different inquiry, the main inquiry. I think that's an issue we will struggle with. But this is not even the forest for the trees; I see this as the branches on a limb.

I think it's clear in my mind that the definition has been met for the purposes of going forward by the Petitioners, and will join Rob in denying the Motion to dismiss.

KKH: I'm not sure that my different way will lead me to a different conclusion, but I would view the country club definition somewhat differently, in two respects: (1) that I would believe that the Council believed, when it used the term club, that it connotated some type of membership. Some type is proposed here, but I have a recollection when that statute came out -- I remember, and the thing that intrigues me -- I don't think the Council's eye was on private issue at that time. I believe the issue was on, for example, L'hirondelle Country Club - which had tennis facilities and not golf. They were not thinking about this type of situation. They were wondering what to call tennis facilities without golf courses, with no focus in the world on public or private. It may not matter in this case, because there is membership. Looking at earlier problem -- and where I might -- and my question would be -- conceptually first, do you read that definition as allowing a totally public country club, permitting that?

ROS: No, I don't think so, personally, for the same reasons you enumerated regarding the Council's use of the word "club."

KKH: I thought that this -- could not think about a club without members.

ROS: If it does not matter if it's 10 or 10,000; there's a membership card. It has nothing to do with that. I agree there must be some consideration and that membership is a form of a contract.

LMS: What about daily membership?

KKH: I've never heard of that. I've tried to divorce myself from my own experience, and just thought about clubs in general. Every time I think about clubs, it has members. I could not think of a single club with non-members. I could not talk to either of you during this phase, but have you ever heard of clubs without members?

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

ROS: I know of many community associations that allow outside, that allow people outside the community not allowed to be members by virtue of geography.

KKH: Again, you're going on another thing altogether. Did those people have a vote, not in geographic territory.

LMS: I see no reason why - it seems to me that membership is a definition which is one that can float. I see no reason why you would not join an organization for the day in order to be able to use its facilities. I'm not saying that's the situation here. I don't see the difference.

KKH: Define someone as a member -- what would they do for that day? There are still members. Here, there is still a membership component here, I guess.

LMS: Let me ask a question. If a membership component is an issue - do you put a percentage on the number or value to this? Is membership to the extent of 25 percent of total usage a threshold?

KKH: I'm grappling with that. I'm just thinking aloud here - do we have to come to that kind of decision today or not? That's a question for me - am I satisfied that to me, to my sense, that a club of any sort needs members? So a country club would be a golf course with other facilities that has members. If that satisfies me, then I can move on. If, on the other hand, there is no other thing - you're either a member, a guest, or trespasser - then I don't know that I can go further. It may be that I will be willing to suspend my discomfort for the moment and just be satisfied there is a membership component with it.

LMS: The statute does quantify it either.

KKH: It's my recollection - I looked at other clubs; I did not see one where they had non-members.

ROS: I think there is a hybrid between what you and Larry have spoken of. In one of the sites - good deal of discussion regarding YMCA and YWCA; they are in fact a club despite word association.

KKH: Because of what?

ROS: Members - but allow uses by nonmembers for a fee. Both offer ongoing programs for a fee.

KKH: And that is where I am right now. I don't view - it has to

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

have some membership component to it.

ROS: I'm in agreement, but getting passed that, there are other issues - what degree constitutes membership? That's maybe part of what needs to be discussed.

KKH: If all they've done is left us with a statute that indicates what it does, and not much else, then I don't think it's a threshold issue for today when we look at what is appropriate.

I do have other questions. If the effluent measurement for a country club is per member, this would be very misleading unless it was confined to members; or measurement would not mean much. What I am looking at---

ROS: Assumptions were made for engineering considerations for effluent, and I would say there are two things to be considered. One, it's entirely possible that the engineering questions already do take into account variances that are inherent to those types of numbers - or variables. That we still have the ability to review that and impose additional restrictions if in fact that particular issue has not been adequately addressed.

KKH: Regarding 502 issue - when you look at this - all sorts of logisticals -- liquor license and all that -- may be a 502 issue and not this issue today, but again, I have difficulty seeing how they can have anything other than a private membership situation, and have these kinds of licenses.

And then the question goes back to what is a country club - as if measured on the basis of members - did not really think of country clubs as anything but just having members. That's where I am coming from.

LMS: As opposed to figure based on usage --

KKH: Like rounds per year or something like that.

I'm just looking there - where I'm coming down on this - I'm looking at it; being strict on the issue. To me, club is not ambiguous but does connote members. But they chose to do nothing further with it -- I may be inclined to agree with you that it has to connote that.

LMS: Why set criteria on taxing level for club that has certain qualifications which in essence says that if you are ten members under --

KKH: All they were getting at -- take the Camden Club - If you want

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

to be a member, you put in \$1,000; three form a corporation; \$300 apiece and all belong. All they were trying to do with that is for people who want to call themselves a club -- Baltimore County Country Club - and go ahead and get tax advantages. That is all I thought they were getting at -- to prevent people from taking advantage of taxes if they have money and opportunity. It's harder to get more than 10 people to collude rather than three or four. I really viewed that number as answering that question in dealing with size. So I did not find that very helpful for me in terms of adding to my ability to distinguish in this instance. And right now, I don't know whether I'm sure that my distinction even rises to the level of -- I'm still grappling with this and not terribly comfortable.

LMS: You may not resolve the issues until you get into the merits.

KKH: I just want to be sure that I'm not bypassing it now; what should be dealt with now.

The "and other appropriate facilities" does not bother me as much at this level as it seemed to bother the two of you only because there seemed like so many procedural ways to go around this -- that did not trouble me as much. When I looked at the country club issue as well, some ambiguity in that respect -- references another statute - I thought you, Rob, may have been going in a different direction. In one way, it's clear they never thought of country club other than what a tennis club might be. In referencing club in definition - just took it for granted. I'm thinking they were referring to other recreational facilities.

ROS: I believe that the restrictions placed on tennis facilities are very thoroughly described, and further narrowed when they are built in conjunction with country club.

KKH: Again, my recollection was L'hirondelle - different ball at that time.

ROS: When they did that -- we now have an animal that is changing stripes; would be unable to define; don't know what else is coming in the future.

KKH: They have to be held with what they have written; do not buy argument about foresight; very parochial look at immediate issue, and even then, the sophistication level was the same.

ROS: Did not wring hands so that no one in the future would be injured, but, if limited, what would happen. Some degree of looseness left in definition.

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

KKH: They have to be held to what they said because they said it.

ROS: I don't disagree. It was under cross by Mr. Nilson -- that he envisions different types of memberships in this particular facility -- country club memberships -- and it was not yet finalized that golfers could or could not use other facilities. But even under the strictest of interpretations of country club -- and even Mr. Mangione indicated that at this point they are considering that very issue, and so I think that we have a situation here that recognizes in their own testimony and in their own proposals, this is what we will be living with here.

KKH: I found his testimony a bit more ambiguous on that.

ROS: He said it nonetheless.

KKH: What did he say --

ROS: There are different types of memberships -- they do contemplate memberships -- not just golf. And whether they can or cannot do that still is a 502 question and not a country club question.

KKH: That makes me more uncomfortable than less. It might be like you said -- in 502 -- could say that is inappropriate. But have not thought about it under those situations. Everyone thinks of this -- assuming membership, tennis membership -- 10 different things could not have by themselves, but now together --

LMS: It's a moving feast, depending on what you put in and what you take out. I have not gotten to that point myself -- it becomes more of a public facility and less a country club since I am coming to the conclusion that it is a country club -- the more it moves to description of other things that we could throw together because we could not do it separately -- could move me to another direction.

But that's going to be a moving feast in terms of going through all this. Testimony is what we will have to go through. The fact that we have not gotten totally specific responses to issues will make it harder. Also we're held to our part of this process; others not before us. The development plan process, etc., which are moving independently from the special exception discussion that we are getting into. That's the way we have to do it. I get less and less comfortable.

KKH: That's where I'm coming from -- and other appropriate

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

facilities -- I guess conceptually I can deal with that. If I agree with the two of you, as agreeing that to some percentage of public, or whatever -- because I have not come down on that -- I have only decided that a club must have members -- should it just have members or not -- have not decided that. It seems to have passed the threshold.

LMS: I'm where I am because to this point I'm satisfied that discussion needs to be 502.1 discussion; believe Petitioners have gotten us past this to that particular issue.

KKH: Okay.

ROS: I believe it's also a situation where it's difficult for us, and even the drafters of the legislation, to try to limit things to a point that it's injurious to future uses, and over time, trends that perhaps were seen by some people some years ago have changed.

We still have changing thing - we have a tremendous amount of latitude to mold that so it does meet spirit and intent.

KKH: That is other appropriate facilities. The focus is - if you do not have golf course -- cannot be a country club. That's what the focus was.

LMS: Petitioners have loaded up for better or worse - those other facilities.

KKH: They have a golf course and they have a clubhouse; does have some discussion of members -- but to that extent, I would agree that they have crossed that threshold. I would disagree if they had no membership component -- and am sure they combined -- does not matter for this discussion today. Okay.

ROS: Having resolved that issue, as we indicated previously, we can get a few minutes break to hear additional argument to each other's memorandum. Once we have concluded that on the record, then we will break up for the day and reconvene as a Board next Thursday for the purpose of deliberating the merits of the case.

And obviously, I will reiterate that any or all of you attend - but you certainly are welcome, as is the general public. We will be back in 10 or 15 minutes.

Mr. Nilson questioned: Are there any further deliberations today? I hope to be brief on the merits.

ROS: With all due respect, we have heard a tremendous amount

Deliberation /Motion to Dismiss Toll House, Inc. 95-308-X

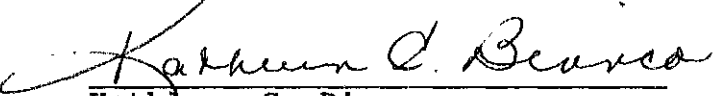
already, But we just wanted to give you an opportunity to rebut what was in each other's memorandum.

KKH: I feel like the second set of memos - I could be wrong - feel like everyone explained themselves in a fashion that I can understand their points. We are interested in -- do not want to cut anyone short, but we feel like we have a grip -- at least, I feel like I have a grip -- on what the Motion said. But we are interested in responses to points made by other parties.

ROS: We will be back in 15 minutes. Thank you.

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Respectfully submitted,

  
Kathleen C. Bianco  
Administrative Assistant





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 30, 1996

NOTICE OF DELIBERATION

Having concluded the hearing in this matter on April 30, 1996, the Board has scheduled the following date and time for deliberation in the matter of:

TOLL HOUSE, INC. /HAYFIELDS  
Case No. 95-308-X

DATE AND TIME : Thursday, May 9, 1996 at 10:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

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|                                       |                                     |
|---------------------------------------|-------------------------------------|
| cc: G. Scott Barhight, Esquire        | Counsel for Petitioner              |
| Toll House, Inc.                      |                                     |
| c/o John M. Mangione                  | Petitioner                          |
| Joseph LaVerghetta, Esquire           |                                     |
| George Gavrelis                       | Daft-McCune-Walker, Inc.            |
| People's Counsel for Baltimore County | Appellant                           |
| George A. Nilson, Esquire             | Counsel for Appellants /Protestants |
| John Bernstein, Executive Director    |                                     |
| Valleys Planning Council              | Appellants /Protestants             |
| Dr. Richard W. McQuaid                |                                     |
| Kenneth T. Bosley, Esquire            |                                     |
| Leslie M. Pittler, Esquire            |                                     |
| Ruth Mascari                          | Landmarks Preservation Commission   |
| Virginia Woodward                     |                                     |
| Pat Keller, Planning Director         |                                     |
| Lawrence E. Schmidt                   |                                     |
| Docket Clerk /PDM                     |                                     |
| Arnold Jablon, Director /PDM          |                                     |
| Virginia W. Barnhart, County Attorney |                                     |

Copies to: R.K.L.

Kathleen C. Bianco  
Administrative Assistant



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Toll House, Inc. /Hayfields  
Case No. 95-308-X

DATE : May 9, 1996 @ 10:00 a.m.

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)  
Kristine K. Howanski (KKH)  
Lawrence M. Stahl (LMS)

SECRETARY : Kathleen C. Bianco  
Administrative Assistant

Those in attendance at this deliberation included the following counsel: G. Scott Barhight, Esquire; George Nilson, Esquire; Leslie M. Pittler, Esquire; Joseph LaVerghetta, Esquire; Peter Max Zimmerman, People's Counsel for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter presented to the Board in Case No. 95-308-X.

ROS: Good morning, ladies and gentlemen. We are this morning to deliberate Case No. 95-308-X, Toll House /Hayfields. As indicated at the conclusion of last week's deliberation on the issue of the country club, we are here to deliberate the merits of the special exception case before the Board. The purpose of this morning's proceedings is to indicate compliance with the open meetings law in the State of Maryland. The Board's secretary will be taking minutes to record that the Board has in fact complied. The official record will be the written Opinion and Order which will come out subsequent to the close of these proceedings.

Before we get started, I first want to thank Counsel in this particular case. Last week I indicated it was probably one of the best-tried cases I've had the privilege to sit on since being on the Board. There was a tremendous amount of information, almost all of which is weighty to one degree or another. Frankly, it makes our job easier to separate the wheat from the chafe, but also goes to the amount that we have to consider and then to weight we give in considering this particular issue.

I believe I can speak for my colleagues when I say "well done" on both sides.

Another preliminary matter is a transmittal from Mr. Barhight and Mr. Nilson's response after close of the evidentiary portion of the proceedings. It is the view of this Board member that the information came subsequent to the close of the evidentiary portion of the proceedings. Therefore, we

will return the packages in tact, unopened. If the parties wish that the Board keep those transmittals, they will not go as part of the file here; only in the Board's general files. If it goes upstairs, the file will go without those transmittals.

Now to the matter at hand. This case involves Section 502 of the Baltimore County Zoning Regulations, as well as other sections. For the benefit of the folks in the room, I will go ahead and read those sections. It may take a few moments.

Section 502, special exception, originally brought to the zoning regulations in 1955, reads as follows:

"Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses [and I underline 'proper uses'] of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals." [Now Board of Appeals.]

I will underline general welfare and come back to that. And then we get into 502.1:

"In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions.

"Before any special exception may be granted, it must appear that the use for which the Special Exception is requested will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved [and again I will underline general welfare...];

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

And then, of course, in 502.2 we have the authority that the Board has, and the latitude that the Board has in considering these types of proposals.

Another of these sections that the Board is looking at in this particular case is 1A01 of the BCZR and specifically 1A01.1, R.C. zones. In 1A01.1 we look at purposes in viewing special exception issues here, and in particular we get to 1A01.2, the use regulations; what is allowed as a matter of right and then those uses which are allowed by special exception; and that is where we find golf course and country club - item 10 of C.

Finally, Section 100.5 of the BCZR speaks to issues related to historic preservation efforts in Baltimore County and basically indicates that preservation issues are resolved as part of the development process.

This case involves a country club which last week we already ruled has been brought consistent with the definition of the term "country club." In making that finding, it's my opinion that we have also collectively reviewed the term "club" as part of the overall consideration of that part of this deliberation. I will come back to that. We have a proposed golf course that is a country club, banquet facilities, overnight accommodations, lit driving range and restaurant as proposed for this particular case. When one looks at the uses as of right, accessory uses or structures are 7 of 1A02B - as of right and then H subsection - which accommodates accessory uses which may fit in this particular case, that being

swimming pools, tennis courts, utility sheds, etc. Taking the position for the moment that the special exception would be granted for a country club, I would say that golf course, tennis courts and swimming pools meet the definition as an accessory use. But we still have to come back to the issue of membership, and several other parts of this country club, that being club house, banquet facilities, overnight accommodations, lit driving range and restaurant.

Also allowed as a matter of right, pardon me, as a special exception under subparagraph 16 of Section C, that being the uses by special exception, we have standard restaurants, or tea rooms converted from dwellings. In this particular case, we have a manor house which is at issue as an historical structure. We have a restaurant which is part of what is proposed in the country club. I've looked and looked and looked -- nowhere do I see banquet facilities as something which can be found in the uses as of right or by special exception for a conversion. However, when one looks at the definition of "country club" and we get into the issue of other appropriate facilities - that's where the question comes - where does banquet facility fit in? And that brings us back to the issue of membership.

As I indicated last week, I view this particular proceeding as a continuance of what we started in defining country club or looking at the proposal of country club -- I agree with Ms. Howanski when the issue of membership was brought up, and what that meant relevant to the term "club," We have to look at that question in looking at appropriateness of banquet facility and if part of this facility would be available to the general public, and whether that in fact meets the intent of the Council when it defined "country club."

We have the testimony of Mr. Mangione who is present this morning. Going all the way back to day one, when Mr. Mangione indicated on that day, among other things, he sees this as a semi-private type of facility, but in my notes, and in my methodology - the way I take notes - I break things down as brought to fore and create my own outline so I'm easily reminded how things were brought during questioning. Mr. Mangione indicated that he expects small core membership, 200 members. The public would pay to play, speaking about the golf course; indicated basically "public facility." He also indicated that the pool and tennis facilities are not envisioned to be public facilities, and that, further, there would be expected to be different types of memberships within the club. He further went on to speak about numerous other issues getting to the dining facility; expects to hold one event at a time; public can request and use the banquet facility. The dining area may be split between public and

private; that the public would be able to use the driving range; expects tennis, swim and country club memberships. But yet on cross examination, he contradicted himself but said it was not finalized as of the date of testimony that golfers can or cannot use other facilities; degree of use that golf membership may or may not include use of other facilities; flexibility to attract different types of members.

Public dining is expected to be available to the public. Banquet facility would accommodate up to 200 people, and, again, available for booking by the public. Issues brought in direct examination, very consistent in cross.

Regarding overnight accommodations, he indicated it would be available on a limited basis but in fact would be available outside membership. The restaurant might serve as many as three meals per day. Then we get into the issues that Mr. Mangione indicated were important to the visibility of the project:

Banquet facility is very important; expects 125 weekend functions; 150 weekday functions with average attendance of 150 per function.

Golf course is important as semi-public facility.

Driving range is important as semi-public.

As indicated in my preamble, the issue concerning the restaurant I think is easily resolved if one assumes argument that special exception should be granted. That would be that the restaurant can be a part of this type of proposal. I would, however, stipulate that to be consistent with the regulations - the zoning regulations - that the restaurant exist in the existing footprint of the manor house; not going to build something not consistent with the intent -- to preserve that type of structure, and yet allow re-use recognized by the Council to be of value.

Regarding tennis courts and club house, we have already ruled a necessary part of this type of proposal; the swimming pool - again is, I think, a recognized recreational facility that is a necessary component of this particular project, and I think that even as an accessory structure permitted by right in the R.C. 2 zone, I believe that we have, are within our purview to indicate this as something, again assuming it is granted, that swimming pool could also exist.

And we get to the lit driving range, overnight accommodations and banquet facility.

Starting with the lit driving range. We have the issue of membership. I think last week we collectively agreed that "club" denotes membership. My belief is that other recreational facilities would include a practice range which is part and parcel to a golf course. I cannot separate myself from my own enjoyment of golf and I think I am one of those who needs to warm up; I don't think anyone would disagree with that -- however, I don't see where a lit driving range is necessary to the enjoyment of the golf course by its membership, and "club" being the term which drives that particular issue. A driving range, while it may be something that Petitioner views as something available to the general public, I disagree. A club is a club. With it comes certain connotations of membership exclusivity; betterment of pursuit of enjoyment of golf, whatever; would argue honing one's skills during off hours. I don't view it that way; view it as a way to provide use of opportunity when golf course would not ordinarily be in use. It's not a factory; you do not need to run it 24 hours per day to maximize return on investment. Therefore, I believe that a driving range as part of this particular facility is a necessary component, but I would eliminate as a restriction, again arguing that if the special exception were to be approved, it should not include lighting of this particular part of the facility.

I'm going to come to, I think, the banquet facilities next. I think it's recognized that we have a country club that's been proposed. Clubs have issues to grapple with on a regular basis, large meetings, what have you -- a banquet facility to accommodate membership, guests, is appropriate as part of club house facility -- but, again back to club -- it does not connote, in my view, a conference center which allows large businesses and so forth to gain access for the purpose of continuing education requirements or any other type of program that might be put on for another set of individuals exclusive of the club. I believe that that type of facility is something which would be allowed under the BCZR as they exist at this time. It's not inappropriate -- but I think that there is a different set of rules -- BCZR at this point do not allow such a public facility as part of a country club in the R.C. zone.

Therefore, I would allow a banquet facility for the use of its members, and its guests; would allow a restaurant for public availability; that they would be separate. And that the banquet facilities would not be available for hire by outside interests.

We get to the overnight accommodations. The overnight accommodations, I understand that we have several different types of memberships -- conceivably -- we have Mr. Mangione's

testimony that he sees different types of memberships -- tennis, golf, and so forth. There was a lot of testimony regarding Caves and other country clubs and other golf courses; and I make that distinction. There's a particular amount of mobility in our society that numerous memberships are in fact the norm for people in business; celebrities, whatever. I understand the need to provide for those folks when they happen to be visiting from out of town.

Therefore, I believe that overnight accommodations are appropriate for this facility. However, it's my belief, again getting to the word "club" -- overnight accommodations should be limited to the use by members and their guests for the purpose of furthering of interests of the club, which may mean bringing even non-members as guest speakers -- certainly not overnight accommodations for someone using it as a resort. That's not the intent of facility per zoning regulations.

One only has to go across 83 to see Embassy Suites up for sale two years ago -- deals are made all the time. I believe that we still have a couple of other issues to resolve -- philosophical in nature. Goes back to the purpose of R.C. 2 regulations. I'll reiterate part of what I said in leading preamble to 502, because under certain conditions could be detrimental to the health, safety and general welfare, underlining "general welfare" --- what does that mean? Talked about other appropriate facilities. Did not talk about general welfare as it relates to country club.

The zoning regulations envisioned certain type of facility when it makes statement allowing restaurant or tea room in existing house. I also grappled with the definition of "club" - Went to Webster's for definition of "club" ....

What do we consider general welfare - issues brought by both sides. This is where I'm going to take the easy way out and sit on the fence and ask my colleagues to help me on this particular issue -- that is, the historicity of this particular farm as well as the buildings; the buildings being part and parcel to what they are connected to; how that relates to general welfare. Should it include special deference to our cultural past; what it means to our future as well as our children's future; and if there is a special weight to be given to that -- enough to overcome presumption under a special exception section of the zoning regulations.

I applaud the Petitioner, and protracted efforts with the Landmarks Preservation Commission. At this point, I'm dead square on the fence in this particular matter. And so right now, I think I'm going to sit back and listen to my colleagues as it relates to that issue. They may have other issues to



Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

discuss with me. That's where I am at this point.

KKH: By-passing 502 issues and just dealing with -- assuming it would be granted in some fashion -- looking at the tip of the iceberg instead of the stuff underneath right now.

LMS: If I am following - trying to narrow to at least a reasonable definition of exactly what kind of project we are talking about -- all know what we can live with -- now the question is...

KKH: How does that relate?

LMS: A specific proposal we can live with.

ROS: We've already agreed they have brought proposal for a country club -- what type of country club meets the definition is ...

LMS: Having a specific thing to discuss. And I have a terrible urge to apologize for back and forth -- but I won't because in my mind -- we had a case last week that I began by saying it was exception to rule that I normally set forth in open deliberation. Very useful for other reasons -- that's one -- all rules have exceptions. Consider the other end of the spectrum.

It's very hard to have you in here; even though you are here, I'm going to take the position that you are not here. Just for the record, I believe that the free flow of information is inhibited to some degree. I think it's the reason why the gentlemen and ladies upstairs do not do so, either individually or three-judge panel. Sometimes the process includes saying things just for the purpose of seeing how they sound and exposing to colleagues' comments. And the interesting part is we see how it happens because some of the cases we don't deliberate publicly, and we cannot help but compare the quality of that deliberation with what we have here.

Having said that -- and my usual comment that I'm sure they would not do what they are requiring us to do -- I'm simply going to take the position that you are not here. I am on the fence on a number of issues; thank Rob for going first. I fully intend to try my best, and being an attorney will say what I want to say. I do also want to say that all counsel, Mr. Barhight, Mr. Pittler, Mr. Zimmerman, Mr. Bosley, Mr. Nilson, have all done -- and Joe -- I have been impressed. You folks have done a phenomenal job; prepared clients' cases; supported them; presented cases in best light and professional in addressing of other side's case; maintained relationships as ladies and gentlemen of the Bar. I applaud you all for

having done so.

KKH: Out of the group, this is among three of the people more comfortable deliberating publicly. But, and I like to say, if it were just a classroom, I would give A's for their abilities. But we are making a real decision here, and somebody or maybe everybody won't be happy with the result. Everybody did their job as far as creating that concrete adversity upon which we rely.

I want to first, Rob, to be sure we are on the same -- will add opinions as appropriate. I do not find Mr. Mangione's testimony as consistent as you did. Although upon listening to what you said and looking at my notes, it stacks up -- basic things you talked about - remain in place.

And I guess we will still have to get to this membership quantity issue -- I don't think right now is the time yet with what you are trying to frame up. I see the merit and the congruence to your belief that a restaurant would be appropriate part but must exist in the footprint of the manor. Makes sense to me. The banquet facility, I have to think about that a little bit. Typical aspect of a country club as far as servicing members. I share with you that distinction; something to be a vehicle for members. And the driving range is the same kind of thing -- I don't want the tail wagging the dog. A country club includes a practice range and not a driving range.

LMS: There's a difference between practice and driving?

ROS: Let me put it in graphic terms --

Practice range - you go out and prepare for a game that day, or work on your swing for whenever you are working on a game.

Driving range -Place where you pull up and hit balls and rent clubs.

Difference is -- there's a certain way to say it -- that makes it available to numerous people as opposed to smaller number of people. It goes back to the membership thing.

KKH: With a practice range, you are going to play a game - 10:00 golf time. You could get there at 9:00, buy a bag of balls, and go to practice range to get ready for your round. By definition, would sort of match -- no reason to practice putt at 10 at night; but in conjunction with either getting on or just getting off the course.

Regarding the driving range - where you say you cannot golf today but you want to keep your swing up -- go at 10 at night - it's late, buy a bucket and hit.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

LMS: Would you not do that as a member of a club?

KKH: Your club would not be open at that hour to do that; hours match pretty much the golf course.

LMS: Your answer is that it's not late because inherently activity --it seems to me that if it were 8:00 at night - you could go out there.

KKH: Why Rob was using practice range -- at night you are not getting ready for golf.

ROS: Again, the word "club" enters into it. I believe that if there were going to be lights as part of this practice range, it would only be as an accommodation to those members of the club who have no other time to practice. I would limit the use only to member use or instructional use. I would not have everyone in the world come in at 9:00 at night.

LMS: I was going to say that I may not accept hours -- but for purpose of argument -- you could have lit range if it were a members only facility; would not opt for that option.

ROS: Such a small minority of members; talking about 200 people; leaving lights on -- or 400 with two per family. I don't see that as something which cannot be viewed as having an overwhelming effect on the majority of the population for the benefit of a few.

LMS: If for a small number of people, does that outweigh detriment?

KKH: I thought your emphasis was on appropriate issue - or rather that if orientation is to service members, that what the focus is on, a practice range should service the members; not a range that caters to the public. If someone was going to play that day, they could practice.

For tennis courts or pool, it would be hard to think of; to say that this would be unheard of.

LMS: Are we talking about the nature of having these things or having things open to wider number of people?

KKH: I found Mr. Mangione confusing; pretty loose on who could be members or whatever. Country clubs tend to have --where you might have -- golf membership; tend to have tennis and pool; might only have tennis membership with pool, etc.

It's confusing to me what testimony was on that; memberships - - could not figure that out.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

ROS: What he is trying to do is maintain ultimate flexibility -- not yet finalized. Assuming we would grant this, we can stipulate this.

LMS: Along with that thought -- this is only one part of any number of things going on in terms of making project happen or not happen. My impression was regarding Mr. Mangione's testimony --

KKH: The overnight accommodations -- I did not follow you, Rob.

ROS: What I was trying to get at -- I do not believe we can allow a hotel. I don't believe they are proposing a hotel. It's clear that the zoning regulations allow hotels in certain zones. On the occasional basis when there is -- at Caves, people who live in Nevada -- in from out of town -- they stay at Caves. I think that is legitimate use. Members only and for guests if part of family.

KKH: Same emphasis there if you were on practice range. And as to banquet facility -- if we decide appropriate for other reasons -- just general determination if these things could exist -- would be member-driven component.

ROS: Say if ground superintendent has problem --brings in expert from out of town -- not a member, but someone to serve the interests of members --legitimate use; looking at broader scope of impact on membership.

LMS: I have no problem with that; members using facility, and so forth; or for that matter, if a member's grandson is getting married there and there are out of town guests. Whenever you try to do something --people will find ways to change it; problem with that.

KKH: For the expert who flies in or whatever, they will charge fee, etc. Let him stay somewhere; I don't want to leave that open; possibility for abuse as well. I don't have a problem with the concept of member driven. Assuming, again, for the sake of argument; we have not gone far enough to decide if I'm comfortable on other levels.

LMS: Are we talking about members and their families or members and their guests?

KKH: Clubs deal with that all the time; guest policies. I have no idea what we are talking about regarding membership at this point. Talking about accommodations for two or three people; talking about two or three rooms.

LMS: We could limit the amount of space or the amount of facility.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

KKH: I'm trying to remember testimony on that.

[Discussion among panel members continued regarding overnight accommodations, including preference to third structure being for overnight guests. Pro shop has no overnight accommodations.]

ROS: Exclusive of caretaker's house, and that having two bedrooms and a bath, the manor house has three bedrooms -- we could stipulate a limit.

KKH: I'll take a crack again, and assuming we are trying to define what structures are under 502, and in light of that --

LMS: Do we have a definition?

KKH: No; not very far here; statutory creature that looks like it's permitted and okay under the rules -- I think it would have tennis courts; would have club house -- it would have 18 holes; club house; pool; tennis courts; restaurant in club house --- The club house is what houses typically the restaurant; typically has banquet facilities.

ROS: After this process, still have the development process to go through.

[Panel members compiled list of items to consider; included banquet and overnight facilities; 18 holes; club house.]

KKH: Regarding banquet facilities - members only; a way that club or membership assumes that someone will be responsible for paying and things not being trashed.

LMS: If I am a member ---

[Panel members then thoroughly discussed what should or should not be permitted relative to use of banquet facilities; for members only or large outside groups, etc.]

KKH: The bottom line - more appropriately member-driven. We are talking about impact that will have; 200 people showing up - whether members or member sponsored - what impact 200 people at this facility will have.

[Panel members continued to deliberate in depth issues regarding time limitations on use of banquet facility; impact on general welfare; number of events; restaurant /80 to

90 diners on first floor; banquet facility to be separate facility.]

BOARD RECESSED AT THIS TIME; RECONVENED AT 12:00 NOON.

ROS: We have gotten to the point where we can start to take what we have in lines of generic terms and decide what's appropriate to compare against statute, that being 502.

This is where we are going to get to the general welfare thing that everybody is pouring out.

KKH: This is where it falls, I think.

LMS: Here is the proposal.

ROS: We have Schultz and Moss and all these cases that have been brought to us.

Section 502.1 -- before special exception can be granted, must appear that use requested will not:

- a. be detrimental to health, safety or general welfare of locality involved (looking at locality and what definition is / vicinity, locality, etc.)
- b. tend to create congestion roads, streets or alleys
- c. create a potential hazard from fire, panic or other danger
- d. tend to overcrowd land and cause undue concentration of population
- e. interfere with adequate provisions for schools, parks, water, sewage, transportation, improvements;
- f. interfere with adequate light or air
- g. be inconsistent with property's zoning or spirit or intent of regulations
- h. be inconsistent with impermeable surface regulations

I think there are a few among those with which we can dispense very quickly; narrow it down to what we have to talk about. For example, fire, panic, schools, parks, etc.

LMS: Water and sewer are considerations.

ROS: Can be brought back.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

LMS: Concerned about (b)

ROS: Not considering proposal before zoning commissioner

LMS: (d) is not something we have to worry about

ROS: (g) and (h) -- need to discuss those

As finding - in this particular case, it does not create hazard for fire, etc. - also c, d, e and f.

LMS: Schultz v. Pritts and Moss - and relationship to 502

ROS: Explained what Schultz v. Pritts says relative to usage compared to other uses

KKH: Petitioners have burden on that insofar as it says -- it must appear, but I don't it's not a question that it will do these things. Obviously it's a given thing -- what's unique about that land and impact on that land or surroundings.

ROS: Same holds true for definition of vicinity and locality -- same reason Council has established certain inherent difficulties with these uses -- assume we will be looking at something in agricultural use is immaterial; do not consider effect on agriculture.

LMS: Boring will be done at each green and tee; does not know part you would develop - re testimony -- Ball, saying at this point, you could theoretically -- if they found one spot where absolutely no clay, would be addressed with this changing plan on coming back to everybody.

ROS: Outcrop or maintenance facility would be completely self-contained; discussion still continued relative to the aquifer

KKH: The only thing we can look at is when they affect use on neighboring properties.

ROS: I agree with Jeff Long who is the drafter of recommendations and comments. On second page of Planning comments -- properties in the vicinity -- site is bordered by this developed property -- does not see anything about site specifically. Vicinity - does not view the property as part of vicinity.

LMS: The definition is pretty solid. Let's look at the cases.

[At this juncture, the panel members discussed two cases they felt "most applied" -- Schultz and Moss.]

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

LMS: Indicated no shift in burden pursuant to Moss or in Moss. Use would generally be bad in that zone, but statutorily saying it can be there, unless it's any worse here than anywhere else in that zone.

KKH: Although RC is to be preserved, this is something that can be there.

ROS: Regarding 502b - testimony of Mr. Guckert and other evidence of those in opposition - but I am convinced that were this particular project placed in another part of RC zone without proximity to interstate and without proximity to US thoroughfare that Shawan Road has grown to be -- more detrimental in other locations in the zone than at this particular location.

KKH: Let me look through my notes to make sure because I was not very happy with his testimony in general. On the other hand, if the impact is going to be the same, it won't matter. I want to be sure; will be experienced anywhere.

I had a problem with some of his assumptions, such as no banquets on the weekdays during rush hour. Looking to see if there was any other testimony relative to worse here than elsewhere.

ROS: Despite those few unusual assumptions, I believe there were some others -- for example, I-83 ramp traffic; projected numbers out to the year 2000. Reasonable approach. Credible approach to the extent they have looked at what effect is here and how that would be viewed if it were elsewhere in the zone.

KKH: Testimony to be examined on appropriateness - whether any impact on 502. No evidence that whatever congestion will happen will be worse here than anywhere else -- R.C. 2 - comfortable with that.

LMS: Agreed.

KKH: 502b is not an issue.

ROS: Looking at 502e---

[KKH and LMS wanted to leave this to a later time to discuss.]

LMS: Suggest looking at 502h.

ROS: Right now we have changing crops at times of year -- crops grown, harvested grain, turned under, and over again. This is something which stabilizes that issue.



Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

LMS: Looking at relationship between impervious surface and water and sewer issue --

KKH: Putting apartment on that, for example - changing the surface.

ROS: Parking lot will be on the back of the slope. I don't, looking at proposal here versus any place else in the zone -- certain standards affected as material consequence of this type of proposal. Here or anywhere else - no difference.

I have no problem with "h" --

Discussing water and sewer next -- this is an issue that frankly, Kris, you touched on last week regarding consumption of water and effluent as calculated regarding membership terms.

LMS: Whose testimony really bore on that and when did they testify?

KKH: Stephanie Novak Hau, Mogilnicki and Ball testified to that. Hau - second day.

ROS: First of all, would like to say that each of them is credible. There was a good bit made of Ms. Hau's lack of thesis; found that to be unnecessarily impugning her credibility; found her to be credible witness.

KKH: I have to see -- nothing to do with credentials; did think Dr. Ball through more serious question - her beliefs - that is what you have to come to grips with here. I was pretty impressed with her on her own, and then flabbergasted by how much impression Dr. Ball made on what I thought was pretty impressive presentation.

[At this point, panel continued in-depth discussion of Mogilnicki and this section; better or worse, here or anywhere else in the zone. Discussed aquifer.]

ROS: Models used by Hau re expected flow and percolation - model assumed uniform thickness of clay. Not talking about golf course that covers all acreage. Golf course and application of chemicals applied on fairways, greens and tees. Average of 7/8 acres per whole - terrific concern re aquifer; if that in fact weighs more heavily in our analysis. Is it not then entirely feasible that we require that the aquifer be recognized; engineering consideration. Ball model assumed; do not have that condition here -- natural formation - but if it is, conversely, does he accept article that uniform thickness would pass review -- enters into it; not a mitigating factor.

KKH: No more meaning than he was indicating -- he wanted it known

that he had taken evidence into account and his testimony would have more weight; that was his point; whether or not aquifer is located in other areas. Even so, existed in such large areas on one site - protestants' case

RECESS AT THIS POINT; RECONVENED AT 1:50 P.M.

ROS: We were talking about (e) and the aquifer. At issue is whether or not the aquifer -- we are looking at the Cockeysville marble aquifer issue -- any greater here -- whether this site is impacted any more than elsewhere.

KKH: Which in some ways determines whether or not the aquifer is unique to that location.

LMS: Also question - even if it is - is it significant; is it going to change - either is or is not? Still basic question based on testimony; does it matter?

KKH: I was persuaded that that is an important item.

ROS: I believe it does matter but I don't know if it overcomes presumption or if other things part of proposal overcome concerns. At this point, I go back to what I said earlier -- not necessarily engineering effort but frankly issues of design -- greens and tees. Onset of problems and how they are handled so County is satisfied that those issues are addressed adequately; intention of fertilizing and so forth.

KKH: I don't recall any intention, but it would be substantially less. 80% of chemical compound would be focused on 20% of land.

ROS: Fairways, tees and greens.

I'm down to fairways; what do we have in area that lies over the Cockeysville marble that is fairways.

[Brief recess; LMS brought in large exhibit from Board office. Panel members then examined exhibits and discussed issues in depth regarding aquifer; property lines; etc. relative to this property.]

ROS: I don't know whether other areas exist in the County other than exhibited in Ball's testimony. Take that to mean that we know there are other RC properties on the Cockeysville marble; are effects greater here, lesser, etc., than in other areas? Given that we are talking about a small percentage of overall area, that a certain part of the area is going to be buffered by clay and the other part possibly could be buffered by clay

-- the lay of the land.

LMS: Some will be 100% and some less than that.

ROS: I don't think it's greater here than elsewhere in RC 2 zone, even in light of the Cockeysville marble; know it exists elsewhere. Know in RC 2 zone and, therefore, and given that only a part of the course here will be over Cockeysville marble - same argument - but that it's less of an impact here.

LMS: Some of it is over Cockeysville marble; perceived to be small portion over Cockeysville marble, and that there is other Cockeysville marble in that zone. And that if we put it there as opposed to here, would not change anything.

KKH: Issue - if we think that Cockeysville marble aquifer has unique value of its own; been persuaded that that is a valuable thing and unique to some degree to this property; other RC 2 places you could develop without involving aquifer; that is the question.

LMS: There's clay out there; boring will be done at each green and tee. Ball saying at this point -could theoretically, if they found one spot where absolutely no clay, would be addressed without changing plan or coming back to anybody.

ROS: Outcrop or maintenance facility - would be completely self-contained.

[Panel members then continued discussion relative to the aquifer, Cockeysville marble, RC 2 zone; impact of proposal on same. Also possible restrictions or requirements, assuming granting of special exception; what can be done relative to development as it relates to aquifer -- in particular, as it relates to location of fairway, should it be found that location chosen was with no clay -- Board should defer to the expert. If there is a spot where there is rock and no clay - move the fairway or apply no pesticides.]

ROS: Are we in agreement that generally we think clay there is important?

KKH and LMS: In agreement.

ROS: Are we in a situation where it happens to be greater because engineering considerations can be handled here the same as anywhere? Are we saying it's unique here or similar to other places or less?

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

LMS: Saying it exists in other places in the zone; that relevant danger would exist anywhere that put it over an aquifer of Cockeysville marble, but given this project and condition that there must be clay under those areas under those circumstances -- or it's not sufficiently bad to overcome balance.

KKH: We are all persuaded that clay is important; persuaded by water concern. Part of that is that we are also persuaded there is something different or important about Cockeysville marble aquifer in some fashion. We do not, I do not know how much we have in the way of evidence that Cockeysville marble aquifer is either representative on this particular land or not representative than what we are going to see in rest of RC zones. Looked around; not sure about evidence one way or another.

Comfortable that there is one area where we would say they have established some uniqueness that must be dealt with. Trying to put on legal framework. We were persuaded that there was something unique about this combination of factors. Given that aquifer is important and uniquely important -- one of the ways we can deal with this is to assess the clay situation or by looking for clay.

The framework upon which we are underpinning clay --

ROS: That's water and health. Underpinning, yes. Still talking uniqueness; uniqueness to a degree. Limited number of places in the County; but there are other places where this exists and other places it does not.

LMS: It exists in enough places so we are okay.

ROS: Okay, saying it's no worse here than anywhere else in the zone; concern - part of condition - reasonable requirement under 502 that clay and whatever engineering factors that might be required by County's authority, the authority having jurisdiction over such concerns be addressed by Petitioner as part of development process.

LMS: Can those concerns be addressed -- is that as strong as putting in on---

ROS: Must be put on one of the categories that qualify as clay.

LMS: And let the engineers work it out --

ROS: Regarding water -- discussed draw down on neighboring wells. True that we have Cockeysville marble underlaying part of the site; the Cockeysville marble is shown to be in a portion of the site which is generally to the south, closest to Shawan

Road. The central pumping station, if you will, is located basically in the center of the complex. And that is also south of the ridge line. The ridge line, well you can see the contours and flow -- and so the effect on properties to the north -- there is nothing where I'm convinced it would affect any of the wells to the north. Question is -- question to the south.

Question -- impact on the west. That area is right on the Urban/Rural Demarcation Line [NOTE: URDL] - can get public water, if wanted. Point is -- how much of an effect is there as a result of drawdown, and I think it's easy to see -- was addressed in testimony --

KKH: Did Ms. Hau successfully show it would not interfere -- was not persuaded; did not think there was enough evidence.

ROS: Hau indicated that authority having jurisdiction had requirements -- standard in tract years; projections made; drawdown --

LMS: If Ball did not dispute her testimony -- it would stand.

[Discussed testimony of Hau and testimony of Ball; on direct, Ball talks about concerns re septic; no judgement can be made with regard to future impact; data insufficient. That's what he says; need to pump well and withdraw water over several weeks.]

ROS: That's where I think he's indicating what he would consider reasonable standard; over and above State standard.

KKH: Larry, in your assessment -- has he accepted her numbers or---

LMS: She does not have enough to base opinion on; it's easy to see where numbers are wrong and not worthy of belief on consideration. Why? Because she did not test enough, etc. Why not do that. He did not say -- lot of ways to say the same thing. Did not say they are bad.

KKH: Would not say data was incorrect -- different response from that to clay analysis.

LMS: Would not say you could not use that; danced around it -- what things could be done is better number.

KKH: Could not say no or yes.

LMS: Could not say that. Essentially -- that is an "I don't know" and implied that neither could say.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

ROS: Convinced that she puts herself on the line to come here and make that assessment based on her reputation and her personal-

LMS: And others can question her assessment and was that done sufficiently to believe it's greater here?

KKH: On drawdown -- no evidence it was more so than elsewhere -- no evidence that impact will be greater here than anywhere else in the zone.

ROS: I believe we are finished with (e).

LMS: That leaves us with (g) and (a).

ROS: Are there any public improvements -- don't know that there are. I'd like to break down (g) into a couple of parts.

[KKH and LMS agreed with above suggestion.]

ROS: Taking the purposes of the property's zoning classification -- The Council has already decided that a golf course /country club is a proper use. It's exactly what they have proposed on RC portion of site.

LMS: Nor in any other way inconsistent with the spirit and intent of the zoning regulations? Again cited the Moss decision. Spirit and intent - governmental body making decisions - decides what is to be and if they say it can be and--

KKH: Problem with that is -- what is provision doing there in 502 if by definition it's already there. You've just read away the provision itself. And maybe that's nonsensical.

LMS: How do you determine spirit and intent even partially at least by what they say.

KKH: The only think I can envision as to spirit and intent -- if purpose is to hold onto agricultural land and development of golf course at this location will cause everything around it to crumble -- I would say it was contrary to the spirit and intent. So something like that -- maybe that's the kind of think they are contemplating.

LMS: Back to Moss again - adverse effects - have been contemplated. They have a zone -- they have set it up for certain purposes.

KKH: Cannot stand on its own. Something that by doing it on this spot it undoes the overall point of zoning itself.

LMS: You could theoretically have something that matches everything

in 502.1 and still be determined to be contrary to spirit.

KKH: I guess you could in that respect.

Even if it's okay -- does the fact that you put in on a corner stone of this zone -- does that destroy the point of having this zone? I don't know if that is the spot --

ROS: Let's put it in this spot now -- you are beginning to make value judgement as to whether it's more attractive to leave it like this; let them build like this and agree with Mr. Gavrelis -- open space not urban use. There would still be the view up the hill. Or -- is it more attractive to allow it to be a farm. Beauty is in the eyes of the beholder. All enjoy driving by green fields of corn. But maybe not in the winter. I personally don't feel that way, but there are people who will. I think that what this is saying -- spirit and intent -- is to foster conditions / we are not even talking about R.C. 4 portion of the site -- R.C. 2 - established pursuant to legislative findings -- agricultural uses in agricultural areas of the County by preventing incompatible uses.

Council decided that special exception allows one to place a golf course and country club on RC 2 property; that recognizes that it is. Is there something about the proposal on this site?

KKH: Maybe you can address here the gateway issue; they are acting like this is a special site. It may be this is the point where you consider this.

[Panel members then reviewed in depth Mr. Gavrelis' testimony as to whether or not he addressed gateway; did not on direct.]

ROS: Gateway is issue in the Master Plan; not part of the zoning regulations. Mr. Gavrelis testified as to meeting requirements here. Gateway comes from document that relates to guidance. When it comes to a close call like this.

[Panel members then requested and received copy of Master Plan from CBA office to review in connection with testimony. Then began review of Patrick Ford's testimony on last day; one of few primary gateways; unique in Baltimore County; discussed in his testimony the Master Plan and importance of gateway. Reviewed his testimony referencing Master Plan versus the Master Plan itself and what each comment referenced.]

[Continued in-depth review and discussion relative to open space; location of golf course as possibly best place on the site; presuming for moment that project is approved, would want to require that nothing changed the line of sight or interfered with view of gateway on future construction. Development in RC 2 that could be viewed from 83 heading southbound; what you see driving on the road.

[Gateway discussion continued; nothing shall interfere with gateway view; part of final decision. Through with (g).

[Panel then moved on to (a); detrimental to health, safety and general welfare.]

ROS: Health and safety have been addressed. General welfare I have had problem with; historicity of property; disagree with Mr. Gavrelis when he says this is not significant farm. Ruth Mascari - believed her testimony.

With historicity of this farm - did doing something to its being a working farm have impact? Only dealing with history of the structure, not of the farmland itself. Does one split the farm from the structures; then the other problem with that question -- if it is, is there something that can be mandated by review process?

General welfare - what cultural value does it have?  
Historical farm --

[Panel then discussed at length and in depth the differences between golf course versus a farm.]

KKH: What is happening to the land is affecting everyone around it.

LMS: What has happened to the land - it's remaining RC2; correct use by definition but not farming use. Are we saying that when you change from farming use you are doing something to the general welfare?

Reality is - impact that change in land has on the locale. Woolen - adverse effect on historical district regarding use of third floor.

KKH: Mr. Woolen is concerned, he was concerned with changing footprint as far as vistas; buildings appropriately used; if they successfully do this and jump through the hoops - we have not destroyed historicity of buildings; he is not referring to



the land. Screening issue does wipe out gateway; land use - he talks about land use not being historical either. Golf Course can render issue moot; neither screening nor leaving it open helps.

Also reviewed his cross by Scott Barhight; also redirect by George Nilson.

Talks about site in evaluating impact not just buildings; but most of his focus was on visual trauma of adding new facilities and putting additions on historical structures.

Daniels, on February 9, imbalance syndrome.

ROS: Believe that is speculation.

LMS: Proximity to water and sewer - magnet to development.

ROS: It's there now; does not have anything to do with the special exception; already at edge of site.

KKH: Has no analysis on his part in determining 6 factors; talked about --

ROS: Engaged in May of 1995; had time to perform whatever analysis he needed, and did not.

KKH: Did not apply factors; cannot do much with his plan.

LMS: Have any issues been raised that we have not addressed?

Eliminating public availability of banquet hall

Light for driving range - eliminated

Practice facility - for whom; only for so many golfers; how many T boxes do you need?

No buildings in the areas

Driving range for public use; practice range there in order for somebody to gain access to that driving range - practice for playing on the course - if they are going to play; play and practice.

ROS: Practice range - does that coincide with operation of the driving range?

KKH: We heard discussion of practice or driving range; putting; heard nothing on chipping.

ROS: Three practice greens are part of the project.

KKH: Not comfortable with overnight accommodations; Gavrelis - did not see that as appropriate use for a country club; his own

testimony. Gavrelis - Not aware of any other country club in vicinity; has no opinion as to overnight accommodations as part of country club.

LMS: We have limited it to the point to two rooms for members and caretaker.

ROS: And by putting two rooms in there - that limits it.

KKH: I don't see the support and don't see where there is evidence of why --

ROS: We did have evidence --

KKH: Everybody agreed that this would have local members --

ROS: I don't believe it makes or breaks it; think there is a legitimate need for uses like that in very small doses.

KKH: I don't believe there is evidence on it; tried to be very rigid on just what evidence was before us. Here again, trying to exercise same rigidity; no evidence but for the why that belongs and or why it's appropriate to country club. Have no evidentiary underpinning to support that.

LMS: When were we first made aware of it?

KKH: Mangione testified to it; very first person.

LMS: Very limited number of overnight accommodations - was how he put it.

KKH: I viewed it as speculative statement.

ROS: On cross -

KKH: Overnight accommodations would be limited and available to members only; no bedroom. We have expected and held everybody to rigid standards in this case; this has to go the same way.

LMS: Any problem with caretaker?

KKH: Not discussed overly much --

LMS: No problem with that?

KKH: Heard of that in country clubs before; only talking about overnight accommodations for non-caretaker; no support for it.

ROS: Mangione's testimony indicated that this was only possible; later on cross - discussed again those features which are

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

prominent; golf course, driving range and food service.

KKH: I don't see same support there.

LMS: If you don't see it as major issue --

KKH: I don't see support for it; no evidentiary support for it.

Would differ from you if that's what it comes to.

ROS: I can agree with you; but can we --

LMS: But that's speculation; if it was an endemic necessary use --

KKH: If cutting off would then be unable to work -- but not demonstrated; only talking about overnight accommodations; not caretaker.

[ROS and LMS agreed at this point with KKH.]

ROS: Summary - 18 holes

- Club house with restaurant and tea room (private restaurant)
- swimming pool
- tennis court
- practice area as limited
- no rooms other than caretaker
- Banquet facilities; location; members and guests only
- Gateway; view
- Fairways -testing for presence of clay; must be on something that constitutes clay; whatever qualifies as clay.
- No light on driving range
- Maximum 32; no more than 15 in use at one time
- Hours of operation; daylight hours only
- only public access to range and practice in preparation for playing on golf course (as part and parcel of playing golf)

KKH: Water use issue - rounds per year insofar as water; has to be some kind of control; water capacity based on numbers; no sure.

ROS: We can place restriction; ask office in charge of reviewing that; what conservative rate is; that we would give them latitude to recompute that; using numbers they have used from hard and fast rules; giving authority having jurisdiction; find out what equivalent rate is.

LMS: Sometime during life of this facility - definition changes - will have to get that; leave figures to the people who know what they are doing.

Case No. 95-308-X /Toll House, Inc. /Hayfields DELIBERATION

KKH: Problem with chemicals on fault line

LMS: Concern can be expressed in opinion.

ROS: Must satisfy laws relative to chemicals.

Better idea - design criteria for that type of facility; country club effluent; golf course; banquet facility - design criteria.

If that changes, the standard changes along with it.

LMS: If we set limits - can be expanded; if it is set to standard, set by other -- if they change standards - these will change too.

Make standard always relevant to what reality is at that point in time.

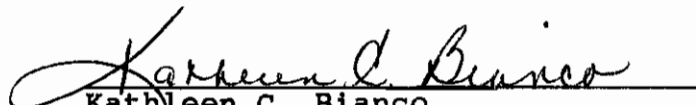
Have to jump through Landmarks Preservation Commission hoops and DEPRM hoops.

ROS: This concludes the matter. The Board will issue a written Opinion and Order pursuant to these proceedings.

It will not be today; any petitions must be filed from the date of that Order and not today's date.

Thank you.

.....  
Respectfully submitted,

  
Kathleen C. Bianco



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
410-887-3180

November 10, 1998

NOTICE OF DELIBERATION /ON REMAND FROM CIRCUIT COURT

IN THE MATTER OF:

HAYFIELDS; TOLL HOUSE, INC. /PETITIONER  
CASE NO. 95-308-X /Circuit Court #3-C-96-008878

Pursuant to the Remand Order of the Court of Special Appeals and the Circuit Court, this Board, having reviewed the testimony and exhibits pursuant to that Remand Order, has scheduled the following date and time for deliberation of this matter pursuant to said remand order:

DATE AND TIME : THURSDAY, NOVEMBER 19, 1998 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

Kathleen C. Bianco  
Administrator

cc: G. Scott Barhight, Esquire Counsel for Petitioner  
Toll House co/ John Mangione Petitioner  
Joseph LaVerghetta, Esquire  
George Gavrelis /Daft-McCune-Walker, Inc.

People's Counsel for Baltimore County Appellant

George Nilson, Esquire Counsel for Appellants /Protestants  
Jack Dillon, Exec. Director  
Valleys Planning Council Appellant /Protestant

Dr. Richard W. McQuaid  
Kenneth T. Bosley  
Leslie M. Pittler, Esquire  
Ruth Mascari  
Virginia Woodward  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director/PDM  
Docket Clerk /PDM  
Virginia W. Barnhart, County Attorney

Copies to: K.L.



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Hayfields (Toll House, Inc.)  
Case No. 95-308-X

DATE : November 19, 1998

BOARD /PANEL : Kristine K. Howanski, Chairman (KKH)  
Lawrence M. Stahl (LMS)  
Charles L. Marks (CLM)

SECRETARY : Kathleen C. Bianco  
Administrator

PURPOSE --to deliberate matter of Hayfields (Toll House, Inc.) on remand to the Board from the Court of Special Appeals via the Circuit Court for Baltimore County (Civil Action No. 03-C-96-008878).

Preliminary matter -- letter of objection from George Nilson, Esquire, regarding this deliberation.

KKH: We have a dated November 17, 1998 from George Nilson by FAX objecting to these proceedings /deliberation as scheduled on several grounds, as well as letter hand-delivered from Mr. Barhight responding thereto. Mr. Nilson objects, one, on the matter of short notice and that the Board's rules indicate 10 days notice; this is not a hearing but rather a deliberation. When a matter is deliberated at the conclusion of a hearing, wherein the Board reconvenes in sometimes 5 minutes for deliberation, much shorter notice is given than in this instance. As to Mr. Nilson's inability to attend, counsel is not able to speak during the deliberation; no reason to alter a date. The purpose of an attorney at that point is more of a scribe than somebody providing evidence or offering input.

My reading of the Opinion and Remand Order, again I thought it was pretty clear -- the Court did not indicate at all that it was expecting us to take new evidence or anything of the sort, if we did not feel there was a need to do so.

If for some reason we deliberate today and cannot reach a conclusion, then that is a different matter.

That is where I would be on that, and I would be happy to hear from you gentlemen (referring to Messrs. Stahl and Marks).

LMS: I agree with you; it's not a proceeding of public record but the Board's proceeding performed in public. In all respects, it's our working session to determine the answer to a question; that is an internal matter for the Board; those here are here purely as observers.

Minutes of Deliberation /Hayfields /Case No. 95-308-X  
On Remand /Civil Action No. 03-C-96-008878

CLM: I have no fault with it. Rule 2 pertains to hearings. This is not a hearing; no testimony or evidence. It's simply a public deliberation in which the public is not permitted to participate; discussion among the Board members.

It's really not necessary that Mr. Nilson be here; the only requirement of public deliberation is who was present and what the ultimate results were, although notes are taken.

As I read the remand order, it does not require additional evidence. We have more than sufficient evidence and testimony in the transcripts which I read.

I would agree with the comments.

KKH: Then we will proceed to the merits of the deliberation.

LMS: The deliberation in this matter was one of the longest I have ever attended; interesting comments made by appellate court was that it accepted the possibility of unartful writing, so I have no difficulty answering the Court's questions from evidence and testimony received. I believe it was more a matter of how it was placed on paper, more than anything else.

Went back through the transcript. The remand asks very narrow set of threshold questions, and essentially it comes down to if we are satisfied there is no difficulty -- then we should say so and be done with it. If not, then there are questions of how much clay and how much Cockeysville marble there is in the rest of the zone in question.

Extremely impressed with the quality of the witnesses; Ms. Hau who testified for Hayfields did a very complete job; came away with overall positive impression of her credibility and her conclusions and how reached. Impressed with knowledge and understanding of Dr. Ball and also Mr. Mogilnicki who likewise did an excellent job. Regarding Ball -- talked about broad generalities; there was some clay there, etc.. Mogilnicki's testimony was useful and good in own way but did not help me answer question we were facing at that time.

Ms. Hau on other hand gave me information upon which I felt comfortable making my decision. As I went through testimony, she was clear that throughout the borings she had taken she had found the clay, virtually across the board. Her testimony survived cross-examination; emerged reasonably unscathed.

Her connection to the project and her activity gave her more credibility; took us through it. Based on my second-time

Minutes of Deliberation /Hayfields /Case No. 95-308-X  
On Remand /Civil Action No. 03-C-96-008878

review of the testimony --

1) Found no adverse impact; no damage.

2) I would answer second question in the affirmative also.

KKH: The Court has indicated that if the Board, in answer to any of the questions 1, 2 or 3, believes....it should say so.

I think #4 is the harder question; but I don't think we have to get there.

LMS: That's where I am.

KKH: I went about it almost the same way. Thought Dr. Ball was impressive, but he did not answer or was not asked questions needed to rebut what we had from Sue Hau. That's why I think there was a problem with semantics and what Judge Smith seemed to understand -- Developer really satisfied the burden, and we were looking to see if the protestants could offer something to rebut that. Dr. Ball was not asked the questions he needed to be asked to get us to that next point.

In the face of Ms. Hau's testimony in the affirmative as to 1, 3 and 3 and Mogilnicki as to question 3, which he also answered affirmatively -- we did not have somebody to rebut that testimony.

I too would answer question #1 affirmatively in light of questions presented. I would view it as semantic and re-evaluated the evidence to be sure that we were answering the questions.

As to #2, I would agree. Three is not just Ms. Hau but also Mr. Mogilnicki.

As to #3 and #4, we would not get that far - that's how I see it.

I would concur for reasons set forth.

CLM: Was more convinced by Ms. Hau than other two experts that testified in these proceedings. As I read Judge Smith's decision and that of the Court of Special Appeals -- what was missing in that particular opinion and Order was that more credibility was assigned to Ms. Hau than to the other two witnesses; that's the prerogative of the Board.

I agree with you that the problem here is one of semantics and



Minutes of Deliberation /Hayfields /Case No. 95-308-X  
On Remand /Civil Action No. 03-C-96-008878

use of language; opinion not convincing enough for the Court that it would not be more adverse here than anywhere else in the zone.

In conclusion, I agree with my colleagues.

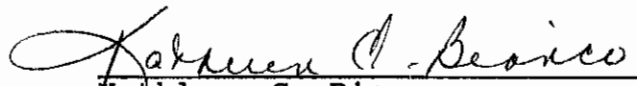
**KKH:** We seem to be unanimous on this. We will go ahead and proceed to issue a written Opinion and Order on this limited issue. And anybody aggrieved from that decision can proceed to do something -- but it's back on remand so it has a different standard.

That will bring this deliberation to a close.

\*\*\*\*\*

**NOTE:** These minutes serve as verification that the subject matter was publicly deliberated and will be included as part of the subject file.

Respectfully submitted,

  
Kathleen C. Bianco  
Administrator

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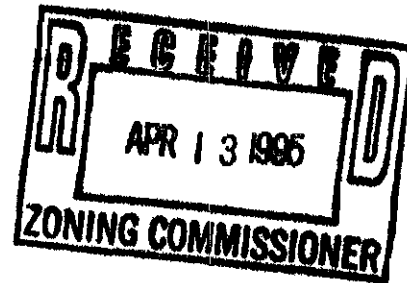
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April 13, 1995

**Via Hand Delivery**

The Honorable Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204



**Re: Case No. 95-308-X  
Tollhouse, Inc.  
Petition for Special Exception**

Dear Mr. Schmidt:

This office is in receipt of Mr. Nelsen's letter dated April 11, 1995 wherein he requests a postponement of the above-referenced case. As Mr. Nelsen properly points out, the current hearing dates were scheduled after consultation with all counsel. Additionally, the Petitioner has gone to considerable expense and effort to prepare its case based upon the hearing dates currently scheduled. Unfortunately, this Petitioner has recently also experienced a delay, through no fault of their own, of the reclassification case pending before the Board of Appeals. It seems unreasonable that the Petitioner should be delayed in every forum, especially in this case with agreed upon dates.

This office has also just received Mr. Nelsen's April 12, 1995 supplemental letter wherein he stated that a key witness would not be available until the week of May 15, 1995. I am reminded that we have been awaiting the scheduling of a fourth hearing date during the week of May 15. The scheduling of this additional date should solve Mr. Nelsen's witness availability problem.

The Honorable Lawrence E. Schmidt  
April 13, 1995  
Page 2

Since the Petitioner desires to proceed with the scheduled dates, and since additional unnecessary delays will continue to jeopardize the Petitioner's interests, I respectfully request that you deny Mr. Nelsen's request for a postponement.

Should you have any questions or comments regarding this request, or if I can be of any additional assistance, please feel free to contact me.

Sincerely



G. Scott Barhight

GSB:slr  
Enclosure  
cc: G. Macy Nelson, Esquire  
Mr. John D. Mangione

**WHITEFORD, TAYLOR & PRESTON  
L.L.P.**

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April 15, 1996

**Via Hand Delivery**

Robert O. Schuetz, Chairman  
County Board of Appeals  
Room 49  
400 Washington Avenue  
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
Office of Planning and Zoning  
Old Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204

**Re: Hayfields, Inc.  
Petition for Special Exception for Country Club  
(Case No. 95-308-X)  
Development Plan/Zoning Cases  
(Case Nos. VIII-661 and 96-347-SPHA)**

Dear Chairman Schuetz and Commissioner Schmidt:

This office is in receipt of People's Counsel's letter dated April 10, 1996 regarding the above-referenced matters. The issues which People's Counsel raises do not create any substantive or procedural problems for either the Board of Appeals or the Zoning Commissioner. As such, all of the scheduled proceedings can and should proceed.

The Zoning Commissioner approved a Special Exception for a country club. The protestants and People's Counsel appealed that approval to the Board of Appeals. The Zoning Commissioner's Order still stands and the Petitioner is permitted by right to proceed at its own risk. The fact that the Petitioner may apply for building permits and proceed at its own risk is clearly set forth in Restriction No. 1 of Zoning Commissioner Schmidt's Order dated June 30, 1995 (Case No. 95-308-X).

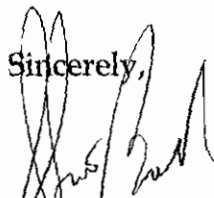
The Board of Appeals will recall that counsel for the Petitioner indicated the intentions of the Petitioner to proceed with the Development Plan process pending the Board of Appeals Hearing. These issues were brought to the attention of the Board and People's Counsel during the opening remarks on the first day of hearings. (January 10, 1996). It is hard to imagine any reason for raising these issues at the eleventh hour except for delay.

The zoning cases filed in conjunction with the Development Plan do not seek a special exception for a country club. Rather, they seek approval of an amendment to the previously approved Special Exception site plan and setback variances for existing historic structures. The relief being sought relies upon the Special Exception approved by the Zoning Commissioner.

The current Development Plan and zoning cases pending before the Zoning Commissioner/Hearing Officer and scheduled for hearing in May, 1996, are consistent with the rights of the Petitioner pursuant to the previously approved Special Exception. There is no reason to deny the Petitioner's right to be heard before the Board of Appeals or the Zoning Commissioner/Hearing Officer. Any decision to prohibit these hearings from proceeding will be a violation of the Petitioner's due process rights and a taking of their property.

The Petitioner sees no reason why a special conference needs to be held regarding any of the issues raised by People's Counsel. We look forward to completing the Board of Appeals hearing on April 16 and 30 and beginning the Development Plan/zoning case before the Zoning Commissioner/Hearing Officer on May 8, 1996.

Should you have any questions or comments, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,  
  
G. Scott Barhight

GSB:slh

cc: Peter M. Zimmerman, Esquire  
Carole S. DeMilio, Esquire  
George A. Nilson, Esquire  
Leslie M. Pittler, Esquire  
Mr. Kenneth A. Bosley  
Mr. John Mangione

95-308-X  
REV 4/17/95

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April 17, 1995

**Via Hand Delivery**

Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

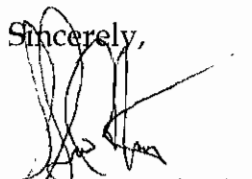
**Re: Case No. 95-308-X  
Hayfields Special Exception**

Dear Mr. Jablon:

Enclosed are 12 amended plans to accompany the Petition for Special Exception in the above-referenced case. Please circulate these plans to the appropriate agencies to obtain any revisions to comments prior to the scheduled hearing dates of May 9, 10 and 11, 1995.

These amended plans revise the golf course, clubhouse and support buildings area. The plans are being provided now, rather than at the time of the hearing, to permit adequate time to review and respond to the amended changes. Copies of the amended plans are being provided to counsel of record, Mr. Nelson and People's Counsel.

Enclosed is a check made payable to Baltimore County, Maryland in the amount of \$100.00 as the fee for this amended filing. Should you have any questions or comments, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,  
  
G. Scott Barhight

GSB:slr  
Enclosure  
cc: Peter M. Zimmerman, Esquire  
G. Macy Nelson, Esquire  
Mr. John D. Mangione

**WHITEFORD, TAYLOR & PRESTON  
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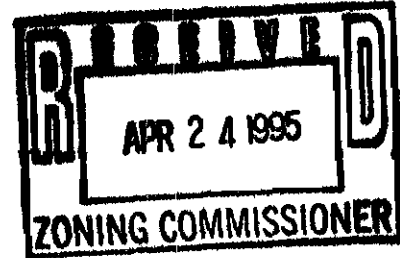
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April 24, 1995

Via Hand Delivery

The Honorable Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
Office of Planning and Zoning  
Old Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204



**Re: Petition for Special Exception  
Response to Scheduling Change  
Request for Additional Hearing Dates  
Tollhouse, Inc. (a/k/a Hayfields)  
Case No. 94-308-X**

Dear Mr. Schmidt:

Thank you for your recent letter dated April 17, 1995 wherein you confirm that the hearing will take place on May 9, May 11 and May 17, 1995. On behalf of the Petitioner, I am stating that we have no objection to the scheduling changes which you set forth.

As this case has been progressing, it has become more and more complicated. During a recent strategy session, we identified approximately 20 Petitioner's witnesses.

In order to accommodate the witnesses we anticipate calling to the stand, as well as those which the Protestants may desire, it is respectfully requested that you schedule three additional hearing dates for the Special Exception. Please schedule these at your earliest convenience. I will make every effort to cooperate with your office in scheduling the additional dates.

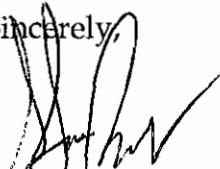
The Honorable Lawrence E. Schmidt

April 24, 1995

Page 2

Thank you for your kind attention to this request.

Sincerely,



G. Scott Barhight

GSB:slr

Enclosure

cc: Peter M. Zimmerman, Esquire

G. Macy Nelson, Esquire

Ms. Gwen Stephens (Docket Clerk)

Mr. John D. Mangione

46318



WHITEFORD, TAYLOR & PRESTON  
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August 11, 1995

**VIA HAND DELIVERY**

Mr. Robert O. Schuetz, Chairman  
County Board of Appeals of Baltimore County  
Room 49 Old Courthouse  
Towson, Maryland 21204

Re: Hayfields, Inc.  
Petition for Special Exception  
Case No. 95-308-X

Dear Chairman Schuetz:

Please be advised that this office represents the Petitioner, Hayfields, Inc. regarding the Petition for Special Exception for Country Club which was granted by the Zoning Commissioner by Order dated June 30, 1995 and Appeal by People's Counsel and the Protestants. Please schedule the hearing for this Special Exception before the Board for at least 6 days. The hearing before the Zoning Commissioner took approximately 5 days, and it is anticipated that the Board of Appeals hearing will take more time to try than the Zoning Commissioner's hearing.

Should you have any questions or comments, please feel free to contact me. This office will cooperate in every way to assist you in scheduling the hearing dates. Thank you for your kind attention in this matter.

Sincerely,  
  
G. Scott Barhight

GSB:bmh

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County  
G. Macy Nelson, Esquire  
John Mangione

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May 7, 1996

**VIA HAND-DELIVERY**

The Baltimore County Board of Appeals  
400 Washington Avenue, Room 49  
Towson, Maryland 21204

Re: Hayfields Special Exception Plan - Board of Appeals  
Case No.: 95-308-X  
WT&P No.: 01332/00001

Dear Board Members:

In the past week, two significant events occurred which affect the Hayfields Special Exception case pending before this Board; namely, (1) the Planning Board rendered a decision on the issues of historic preservation as they relate to Hayfields on May 2, 1996, and (2) the Court of Special Appeals rendered a decision in *Perdue Farms, Inc. v. Hadder*, No. 835, September Term (filed May 1, 1996) on May 1, 1996. Both events occurred after the period to brief the Board of Appeals, but prior to the rendering of a decision, and therefore, the parties are obligated to bring to the Board of Appeals' attention these significant events.

**THE PLANNING BOARD'S RESOLUTION**

On May 2, 1996, the Baltimore County Planning Board ("Planning Board") adopted its Decision regarding historic preservation issues as they relate to the Hayfields property. The issues of historic preservation regarding the Development Plan were referred to the Planning Board pursuant to § 26-207 of the Baltimore County Code. The Development Plan included the country club use and thirty nine (39)

residential lots. The Planning Board, stepping into the shoes of the Hearing Officer to adjudicate historic preservation issues, must reach a final decision, and its decision is binding upon the Hearing Officer and must be incorporated as part of the Hearing Officer's final action on the plan.

Attached hereto as Exhibit No. 1 is the Planning Board's Decision as described in the May 3, 1996 memorandum from Arnold F. "Pat" Keller, III, Secretary of the Planning Board to Lawrence Schmidt, Esquire, Hearing Officer. The Planning Board's decision is binding on the Board of Appeals, and the parties are collaterally estopped from relitigating the historical preservation issues.

Under the doctrine of "collateral estoppel", or "issue preclusion", an issue which was raised and fully litigated in one tribunal is precluded from being relitigated in a subsequent tribunal. In other words, the subsequent tribunal is bound by the decision of the initial tribunal. The doctrine is based on the concepts of judicial economy and finality of decision. The underlying principle governing the notion of collateral estoppel is that the parties should not be allowed to relitigate a matter that it already had an opportunity to litigate.

The issues before the Planning Board were whether the proposed Development Plan would have any adverse impacts on the historic preservation of Hayfields. See § 26-207(a)(3), § 26-208, and § 26-206(o). The parties are collaterally estopped from relitigating the issues of any adverse impacts the proposed development would have on the historical features of Hayfields. The parties had the opportunity to litigate those issues before the Planning Board, those issues were litigated before the Planning Board, and the Planning Board resolved those issues. The Board of Appeals is bound by the decision of the Planning Board.

**THE BOARD OF APPEALS IS BOUND BY THE DECISION  
OF THE PLANNING BOARD THAT THE APPROVED PLAN WITH CONDITIONS  
DOES NOT HAVE ANY ADVERSE IMPACTS ON THE HISTORIC  
PRESERVATION OF HAYFIELDS.**

The Protestants identified three impacts of the proposed development on the historic preservation of Hayfields; namely, (1) the on-site impact of the proposed development on the seven historic structures listed on the Baltimore County Final Landmarks List; (2) the on-site impact of the proposed development on the Hayfields site; and (3) the off-site impact of the proposed development on the Western Run/Belfast Road historic district.

Petitioner consistently has contended that the proper analysis for a special exception case is to evaluate the adverse impacts to the surrounding properties and not the site itself. If the Board of Appeals adopts Petitioner's position, then the Planning Board's ruling as it relates to the seven historic structures and the Hayfields site does not affect the Board of Appeals' Special Exception analysis. The Planning Board's ruling as it relates to the seven historic structures and the Hayfields site pertains to *on-site* adverse impacts and is irrelevant for a special exception case.

However, if the Board of Appeals adopts Protestants' argument that one must evaluate the site itself for special exception analysis, then the Board of Appeals is bound by the decision of the Planning Board on the issue of any adverse impacts on the historic structures. The issue of any adverse impacts on the historic structures was fully litigated before the Planning Board, and the Planning Board placed conditions on the plan to alleviate any of the adverse effects. The parties may not relitigate those issues. The Board of Appeals is bound by the decision of the Planning Board that the approved plan with conditions does not have any adverse impacts on the historic preservation of Hayfields.

The off-site impact of the proposed development on the Western Run/Belfast Road historic district is a "development process" issue and not a "zoning" issue. Section 100.5 of the Zoning Regulations specifically state, "the designation of any historic property, site, or historic district on the zoning map ***does not change the zoning classification or any requirement*** with respect to that zoning classification, unless specified otherwise in these regulations." (emphasis added) The Zoning Regulations make clear that designation of a historic property will raise several development process issues, but is not a consideration of the zoning process. Further, the Development Regulations found in section 26 of the Baltimore County Code clearly mandate that historic preservation issues are "development process" and not "zoning process" issues.

The regulations, both the development and zoning, recognize that the proper forum to address historic preservation issues is not in a special exception case where the sole issue is if there are any adverse impacts on the surrounding properties which are above and beyond those adverse impacts generally associated with such a use in a similar zone, regardless of the location. Rather, the proper forum is the Development Process which is structured to address the broader issues of development and thereby allows for greater latitude for the review of the proposed development. For example, the Development Regulations specifically address the issue of historic preservation in § 26-207, § 26-208, and § 26-206(o) of the Baltimore County Code.

The purposes of the Development Regulations are as broad as, "to ensure the adequate supply of land suitable for development" and "to implement the future growth of the county in accordance with the master plan" and are clearly broader than the requirements for a special exception use. Section 26-167(a). The Development Regulations clearly were intended to address a broad range of development issues which are not appropriate issues for special exception cases. The County Council created the Development Regulations to address the whole host of issues which are relevant to the development of land, but are not proper issues for the zoning process.

However, if the Board of Appeals adopts the Protestants' argument that somehow § 100.5 of the Baltimore County Zoning Regulation is not applicable, then it is collaterally estopped from addressing those issues as they were decided by the Planning Board. Specifically, the Planning Board was presented with evidence that the visibility of the four RC-2 lots from the adjacent Western Run/Belfast Road historic district would have a detrimental effect on that historic district. Based on that evidence, the Planning Board incorporated into its decision a condition that the developer move the four lots and screen them from the adjacent historic district.

The Planning Board also placed a condition on the plan that the driving range shall not be lighted. There was evidence presented before the Planning Staff and the Planning Board that the lighting of the driving range would have an adverse impact on the adjacent historic district. The Planning Board heard evidence on that issue and rendered its decision to place the restriction on lighting.

The issues of the adverse effects to the adjacent historic district clearly were fully litigated before the Planning Board and the Planning Board rendered a decision on that issue. The parties are collaterally estopped from relitigating those issues. The Planning Board's decision that the plan approved with conditions has no adverse effect on the historic preservation of Hayfields is binding upon this Board.

**ANALYSIS OF ISSUE OF PREEMPTION BY  
COURT OF SPECIAL APPEALS OF MARYLAND IN  
PERDUE FARMS, INC. V. HADDER, NO. 835,  
SEPTEMBER TERM, (FILED MAY 1, 1996).**

Additionally, the issue of preemption also impacts the Board of Appeals' review of Hayfields' Petition for Special Exception and the Board of Appeals' consideration of matters concerning water appropriation and septic controls. Specifically, because the Maryland Department of the Environment (MDE) possesses sole jurisdiction over the regulation of water quantity, water quality, and water use in Maryland, the Board of

Appeals has no authority to impose conditions regulating water appropriation, nitrate levels, or groundwater discharge on its approval of Hayfields' Petition for Special Exception.

Recently, in *Perdue Farms, Inc. v. Hadder*, No. 835, September Term (filed May 1, 1996)(attached hereto as Exhibit 2), the Court of Special Appeals of Maryland reviewed the issue of preemption in the context of water quality and the amount of nitrogen permitted in wastewater irrigation spray. In that case, the appellant, Perdue Farms, Inc., pursuant to Worcester County zoning requirements, filed a petition for special exception to permit spray irrigation of wastewater over its agricultural land. The Worcester County Zoning Board granted Perdue's Petition for Special Exception but imposed a condition that "the nitrogen concentration in the sprayed (irrigated) wastewater [shall] not exceed twenty milligrams per liter (20 mg/L), on a flow rated (sic) annual average basis." *Perdue Farms*, slip op. at 5. Perdue, however, argued that the comprehensive regulations promulgated by the Department of the Environment preempted the Board of Zoning Appeals' authority to impose conditions on its wastewater spray irrigation special exception.

The Court of Special Appeals agreed with Perdue and held:

The Board's nitrogen limitation would prohibit spraying of water exceeding 20 mg/L of nitrogen at the nozzle even though MDE allows its so long as it does not exceed 10 mg/L of nitrogen in the groundwater. In essence, the zoning board is impermissibly second guessing MDE on the question of how best to achieve compliance with a standard contained in MDE's water quality regulations. . . . The approach adopted by the Board is patently in conflict with the State approach. The State approach would permit appellant to spray irrigate with water that contains a concentration, for example, of 21 mg/L of nitrogen at the nozzle, on an annual basis, so long as nitrate levels in groundwater do not exceed the 10 mg/L standard. The Board, on the other hand, would not permit such spraying in the above case because the nitrogen level exceeds 20 mg/L at the nozzle. Thus there is an inherent conflict between the State's approach and the Board's approach in achieving safe drinking water standards.

*Id.* at 7-8. Accordingly, in *Perdue Farms*, the Court of Special Appeals ordered the Worcester County Board of Zoning Appeals to delete its condition limiting nitrogen concentrations from the wastewater irrigation special exception.

**APPLICATION OF PERDUE FARMS, INC. V. HADDER TO  
HAYFIELDS' PETITION FOR SPECIAL EXCEPTION**

State law may preempt local law either by conflict, express preemption, or implied preemption. *Id.* at 6. In the *Perdue* case, the state law governing nitrogen limitations conflicted with the Worcester Zoning Board's conditions, and therefore, the Zoning Board's conditions were preempted by conflict. In light of the Court of Special Appeals' holding in *Perdue Farms*, it is important for the Baltimore County Board of Appeals to realize, when reviewing Hayfields' Petition for Special Exception, the limitations on its authority to impose conditions relating to water quality, water quantity, or septic controls.

In meeting federal and state water quality, water quantity, and septic control standards, the General Assembly has promulgated comprehensive requirements set forth in Title 26, subtitles 3, 4, 6, 8, & 9 of C.O.M.A.R. Water (well water, ground water, surface water, etc.) is considered a state resource. Baltimore County has authority to protect and regulate county resources and county land uses. Baltimore County has not been given the authority to regulate state resources such as water. Accordingly, the MDE, a state agency, regulates, exclusively, water quality, water quantity and water use in Maryland through, *inter alia*, the regulation and issuance of permits for groundwater discharge, the issuance of permits for water appropriation, and the regulation of nitrate loading in septic systems.

#### **SPECIFIC CONDITIONS WHICH STATE LAW PREEMPTS THE BALTIMORE COUNTY BOARD OF APPEALS FROM IMPOSING**

With respect to water quality, water quantity, and septic control issues which underlie Hayfield's proposed development of its golf course and country club facility, this Board cannot impose any conditions on its approval of Hayfields' Petition for Special Exception because the General Assembly has seen fit to enact pervasive and comprehensive regulations which control water resources in Maryland. Such comprehensive and pervasive regulations effectively preempt the Board of Appeals from imposing any conditions above and beyond those already imposed by the State.

For example, in light of the holding in *Perdue Farms*, the Baltimore County Board of Appeals is without power to impose conditions on nitrate levels in groundwater discharge because the issuance of groundwater discharge permits falls within the exclusive jurisdiction of the State of Maryland.

Similarly, state water quality and water quantity regulations preempt the Board of Appeals from imposing extensive and costly ground water monitoring or surface water monitoring conditions on its approval of Hayfields' Petition for Special Exception because issues concerning water quality and water quantity are exclusively within the

State's purview; the State has no requirements that a golf course must perform extensive monitoring of groundwater or surface water for nitrates, fertilizer, or pesticide concentrations.

Additionally, the Board of Appeals cannot impose any conditions regarding water level tables because such issues concern water quantity and, therefore, fall within the State's exclusive regulatory jurisdiction.

In essence, the Court of Special Appeals' holding in *Perdue Farms*, makes clear that the Baltimore County Board of Appeals has no authority to consider issues of water appropriation, or groundwater discharge and nitrate loading for the clubhouse septic system when reviewing Hayfield's Petition for Special Exception because such issues are within the exclusive jurisdiction of the State, more specifically, the MDE.

### CONCLUSION

On May 2, 1996, the Planning Board rendered its decision on "historic preservation issues" as they relate to Hayfields. Based on the doctrine of collateral estoppel, the Board of Appeals is bound by the decision of the Planning Board that the approved Development Plan with conditions does not have any adverse impacts on the historic preservation of Hayfields.

Moreover, the MDE, as stated above, is responsible for issuing the groundwater discharge permit for the clubhouse septic system and the water appropriation permits. The County has no authority to issue such permits and the Board of Appeals has no authority to impose any conditions above and beyond the requirements promulgated by the State.

Sincerely,  
  
G. Scott Barhight

GSB:dmk

Attachments

cc: George A. Nilson, Esquire (via facsimile)(w/ attachments)



The Baltimore County Board of Appeals

May 7, 1996

Page 8

Peter Max Zimmerman, Esquire (via hand-delivery) (w/ attachments)

Leslie M. Pittler, Esquire (via facsimile)(w/ attachments)

Virginia Barnhart, Esquire, Baltimore County Office of Law (via hand-delivery)  
(w/ attachments)

Kenneth T. Bosley (w/ attachments)

John D. Mangione (w/ attachments)

David K. Gildea, Esquire (w/ attachments)

Julie D. Wright, Esquire (w/ attachments)

76824

EXHIBIT 2

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 835

September Term, 1995

**RECEIVED**

MAY 2 1996

LIBRARY (BALTIMORE)  
WHITEFORD, TAYLOR & PRESTON

PERDUE FARMS INCORPORATED

v.

LINWOOD HADDER

Wilner, C.J.,  
Bloom,  
Alpert, Paul E. (Ret'd,  
Specially Assigned),

JJ.

Opinion by Bloom, J.

Filed: May 1, 1996



Baltimore County  
Planning Board

401 Bosley Avenue  
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(410) 887-3495  
Fax: (410) 887-5862

May 3, 1996

**TO:** Lawrence Schmidt, Esquire  
Hearing Officer

**FROM:** Arnold F. "Pat" Keller, III  
Secretary to the Planning Board

**SUBJECT:** PDM VIII-661 ("Hayfields Manor") -  
Decision by the Planning Board

Pursuant to Section 26-208(b)(2) of the Development Regulations, the plans for this project were reviewed extensively by the County Planning Board in its meetings on January 18, March 21, April 18 and May 2, 1996.

In the May 2nd meeting, the Planning Board voted that, for the reasons stated in the March 16, 1996 staff report, the Planning Board's decision to the Hearing Officer for use in accordance with Section 26-208(c) of the Baltimore County Code, 1988, is that, in addition to such other conditions as the Hearing Officer may deem to be appropriate for the approval of the "Hayfields Manor" development plan dated 3-5-96 (PDM No. VIII-661):

- A. In accordance with the Landmarks Preservation Commission's authority pursuant to Sections 26-544, et seq. of the Baltimore County Code, 1988, and pursuant to the Order of the Zoning Commissioner for Baltimore County in Case No. 95-308-X, granted on June 30, 1995, the Hearing Officer's approval of the development plan for "Hayfields Manor" shall reserve to the Commission the authority for issuing a certificate of appropriateness or a notice to proceed in regard to physical alterations to the following Baltimore County Final Landmarks List structures:
1. "Main House," including the details of the siting and the exterior design of the proposed clubhouse addition (with the "hyphen") and the any grading associated with the construction of the addition, its terrace walls and steps;
  2. "Cook's House";

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JULIE D. WRIGHT  
DIRECT NUMBER  
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2071752@mcimail.com

November 5, 1996

Ms. Charlotte E. Radcliffe  
County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

**Re: Toll House, Inc./Hayfields  
Civil Action No. 03-C-96-008878  
(CBA Case No. 95-308-X)**

Dear Charlotte:

This letter is to confirm our recent telephone conversation regarding the Petition for Judicial Review filed by J. Carroll Holzer, Esq., in the above-referenced matter, on behalf of Dr. Richard McQuaid, Mary Bee Gaines, North County Coalition, Inc., and Piney Run Preservation Association, Inc.

As I recall, I contacted your office to request that the County Board of Appeals issue a Notice to Mr. Holzer informing him and his clients that Hayfields, Inc., had filed a Petition for Judicial Review in the above-referenced matter. I requested that the Notice be sent to Mr. Holzer because when I filed the Petition for Judicial Review on behalf of Hayfields, Inc., I did not list Mr. Holzer on the Certificate of Service. I became aware of this omission when I received Notice that Mr. Holzer had filed a Petition for Judicial Review in the above-referenced matter on behalf of his clients.

Pursuant to our telephone conversation, it is my understanding that, initially, the County Board of Appeals did not send Notices to Mr. Holzer regarding the above-referenced matter because Mr. Holzer's clients were not parties to the special exception hearing before the County Board of Appeals (CBA Case No.: 95-308-X). Only after Mr.

Ms. Charlotte E. Radcliffe

November 5, 1996

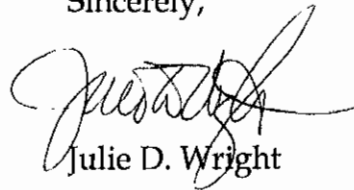
Page 2

Holzer filed a Petition for Judicial Review in the above-referenced matter, was the Board aware of Mr. Holzer's clients' interests in the above-referenced matter.

I have taken the liberty of forwarding to Mr. Holzer's office copies of all of the Petitions for Judicial Review filed in CBA Case No. 95-308-X, as well as all of the Notices issued by the County Board of Appeals. Accordingly, Mr. Holzer, although his clients were not parties to the administrative hearing before the County Board of Appeals, should have a complete file with respect to all of the materials filed in the above-referenced matter. Additionally, the copies were forwarded to Mr. Holzer in a timely manner so that Mr. Holzer could notify the Circuit Court whether his clients intend to participate in the hearings for the Petitions for Judicial Review.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,



Julie D. Wright

JDW;jdw

cc: G. S. Barhight, Esquire  
Mr. John Mangione  
Peter Max Zimmerman, Esquire  
George Nilson, Esquire  
J. Carroll Holzer, Esquire  
Virginia Barnhart, County Attorney

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November 19, 1998

***Via Hand Delivery***

County Board of Appeals of Baltimore County  
Attn: Ms. Kathleen C. Bianco, Administrator  
Room 49, Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

**In the Matter of: Hayfields  
Petitioner: Hayfields, Inc.  
Case No. 95-308-X  
Circuit Court Case No. 3-C-96-008878**

Dear Members of the Board of Appeals:

On November 17, 1998 I received a letter of same date from Mr. Nilson to the Board of Appeals objecting to various issues arising out of your deliberation notice dated November 10, 1998. The Petitioner, Hayfields, Inc., does not object to the procedure contemplated by the Notice of Deliberation. Additionally, please accept this letter as our brief response to the issues raised by Mr. Nilson.

Mr. Nilson's first objection relates to the ten day hearing notice requirement of Rule 2 of the Rules of Procedure of the Board of Appeals. Since this matter is not a hearing, Rule 2 does not apply. As the Board is well aware from years of administrative practice, there may be virtually no notice of deliberation in a zoning case, in that the deliberation may occur immediately following a hearing. The scheduling of a deliberation is largely a function of the availability of the board members and can occur either immediately after the zoning case or within a matter of days.

Mr. Nilson also complains that he will be unable to attend the deliberations. Since counsel will not be able to speak at all during the deliberation, it is clearly not a prejudice to Mr. Nilson, or his client, should he fail to appear. As has happened on a variety of cases in which this office has been involved, if I am unable to attend the public deliberation, another attorney from this office is sent to take notes regarding the

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deliberations. Again, since there is no role of counsel other than to listen, I fail to see how Mr. Nilson or his client is being prejudiced.

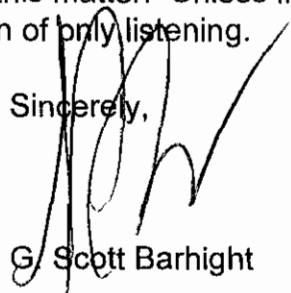
Mr. Nilson also objects to the proceeding being "mere deliberations." It is clear from the remand order that the Board may exercise its discretion to proceed in whatever fashion it deems appropriate. If after reviewing the remand order the Board determines that no evidentiary hearing is necessary, the Board may clearly proceed directly to deliberations. Since this matter was fully litigated by more than adequate counsel over a multiple day hearing, I am sure the Board will find that there is sufficient testimony in the record on all of the issues presented to be able to reach a reasoned and informed decision. Counsel have had ample opportunity to argue these very issues before the Board of Appeals previously, not to mention arguing them before the Baltimore County Circuit Court and the Court of Special Appeals. The matter before the Board is to simply comply with the remand order. The Petitioner asserts that there is no need for counsel to again argue the same issues presented previously. The Board, who is quite familiar with the issues, can reach its own decisions.

Finally, Mr. Nilson asserts that there is "rush to judgment" in this matter. As this matter has been ongoing for many years, it is hard for me to see this as a rush. It has been some time since the remand order (i.e., the appeal period has passed) and it is most appropriate for the Board to proceed diligently to complete its rulings in this matter in a fashion which it deems appropriate and judicious.

Accordingly, Hayfields, Inc. respectfully opposes Mr. Nilson's requests and asks that the deliberations notice for November 19, 1998 proceed as scheduled in the fashion contemplated by the Board of Appeals. The Petitioner does not desire there to be any delay of this matter.

Thank you for your kind attention to this matter. Unless indicated otherwise, I will attend the deliberations with the expectation of only listening.

Sincerely,



G. Scott Barhight

GSB:sll

cc: George A. Nilson, Esquire (via fax)  
People's Counsel of Baltimore County (via fax)  
Hayfields, Inc.

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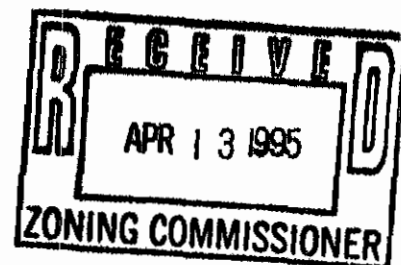
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JAN H.K. CARDIN  
E. SCOTT CONOVER, JR

G. C. A. ANDERSON  
(189B-1985)

April 11, 1995

Mr. Lawrence Schmidt  
Zoning Commissioner  
Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204

Re: Case No. 95-308-X (Item 302)  
Tollhouse, Inc.



Dear Mr. Schmidt:

Your office has scheduled a hearing on Petitioner's Petition for Special Exception for May 9, 10, and 11, 1995. Although your office consulted with all counsel, including me, about these dates, I must respectfully request for personal reasons a brief postponement of the hearing. I have a jury case which began today, Monday April 10, 1995 in Rockville which will last a minimum of two weeks. Within several days of the conclusion of that case, I am scheduled to begin another jury trial with Judge Wolfe in Annapolis. That jury case is scheduled to be completed by Tuesday, May 2, 1995. Quite frankly, I had hoped that the Rockville case would settle so that my schedule would be much more open than it is now. Since that case has not settled, and since I will be in court virtually full time between now and May 2, 1995, I respectfully request a brief postponement of the Hayfields' case so I can adequately prepare for the hearing. I am basically free the weeks of May 15 and May 22. Such a brief postponement should not jeopardize the interests of the Petitioner. A brief postponement will also enable me to honor my obligation to my clients.



Very truly yours,

*G. Macy Nelson*  
G. Macy Nelson

GMN/slt

cc: G. Scott Barhight, Esquire

LAW OFFICES

ANDERSON, COE & KING

SUITE 2000

201 N. CHARLES STREET

BALTIMORE, MARYLAND 21201

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FAX DIRECT DIAL: 410-752-0085

CABLE ABKO

OCEAN CITY OFFICE

P O BOX 535

7904 COASTAL HIGHWAY, #5

OCEAN CITY, MD 21842

TELEPHONE 410-524 6411

FAX DIRECT DIAL: 410-524-9479

ROBERT H. BOUSE, JR.  
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JAMES A. ROTHSCHILD  
M. BRADLEY HALLWIG  
J. MICHAEL SLONEKER  
G. MACY NELSON  
E. PHILIP FRANKE, III  
T. MICHAEL PRESTON  
PHILIP C. JACOBSON  
LYNNE B. MALONE  
GREGORY L. VANGEISON

COUNSEL

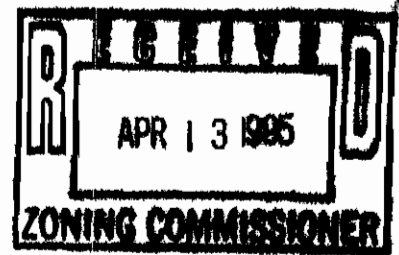
WARD B. COE, JR.  
FRANK J. VECELLA  
JOHN F. KING

BARBARA MCC STANLEY  
MATTHEW T. ANGOTTI  
HUGH CROPPER, IV  
JILL R. LEINER  
JAMES S. AIST  
KIMBERLY E. RICE  
RUSSELL S. WOODWARD  
JAN H.K. CARDIN  
E. SCOTT CONOVER, JR.

G. C. A. ANDERSON  
(1898-1985)

April 12, 1995

Mr. Lawrence Schmidt  
Zoning Commissioner  
Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204



Re: Case No. 95-308-X (Item 302)  
Tollhouse, Inc.

Dear Mr. Schmidt:

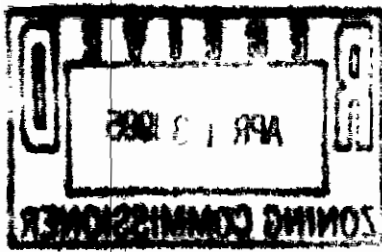
This letter is a supplement to my letter dated April 11, 1995 requesting a postponement of the above captioned case. In addition to my personal scheduling problems, I learned on April 11, 1995 that one of my client's expert witnesses, Lynne Hastings, will be out of the state during the week that this case is currently scheduled to be heard. Ms. Hastings is the curator of the Hampton National Historical site in Towson. She will be an important witness in the case. It is my sincere hope that you will consider delaying this hearing a week or so.

Very truly yours,

*G. Macy Nelson*  
G. Macy Nelson

GMN/slt

cc: G. Scott Barhight, Esquire



## LAW OFFICES

## ANDERSON, COE &amp; KING

SUITE 2000

201 N. CHARLES STREET

BALTIMORE, MARYLAND 21201

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CABLE: ABRK

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FAX DIRECT DIAL: 410-824-6478

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JAMES A. ROTHSCHILD  
M. BRADLEY HALLWIG  
J. MICHAEL SLONEKER  
G. MACY NELSON  
E. PHILIP FRANK, III  
T. MICHAEL PRESTON  
PHILIP C. JACOBSON  
LYNNE E. MALONE  
GREGORY L. VANGEISON

## COUNSEL

WARD B. COE, JR.  
FRANK J. VECILLA  
JOHN F. KING

BARBARA MCC. STANLEY  
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HUGH CROPPER, IV  
JILL R. LEINER  
JAMES S. AIST  
KIMBERLY E. RICE  
RUSSELL S. WOODWARD  
JAN H. K. CARDIN  
E. SCOTT CONOVER, JR.

G. C. A. ANDERSON  
(1995-1996)

FACSIMILE COVER SHEET

DATE:

5/17/95

FAX #:

887-3468

TO:

Macy Nelson c/o Commissioner Schmidt

FROM:

Darryl Kelly

Re:

Dayfields Farm

No. of pages, including this cover sheet: 2

Should you have any questions regarding this transmittal, please  
contact: \_\_\_\_\_

Original will be mailed: Yes ☐ No ☒

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SENT BY FAX 10180018 7020 1 5-17-95 1 9:07AM

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN RE: TOLL HOUSE, INC.  
(Hayfields)

\* OFFICE OF ZONING  
\* ADMINISTRATION AND  
\* DEVELOPMENT  
\* Case No. CR-95-138

\*\*\*\*\*

SUBPOENA

TO: Jeffrey Long  
c/o Office of Administrative Hearings

You are hereby summoned to appear in person before the County Board of Appeals, Office of Zoning Administration and Development, Room 118 Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on Wednesday, May 17, 1995 at 9:00 a.m. to testify in the above captioned matter.

This summons was requested by G. Macy Nelson, Esquire, 201 North Charles Street, Suite 2000, Baltimore, Maryland 21201, 752-1630, Attorney for Valleys Planning Council.

Issued this            day of May, 1995.

ARNOLD JABLON, DIRECTOR  
Zoning Administration and  
Development Management

LAW OFFICES

ANDERSON, COE & KING

SUITE 2000

201 N CHARLES STREET

BALTIMORE, MARYLAND 21201

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PHILIP C. JACOBSON  
LYNNE B. MALONE  
GREGORY L. VANGEISON

COUNSEL

WARD B. COE, JR.  
FRANK J. VECELLA  
JOHN F. KING

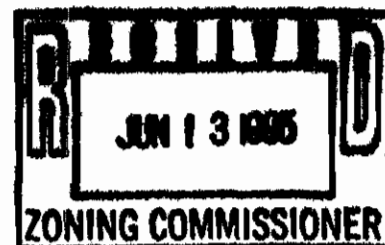
BARBARA MCC. STANLEY  
MATTHEW T. ANGOTTI  
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JILL R. LEINER  
JAMES S. AIST  
KIMBERLY E. RICE  
RUSSELL S. WOODWARD  
JAN H.K. CARDIN  
E. SCOTT CONOVER, JR.

G. C. A. ANDERSON  
(1898-1985)

June 14, 1995

HAND DELIVERED

Lawrence E. Schmidt, Zoning Commissioner  
Baltimore County Government  
Office of Planning and Zoning  
Courthouse, Suite 112  
400 Washington Avenue  
Towson, Maryland 21204

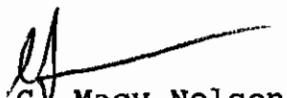


Re: In re Petition for Special Exception Tollhouse, Inc.  
Case No. 95-308-X (Item 302)

Dear Mr. Schmidt:

Enclosed is Protestants' Memorandum in Opposition to  
Petition for Special Exception.

Very truly yours,

  
G. Macy Nelson

GMN:bam

Enclosure

c.c. G. Scott Barhight, Esquire  
Kenneth T. Bosley, Esquire

LAW OFFICES

ANDERSON, COE & KING

SUITE 2000

201 N. CHARLES STREET

BALTIMORE, MARYLAND 21201

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FAX DIRECT DIAL: 410-752-0085

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7904 COASTAL HIGHWAY, #5

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TELEPHONE: 410-524 6411

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ROBERT H. BOUSE, JR.  
E. DALE ADKINS, III  
JAMES A. ROTHSCHILD  
M. BRADLEY HALLWIG  
J. MICHAEL SLONEKER  
G. MACY NELSON  
E. PHILIP FRANKE, III  
T. MICHAEL PRESTON  
PHILIP C. JACOBSON  
LYNNE B. MALONE  
GREGORY L. VANGEISON

COUNSEL

WARD B. COE, JR.  
FRANK J. VECILLA  
JOHN F. KING

BARBARA MCC STANLEY  
MATTHEW T. ANGOTTI  
HUGH CROPPER, IV  
JILL R. LEINER  
JAMES S. AIST  
KIMBERLY E. RICE  
RUSSELL S. WOODWARD  
JAN H.K. CARDIN  
E. SCOTT CONOVER, JR.

G. C. A. ANDERSON  
(1888-1985)

July 10, 1995

Arnold Jablon, Director  
Zoning Administration and Development  
Management Office  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

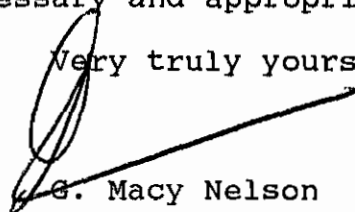
Re: Petition for Special Exception  
301 Western Run Rod, c/1 Shawan Rod  
1780' NWly of c/1 I-83, 8th  
Election District - 3rd Councilmanic  
Toll House, Inc., Petitioner  
Case No. 95-308-X

Dear Mr. Jablon:

Please enter an appeal of the Valleys Planning Council, Inc., 212 Washington Avenue, Towson, Maryland 21204; Lynn Hastings, 818 Western Run Road; Dan and Joanne Timmel, 918 Western Run Road; Theodore and Ingrid Baramki, Western Run Road; Robert and Shirley Mand, 718 Western Run Road; Marguerite Hastings, 812 Western Run road; and Dr. Constantine and Nancy Chilimindris, 1003 Shawan Road to the County Board of Appeals from the Order dated June 30, 1995 of the Baltimore County Zoning Commissioner in the above-entitled case. Enclosed please find our check in the amount of \$285 for the filing fee.

Please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

  
G. Macy Nelson

GMN/slt  
Enclosure  
cc: G. Scott Barhight, Esquire  
Mr. Peter Max Zimmerman

RECEIVED

JUL 10 1995

ZADM

# PIPER & MARBURY

L.L.P.

CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE, MARYLAND 21201-3018  
410-539-2530  
FAX 410-539-0489

GEORGE A. NILSON  
(410) 576-1769  
FAX: (410) 576-7695  
gnilson@pipermar.com

WASHINGTON  
NEW YORK  
PHILADELPHIA  
EASTON  
LONDON

October 16, 1995

Baltimore County Board of Appeals  
Room 49, Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

Re: Toll House, Inc. (Hayfields, Inc.)  
Appeal from Special Exception Decision of  
Zoning Commissioner 95-308-X

Dear Ms. Weidenhammer:

Please enter my appearance on behalf of the Appellants in this matter -- The Valleys Planning Council, Inc., Lynn Hastings, Dan and Joanne Timmel, Theodore and Ingrid Baramki, Robert and Shirley Mand, Marguerite Hastings and Dr. Constantine and Nancy Chilimindris. Please also withdraw the appearance of Macy Nelson, Esquire on behalf of the Appellants.

Also, per recent conversations with your office, I am currently holding open on my calendar the following dates for a Hearing in the above matter: January 4, 10, and 18, as well as the week of January 22, 1996. I understand you are attempting to reserve six hearing days for this matter. As my secretary indicated to you earlier, I have been summoned for jury duty by the Circuit Court for Baltimore City on January 3, 1996 (postponed from an earlier summons, and not subject to change). In the perhaps unlikely event I am selected to serve on January 3, 1996, my unavailability could extend beyond

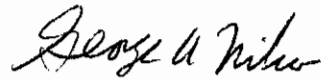
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Baltimore County Board of Appeals  
October 16, 1995  
Page 2

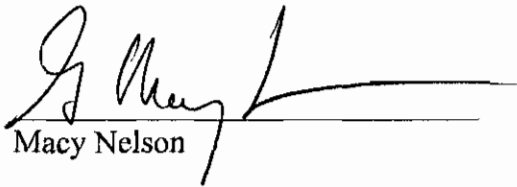
that date.

Sincerely yours,



George A. Nilson

Withdrawal of appearance requested:

  
Macy Nelson

GAN/bal

cc: Macy Nelson, Esquire  
G. Scott Barhight, Esquire

PIPER & MARBURY  
L.L.P.

CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
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January 16, 1996

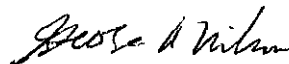
Ms. Kathy Bianco  
Baltimore County Board of Appeals  
Room 49, Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

Re: Toll House/Hayfields - Case No. 95-308-X

Dear Ms. Bianco:

Please issue a subpoena for Mr. Steve Mogilnicki, Geohydrologist, Bureau of Water Quality and Resource Management, Ground Water Management, DEPRM, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204, to testify in these proceedings on January 25, 1996.

Sincerely yours,



George A. Nilson

GAN/bal

RECEIVED  
JAN 17 1996

PIPER & MARBURY  
L.L.P.

CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE, MARYLAND 21201-3018  
410-539-2530  
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GEORGE A. NILSON  
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gnilson@pipermar.com

WASHINGTON  
NEW YORK  
PHILADELPHIA  
EASTON  
LONDON

April 25, 1996

DELIVERY BY HAND

Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

Re: Toll House, Inc./Hayfields  
Case No. 95-308-X

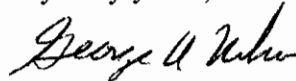
Dear Chairman Schuetz and Members of the Board:

Enclosed please find an original and three copies of Protestants' final Memorandum in connection with the above-referenced special exception.

My understanding is that the Board will hear argument beginning at 10:00 a.m. on April 30, 1996 on the Motions to Dismiss and then will proceed to deliberate on that Motion and on the matter generally. Based on conversations with Mr. Barhight and Mr. Zimmerman on April 16, 1996, I would anticipate that arguments on the Motion to Dismiss would take approximately one hour.

I am also enclosing the Rule 8 materials relative to the testimony of Mr. Lester Connolly, who appeared both individually and on behalf of the Greencroft Community Association.

Very truly yours,



George A. Nilson

GAN/bal  
Enclosure

cc: All Counsel of Record

## PIPER &amp; MARBURY

L.L.P.

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WASHINGTON  
NEW YORK  
PHILADELPHIA  
EASTON  
LONDON

May 8, 1996

VIA FACSIMILE

Baltimore County Board of Appeals  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204Re: Hayfields Special Exception - Board of Appeals - Case No. 95-308-X

Dear Board Members:

Late yesterday I received a copy of a letter from Scott Barhight to the Board dated May 7, 1996 regarding the above matter. I disagree with virtually everything said in the letter, and also believe that the letter and the matters raised in it are untimely - being sent and arriving after the close of the record in this case. I am not in a position to respond to the particulars of the letter at this time, because we are in the middle of proceedings relative to the development plan in this case - notwithstanding my position, as asserted to the Zoning Commissioner, that those hearings should not begin until the Board has rendered its decision on the special exception application.

I would initially ask that the Board reject the letter as being untimely filed, and not consider the matters and arguments set forth in the letter. If the Board is inclined to receive and consider the letter, then I would urge the Board to allow us an opportunity to respond to the letter in some orderly fashion and on some reasonable schedule. Since the letter takes the position, wrongly in my judgment, that the Board may not consider various matters in its deliberations, then I would urge that if the Board is going to receive and consider the letter, it should delay its deliberations on the matter until we have had an opportunity to respond. Because I presently anticipate that Mr. Barhight and I will be engaged in development plan hearings before Commissioner Schmidt on May 9, 1996, I will request that Commissioner Schmidt schedule a brief recess for around 10:00 a.m. on May 9, 1996, so that I may appear briefly before the Board to express my opposition to Mr. Barhight's letter and to the Board's consideration of it. If the Board decides at that time to receive and consider the letter, then I trust the Board will inform me as to when

PIPER & MARBURY  
LLP

Baltimore County Board of Appeals  
May 8, 1996  
Page 2

my response will be expected and what the Board intends to do with regard to its deliberations in the interim.

Sincerely yours,

  
George A. Nilson

GAN/bal

cc: Peter Max Zimmerman, Esquire (via facsimile)  
Leslie M. Pittler, Esquire (via facsimile)  
Mr. Kenneth T. Bosley  
Mr. John Bernstein (via facsimile)

## Facsimile Transmission Sheet

|                                                                                                                             |  |
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|-----------------------------------------------------------------------------------------------------------------------------|--|

|                                           |                                   |
|-------------------------------------------|-----------------------------------|
| To:                                       | Baltimore County Board of Appeals |
| Company:                                  |                                   |
| Phone:                                    |                                   |
| Fax:                                      | 887-3182                          |
| From:                                     | George Nelson                     |
| Phone:                                    |                                   |
| Fax:                                      |                                   |
| Date:                                     | 5/8/96                            |
| Number of Pages<br>(including fax sheet): | 3                                 |

Original ☐ will / ☒ will not follow.

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- ☐ FedEx my facsimile to its recipient and notify me. (Provide FedEx address and details on reverse of this form.)
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Signature \_\_\_\_\_

Comments:

## PIPER &amp; MARBURY

L.L.P.

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FAX 410-539-0489

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WASHINGTON  
NEW YORK  
PHILADELPHIA  
EASTON

November 17, 1998

FACSIMILE (410) 887-3182

County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, MD 21204

Attention Kathleen C. Bianco, Administrator

Re: IN THE MATTER OF:  
HAYFIELDS; TOLL HOUSE, INC./PETITIONER  
CASE NO. 95-308-X/Circuit Court #3-C-96-008878

Dear Members of the Board of Appeals:

On Monday, November 16, 1998, I received a Notice of Deliberation (on Remand) in connection with this matter, scheduling that deliberation for 9:30 a.m. this Thursday, November 19, 1998.

I must respectfully object to the extraordinarily short notice given for this proceeding, to the particular date on which the proceeding has been scheduled, and to the very limited nature of the proceeding contemplated by the Board.

Pursuant to Rule 2 of the Rules of Procedure of the Board of Appeals, no hearing may be conducted without ten (10) days prior notice of those proceedings to all parties of record or their counsel. The Notice of the contemplated deliberation was mailed last Friday and received three (3) days before the November 19<sup>th</sup> date. I have represented the primary protestants in this matter from the outset of proceedings before the Board, and I am scheduled to be in Dallas, Texas on Thursday and Friday of this week (November 19<sup>th</sup> and 20<sup>th</sup>) for proceedings in another matter, which have been scheduled for some time and cannot be rescheduled. Since counsel for Valleys Planning Council and the other related protestants cannot be present at (or submit written arguments prior to) the

PIPER & MARBURY  
LLP

County Board of Appeals of Baltimore County  
November 17, 1998  
Page 2

proceedings this Thursday, and since we did not receive anywhere near the required prior Notice, and since other parties did not receive proper notice either, I hereby formally request that those proceedings be rescheduled and be preceded by proper notice as required by Rule 2 and procedural due process. I would also appreciate it if the Board could follow what has previously been its customary practice, which is contacting me (and Mr. Barhight) before the Notice is sent out to avoid the kind of irreconcilable scheduling conflict that has arisen in connection with this Thursday's proceeding.

Finally, I must strenuously object to the notion that the proceedings of the Board on remand in this matter would be limited to mere deliberations on the matter, not permitting either participation or argument by counsel or an opportunity to make written submissions or the introduction of appropriate evidence. At the very least, out of fundamental fairness and in the interest of providing for a fair and reasonable decision-making process, I strongly urge the Board to permit counsel to present written and oral argument in connection with the remand issues before the Board pursuant to the Court of Special Appeals' Opinion. My understanding is that not all of the three Board Panel Members who sat in and decided this case are still on the Board, and that the extensive evidence from the original special exception proceeding will thus be totally new to at least one of the required three Board members who will consider the matter (three being required for the conduct of all business of the Board by Rule 1 c.). The environmental evidence relative to ground water quality was complex and highly technical, extended over a substantial period of time, and was presented over two years ago. While that environmental/water quality evidence was touched on in the Board of Appeals original decision, and alluded to in slightly greater detail in the Court of Special Appeals Opinion, neither of those two prior Opinions can serve as a substitute for a full and complete review of the applicable portions of the record in this case. Permitting arguments by counsel would be of material assistance to both the original and new members of the panel. It may also be that some limited additional evidence would be appropriate.

I would respectfully suggest that it would be unseemly for the Board to rush this matter through on remand, with only three days notice (in the face of Rule 2) no opportunity for briefing or argument by counsel, and no opportunity for the kind of meaningful consideration of the evidence required by the Court of Special Appeals Opinion. This matter has been pending for some time, and it would seem counterproductive to create significant procedural issues at this stage when we are trying to conclude and not prolong the proceedings. We should avoid a "rush to judgment" on this final and important water quality issue. Accordingly, I would respectfully request that the proceedings noticed for November 19, 1998 be rescheduled to a different date, that the Board's Administrator contact both Mr. Barhight and myself to work out a

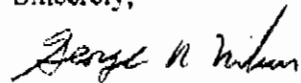


PIPER & MARBURY  
LLP

County Board of Appeals of Baltimore County  
November 17, 1998  
Page 3

mutually satisfactory date, and that the Board (and counsel) first address the question of whether written briefs, oral argument and/or additional evidence will be received by the Board.

Sincerely,



George A. Nilson

GAN/vdk

cc: G. Scott Barhight, Esquire  
People's Counsel for Baltimore County  
Jack Dillon, Executive Director  
Valleys Planning Council

PIPER & MARBURY  
LLP

County Board of Appeals of Baltimore County  
November 17, 1998  
Page 4

bcc: Mr. Dorsey Brown

Balt1:181631 1 11/17/98  
14577-3

## Facsimile Transmission Sheet

|                                                                                                                             |                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| PIPER & MARBURY<br>L.L.P.<br>36 SOUTH CHARLES STREET<br>BALTIMORE, MARYLAND 21201-3018<br>410-539-2530<br>FAX: 410-539-0489 |                                                                               |
| To:                                                                                                                         | Kathleen C. Bianco, Administrator/County Board of Appeals of Baltimore County |
| Fax:                                                                                                                        | (410) 887-3182                                                                |
| From:                                                                                                                       | George A. Nilson                                                              |
| Phone:                                                                                                                      | 410/576-1769                                                                  |
| Fax:                                                                                                                        | 410/576-2276                                                                  |
| Client/Matter No.                                                                                                           | 14577-3                                                                       |
| Date:                                                                                                                       | November 17, 1998                                                             |
| Number of Pages (including fax sheet):                                                                                      | -4-                                                                           |

11/18/98  
T/c to G. Nilson -  
L.M. - to go on  
as scheduled.  
T/c w/  
Barthright -  
same as  
above.

Original ☐ will / ☒ will not follow.

11/18/98 - Visit by J. Dillon -  
Addressed Bal will go forward  
on 11/19  
as  
scheduled.  
K.

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Signature \_\_\_\_\_

## Comments:

cc: G. Scott Barnhight, Esquire / (410) 832-2015  
 People's Counsel for Baltimore County / (410) 887-3182  
 Jack Dillon, Executive Director, Valleys Planning Council / (410) 296-5409

|                   |               |         |              |            |   |
|-------------------|---------------|---------|--------------|------------|---|
| Post-It® Fax Note | 7671          | Date    | 11/18        | # of pages | 5 |
| To                | Kris Hewanski | From    | Kathi Bianco |            |   |
| Co / Dept         |               | Co.     |              |            |   |
| Phone #           |               | Phone # | 410-887-3180 |            |   |
| Fax #             | 410 296 8016  | Fax #   |              |            |   |

98 NOV 17 PM 3:16

RECEIVED  
COUNTY BOARD OF APPEALS

**THE VALLEYS  
PLANNING COUNCIL, INC.**

212 Washington Avenue  
P.O. Box 5402  
Towson, Maryland 21285-5402  
410-337-6877  
410-296-5409 (FAX)

Re: Toll House,  
95-306-X

June 15, 1995

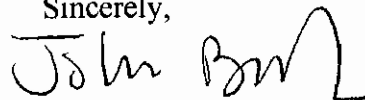
Mr. Lawrence Schmidt  
Zoning Commissioner,  
Baltimore County  
Old Court House  
Towson, MD 21204

Dear Mr. Schmidt:

Macy Nelson has asked me to give you this list of the contiguous landowners whom he represents in the Toll House Special Exception, in addition to the Valleys Planning Council. These landowners were previously listed in Mr. Nelson's opening statement. All are in Cockeysville, 21030. An \* indicates that they testified at the hearings.

|                                       |                        |
|---------------------------------------|------------------------|
| Mrs. Ingrid Baramki                   | 806 Western Run Road   |
| Mrs. Marguerite Hastings              | 812 Western Run Road * |
| Mr. and Mrs. Robert Hastings          | 818 Western Run Road   |
| Mr. Robert Lyston                     | 700 Western Run Road * |
| Robert and Shirley Mand               | 718 Western Run Road   |
| Dr. and Mrs. Constantine Chilimindris | 1003 Shawan Road       |

Sincerely,

  
John Bernstein

THE VALLEYS  
PLANNING COUNCIL, INC.

212 Washington Avenue  
P.O. Box 5402  
Towson, Maryland 21285-5402  
410-337-6877  
410-296-5409 (FAX)

June 15

Re Tollhouse 95-308-X

Dear Mr. Schmidt:

This map is the replacement, as  
agreed, for the framed map from OP2  
that was used in the hearings.

John Bernstein.

NB: the ag. preservation area is shaded,  
to match the other map. There is  
no significance to the variation in shading  
color.

J.B.

**THE VALLEYS  
PLANNING COUNCIL, INC.**

212 Washington Avenue  
P.O. Box 5402  
Towson, Maryland 21285-5402  
410-337-6877 JUL 31 1995  
410-296-5409 (FAX)

July 21, 1995

Dear Valleys Planning Council Neighbor:

The Zoning Commissioner has ruled on the petition for a Special Exception for a golf course at Hayfields. His decision, unfortunately, was in favor of the developer.

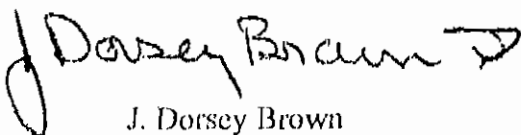
**This decision has already been appealed.** The Valleys Planning Council and our lawyers believe that there are strong and convincing grounds for turning down this Special Exception. We will aggressively pursue these issues, particularly well water, historic preservation, and environmental pollution, at length in the next series of hearings, which will take place in the fall.

**The courts (and even the county Board of Appeals) often reverse decisions of county officials.** Generally, these higher bodies interpret the law more stringently, and therefore are less accepting of problems in the developer's case. The Valleys Planning Council has a strong record of winning cases on appeal.

We all must keep up the will and the determination to see this process out. For 30 years, Hayfields has acted as a wall that has protected the Western Run and Worthington Valleys from intense development pressures. Once that wall is breached, it will be ten times harder to erect an equally strong one farther into the valleys.

**We must now ask you to contribute to this project.** The VPC has already spend over \$20,000 on legal expenses; most of this has come from a small minority of committed neighbors. Hayfields is certainly the most important single property in the area, and this is one of the most critical battles we have ever faced. It is now time to ask for help from a wider circle of supporters. We hope you will contribute generously to our "Hayfields Special Project". Please forward a tax deductible donation, payable to The Valleys Planning Council, marked for the Hayfields Special Project, in the enclosed envelope. The financial sacrifices to protect our quality of life, our homes, and our property, is essential, and an excellent investment in our future.

Sincerely,

  
J. Dorsey Brown

  
Richard B. Buck



13909 Greencroft Lane  
Cockeysville, Maryland 21030

Community Association, Inc.

---

This affidavit is to certify that Lester R. Conley, residing at 14013 Greencroft Lane, Hunt Valley, Maryland is the now current president of the Greencroft Community Association Board of Directors and that Lester R. Conley has held this position since February 8, 1995.

GREENCROFT COMMUNITY ASSOCIATION  
BOARD OF DIRECTORS

Lester R. Conley 4/29/96  
Lester R. Conley Date  
President

Christopher P. Downs 4/20/96  
Christopher P. Downs Date  
Secretary

**Community Association, Inc.**

A resolution was adopted by the Greencroft Community Association Board of Directors on April 11, 1995 unanimously opposing the proposed development of a golf course on the neighboring Hayfields property. The unanimous concern was for the negative impact on each resident's well water supply and potential contamination.

Lester R. Conley 4/20/96  
Lester R. Conley Date  
President

Christopher P. Downs 4/20/96  
Christopher P. Downs Date  
Secretary





13909 Greencroft Lane  
Cockeysville, Maryland 21030

Community Association, Inc.

---

Resolved on Wednesday, February 21, 1996 at the annual meeting of the Greencroft Community Association that the Board of Directors proceed with expressing the community's opposition to the proposed development of a golf course on the neighboring Hayfields property. The community's unanimous concern was for the negative impact on each resident's well water supply and potential contamination.

GREENCROFT COMMUNITY ASSOCIATION  
BOARD OF DIRECTORS

Lester R. Conley 4/20/96

Lester R. Conley  
President

Date

Christopher P. Downs 4/20/96

Christopher P. Downs  
Secretary

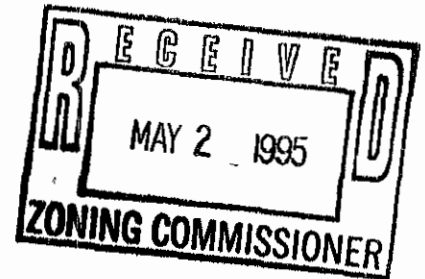
Date



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BALTIMORE, MARYLAND 21237

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410-325-2121



4.27.95

Dear Commissioner,

In reference to the Hayfields case 95-308X. I approve of the proposed golf course for the Hayfields. As a small businessman who lives in the heart of Western Run Vally the golf course will be a welcome addition. Presently there are not enough golf courses in the county. This is evidenced by the fact that every Saturday morning, during the spring and summer you can witness car loads of golfers heading up I-83 North to golf and spend there money in Lancaster Pa. The golf course will cause a minimal amount of extra traffic. (Hunt Valley Golf Course does not burden Paper Mill Road). It will ease the cynch on crowded courses, it will add substantially to the tax base. It will increase employment and will beautify and preserve the Hayfields for generations to come.

As long as the environmental issues can be reconciled, I am 100% in favor of the golf course.

Sincerely,

*Daniel Paszkiewicz*

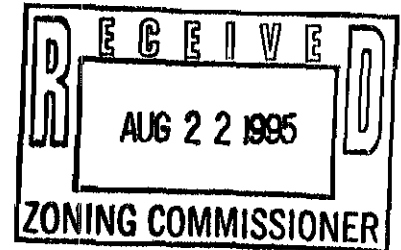
Daniel Paszkiewicz

*Letter of  
Support*

A.M.S. de Lange  
"Sagamore Forest"  
5 Trighton Court  
Reisterstown, MD 21136 U.S.A.

July 31, 1995

Zoning Commission of Baltimore County  
Room 112, 400 Washington Avenue  
Towson, MD 21204



ATTN: Lawrence E. Schmidt  
Zoning Commissioner

RE: Hayfields #95-308X

Dear Mr. Schmidt:

The placement of a golf course on the Hayfields Farm is WRONG! Totally WRONG!!

There are more important matters than making a few dollars. Each infringement into the Valley will lead to more development and destruction of this last remaining beautiful and unspoiled area.

This Valley is unique to the entire United States! All other cities have allowed their suburban areas to be developed. The northern York Road area is typical. The desecration along York Road also began with a few "not so bad" exceptions, and look at it now. It reflects the failure of planning and the success of greed and indifference.

What a joy and thoroughly wonderful place York Road *could have been* if prior Commissioners would have exercised thoughtful and long-range needs instead of helter-skelter spot zoning. Now the west side of I-983 is being attacked by the same careless and tasteless developers and greedy opportunists who, with the assistance of zoning officials, methodically and for all time have decimated the York Road corridor.

Zoning Commissioner of Baltimore County

July 31, 1995

Page Two

The only thing that can and will happen to York Road is the gradual decay - just like it is happening along other older roadways. And, in your considered opinion, we should replicate this idiotic process in the Valley? Beginning with the Hayfields?

Greed, avarice and desecration have always propelled the development machine; it does not have to continue. The legacy of our failure to preserve the Valley can still be reversed.

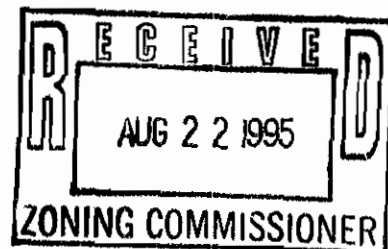
I URGE YOU TO RECONSIDER YOUR INDIFFERENT AND FLAWED DECISION. BE REMEMBERED AT YOUR FINAL HOUR AS THE DEFENDER OF PRICELESS BEAUTY, NOT THE EXPEDITOR OF GARISH DEVELOPMENTS, GREED, AND THE DESTRUCTION OF THE LAST UNSPOILED VALLEY.

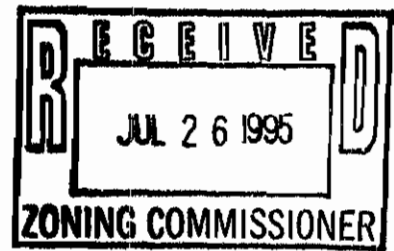
Very truly yours,

*Tony de Lange*

Tony de Lange

cc: C. A. Dutch Ruppertsberger  
John Bernstein, V.P.C.





Mr. Lawrence L. Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Towson, M.D. 21204

Dear Mr. Schmidt,

I am writing to you in reference to the Hayfields Development. I think that Mr. Mangionne's idea is a very good use of the land. I think that a golf course would be good for the area. I also believe that there would be less opposition from the surrounding communities if all the communities bordering the Hayfields should get reduced, or free membership. Living near to the Hayfields I have concerns about the water. First, will my community's water table drop, and second, will new pollutants be introduced into the water and the rest of the environment? If you can find proof that neither of these is a problem I will be behind the idea 100%.

Sincerely,

Chris Vachetta

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME  
MB Mangione  
G E. GARRICK, DMM  
WES GUCKERT TRAFFIC GROUP  
PHILIP A. VOELKER  
LOUIS MANGIONE  
BRIAN AULT  
JOHN MANGIONE

ADDRESS  
2514 Proctor Lane  
200 E. Penn Ave  
40 W. CHESAPEAKE AVE. SUITE 600  
E-1 204  
8640 HENNING RD 21236  
ONE BUCKLEY CT. 21286  
3821 FARRAGUT AVE  
1205 YORK RD. Md. 21093  
KESING  
MD  
2089



5/11/95

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

JOHN MANGIONE

1205 YORK RD. 21093

LOUIS MANGIONE

ONE BUCKLEY CT. TOWSON MD. 21286



Printed with Soybean Ink  
on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

5/11/95

NAME

ADDRESS

SUSAN CATLING

815 MALVERN AVE 21204

RICK ZAPP

10 BELMULLET CT, #302 TIMONUM 21093

JARDA M. WARD

932 WESTERN RUN RD 21030

FLORENCE N. SAVIN

809 WESTERN RUN RD 21030

MARGUERITE T. HASTINGS

2102 WESTERN RUN RD 21030

Victoria Woodward

5126 Trenton Mill Rd 21155

CHRISTOPHER P. DOWNS

7 CLIPPING TREE LANE 21030

Julie Colman

16301 Trenton Church Rd

Richard Buck

11279 Kunging Ave - Luth. 21093

Dr. Richard W. McQuaid

1501 Harris Mill Rd. Parkton 21120

Gloria McQuaid

1501 Harris Mill Rd. Parkton 21120

Mary B. CRAINES

3423 BLACK ROCK RD 21138

Kristen Forsyth

The Valley's Planning Council



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

BARBARA M. WARD

932 WESTERN RUN RD. 21030

RICHARD BUCK

11219 GREENSPRING AVE 21093

VICTORIA WOODWARD

5126 Trenton Mill Rd 21117

MARGARET S. HASTINGS

812 WESTERN RUN RD 21030

Shirley A. MAND

704 Western Run Rd 21030

RICHARD ZAPP

10 BELMULLET CT, #302 Timonium 21093

Florence N SAVIN

809 WESTERN RUN RD. 21030

VICTORIA REED HURKO

2 WESTCROFT COURT 21030

KATHARINE PATTERSON

1800 WESTERN RUN RD 21023

Amy McGUIRK

1120 Western Run Rd Butler 21043

Payton S. Cochran Jr

3542 Butler Rd, GLYNDEN 21071

CHRISTINE W. BROWN

Box 19 Butler, MD. 21023

Latisha Zempel

3717 Butler Rd. Glyndon 21071

Robert Sellers

4125 Worthington Ave Reisterstown 21136

John Bernick

Valleys Planning Council

Suzanne McShane

13781 Fiddle Rd. Catonsville 21032

JULIE COLEMAN

16301 Tranter Church Rd Upper Meriden 21084

T. Courtenay Jenkins

1720 Broadway Rd. Lutherville 21093

# Protestant sign up sheet

5/24/95

Norman M. Savin 809 Western Run Rd Cockeysville 21030  
RICK ZAPF 10 BELMULLET CT, #302 TIMONIU, MD. 21093 252-4265

Darlene M. Wark 932 Western Run Rd. 21030-771-434

Lynn Garcia 9 Clipping Tree Ln. 21030 584-2665 Greencraft

LESTER CONLEY 14013 Greencroft Lane 584-265

AD Arcy Byrnes 409 Gittings Ave 21212 584-2659

→ 532-8855

Sand  
copy

Victoria Woodward PO Box 58 Upperco MD 239-9353

Special Exception for a golf course at Hayfields  
Zoning Commissioner Hearing  
5/11/95

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_

|                        |                                        |          |
|------------------------|----------------------------------------|----------|
| RICK ZARF              | 10 BELMULLET CT., #302 Timonium, 21093 | 252-4265 |
| BARBARA M. WARD        | 932 Western Run Rd. 21030              | 771-4347 |
| Florence N Savin       | 809 Western Run Rd 21030               | 584-2923 |
| MARGUERITE J. HASTINGS | 812 Western Run Rd 21030               | 584-2550 |
| CHRISTOPHER P. DOWNS   | 7 Clipping Tree Lane 21030             | 285-5660 |
| K. Webster Bosley      | PO Box 585 Sparks 21152                | 771-4316 |
| Victoria Woodward      | Box 58 Upperco 21155                   | 239-6480 |
| Dr. Richard W. McQuaid | 1501 Harris Mill Rd Parkton 21120      | 343-108  |
| Gloria McQuaid         | 1501 Harris Mill Rd. Parkton 21120     | 343-108  |
| Julia F. Colhoun       | 16301 Trenton Church Rd. Upperco 21155 | 239-82   |
| MARY B GANER           | 3423 BLACK ROCK Feestersh...           | 322      |

ZONING COMMISSIONER - WITNESS FORM

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

REPRESENTING: \_\_\_\_\_

SUPPORTING: PETITIONER \_\_\_\_\_ PROTESTANT \_\_\_\_\_

TESTIMONY: EXHIBITS

Pet #1 - Aerial photo of site + area  
Prot #1 - Borley entry appearance

Pet #2 - Site Constraints map  
✓ Prot No 2 - Borley Motion to Deny

7/95 Pet No 3 - Hayfields Manor Golf Club  
✓ Prot No 3 - Map # 3

Pet No 4 - Site plan of current revisions 5/95  
✓ Prot No 4 - Petitions

Pet No 5 - Clubhouse Campus  
Prot No 5 - Hoblitzell's statement

Pet 6A-6B-6C  
Club House (MANSION)  
✓ Prot No 6 - ~~Prot~~ Nomination to local commission  
Prot No 7 - 1967 of Memo to Hardell  
6/6/95

Pet 7A-7B-7C - Mens Hall (Pro Shop)

✓ Pet No 8 - Master Plan for Golf Course

Pet.

No 9 - Traffic  
impact analysis  
by Wes Hucker

No 10 - Rec & Parks  
A plan for the  
1990's

No 11 How  
Reserve.

Pet 12 - A to "O" -  
How maps

Pet 13 - Environmental  
impact Report

Pet 14 - Golf Course  
Management Plan -

Pet No 15 - letter  
of 3/13/79  
on back of  
Prod No 8

Pet No 16

Prod No 8 - Map  
Natl Register

Prod No 9 - Nomination  
form for  
Natl Registered  
of Historic  
Places

Prod No 10 -  
Dr Ball's C.V.

Prod. No 11 - allow  
Nelson to submit  
small map after  
hearing  
(to be submitted)

Prod No 12 -

See of  
Interior's Stds

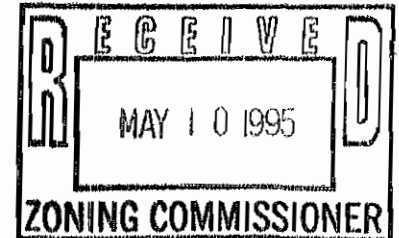


C.A. Dutch Ruppersberger, III  
Baltimore County Executive

Executive Office  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2450  
Fax: (410) 887-5781

May 1, 1995

Mr. & Mrs. Donald B. Davies  
14022 Greencroft Lane  
Hunt Valley, MD 21030



Dear Mr. & Mrs. Davies:

Thank you for your letters dated April 20, 1995, regarding the proposed development at Hayfields. As you are aware, the property owner has petitioned for (1) a rezoning to allow more residential houses on the property and (2) a special exception for a golf course.

The County has not supported the petition for a rezoning of the property. The Planning Board on February 16, 1995, recommended against the rezoning and the petition is scheduled for a hearing before the Board of Appeals on June 1, 6, 14, and 20, 1995.

The special exception for a golf course is being handled separately outside the rezoning process. Golf courses are permitted within the RC 2 and RC 4 zones, as well as the agriculture preservation areas delineated in the Master Plan. Hearings have been scheduled for May 9, 10, and 11, 1995, before the Zoning Commissioner. It will be incumbent upon the Zoning Commissioner to determine the appropriateness of the golf course at this location.

I appreciate the time you took to inform me of your concerns.

Sincerely,

C. A. Dutch Ruppersberger  
County Executive

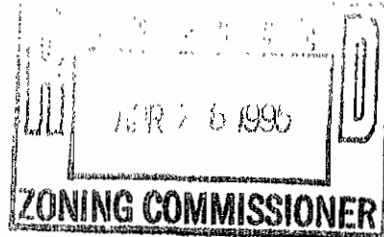
CADR:bjs

bc: Merreen E. Kelly, Administrative Officer  
Robert R. Staab, Chief of Operating Policies  
John F. Weber, III, Director, Recreation & Parks  
Lawrence E. Schmidt, Zoning Commissioner  
William T. Hackett, Board of Appeals  
Arnold F. (Pat) Keller, III, Director, Office of Planning

14022 Greencroft Lane  
Hunt Valley, Maryland 21030  
April 20, 1995

Zoning Commissioner of Baltimore County  
Room 112, 400 Washington Avenue  
Towson, Maryland 21204

HAYFIELDS CASE #95-308-X



I would like to state my strong opposition to a golf course being constructed on the Hayfields property. This is an historic farm, one that should continue to be agriculturally productive, continue to be a source of historic pride to Baltimore County and remain the line at which agricultural preservation begins.

Unfortunately, in this area, we have already seen a "farm" be rezoned from agricultural use to house a "significant structure" of religious worship. The County cannot keep destroying these agricultural properties through rezoning.

This area of Baltimore County is one of the most bucolic and beautiful - it should remain that way. We cannot let our drinking water be contaminated by pesticides which a golf course would certainly make use of. Shawan Road is already heavily traveled; we do not need more congestion added. The traffic will be even worse when Oregon Ridge is holding celebrations and the roads are closed and traffic rerouted.

In these times of constant change, let something remain constant.

Continue to preserve Hayfields as a beautiful, historic and productive farm.

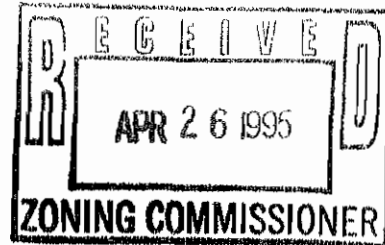
  
Judith A. and Donald B. Davies

cc: C.A. Dutch Ruppersberger

Mr & Mrs John L. McShane  
13731 Falls Road  
Cockeysville, MD  
21030

April 18, 1995

Zoning Commissioner of Baltimore County  
Room 112, 400 Washington Ave  
Towson, MD 21204



RE: Hayfields, Case #95-308-X

Sir:

As residents of the immediate area of Hayfields, we strongly oppose any rezoning to allow more development. The County has rejected the last 5 rezoning requests and should not grant one now. The proposed rezoning is not more protective of the environment than the existing zoning. The existing line between RC-4 and RC-2 is drawn in the right place, according to the county's own studies.

The proposed use of this farm as a golf course is particularly disturbing to us as we draw our water from this aquifer and do not like the idea of the herbicides and pesticides, in the quantities necessary for golf course maintenance, seeping into it. Also, the amount of water that such usage will require will drastically lower the existing water table, much to the detriment of the wells in the area.

We thank you for your attention in this matter.

Sincerely:

A handwritten signature in cursive script, appearing to read "John L. McShane".

John L. McShane

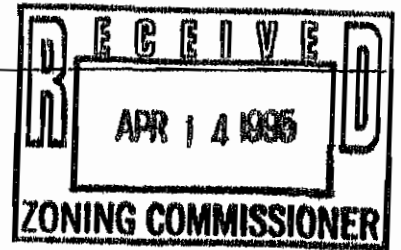
cc: C A Ruppertsberger





13909 Greencroft Lane  
Cockeysville, Maryland 21030

Community Association, Inc.



April 12, 1995

Zoning Commissioner of Baltimore County  
Old County Court House  
400 Washington Avenue  
Towson, MD 21204

RE: Hayfields Golf Course, Case #95-308-X

Gentlemen:

I am writing this letter as the Chairman of the Greencroft Community Association.

I wish to express the strong opposition of the Greencroft Community Association to the proposed golf course. We believe that the placement of the golf course over the Cockeysville Marble aquifer on the valley floor, a geologic formation that has been characterized by the County as "uniquely vulnerable to groundwater contamination", is environmentally foolhardy at best. Furthermore, it violates 30 years of County land planning tradition: the County has worked hard for decades to keep potentially polluting land uses off these sensitive valley floors, specifically so that the aquifer may be preserved.

We are further concerned about the possible effects of immense water withdrawals for irrigation on neighboring wells. At Caves Valley, for example, the irrigation requirements may approach 300,000 gal/day under certain conditions. At Greencroft we are in an area of relatively poor and inconsistent well yields, and are likely to suffer ill effects from such large water withdrawals at a site only 1000 feet distant. Further, should the aquifer become polluted, we would lose our only recourse in the event of widespread well failures.

It is the view of myself, as a businessman, and of the Greencroft Community Association, that the proposed golf course would be especially detrimental at Hayfields, and should not be approved.

Sincerely,

Lester R. Conley  
Chairman

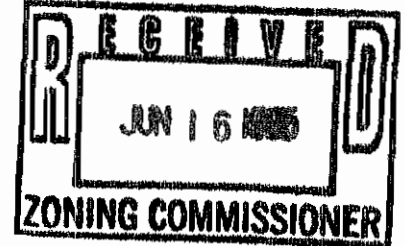
LRC/kko

# William Stump

13306 Beaver Dam Road, Cockeysville MD 21030-1500  
410-584-7788 office; 410-584-2587 house  
Fax also 410-584-7788, non-dedicated line

June 14 1995

The Zoning Commissioner  
Baltimore County  
Room 112, 400 Washington Avenue  
Towson MD 21204



Re: Hayfields: No. 95-308-X

Sir:

As a property owner less than half a mile south of the proposed Hayfields golf course and housing development, I am deeply concerned about the golf course's environmental impact on the area. A major concern is water--of which a golf course uses huge amounts. One assumes, because no public water lines come across I-83, that the golf course would need well water, thus lowering the tables which, I maintain, already are stressed.

How would this golf course serve the public interest? It is to be a private facility, thus not available to countains unless they pay what certainly will be substantial fees.

The county's Growth Management Plan does not permit inordinate heavy use of land west of I-83. The county should stick with that plan, and once again rebuff schemes for development which certainly would change the area--and open up the entire west side of I-83 to heavy development.

Very truly yours

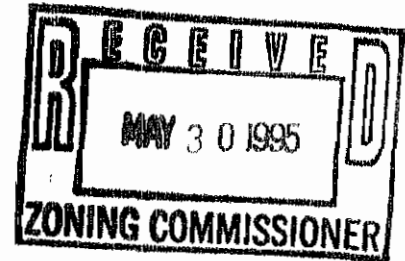
William Stump

ws

cc: C.A. Dutch Ruppertsberger, County Executive

May 4, 1995

Mr. Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
Room 112  
400 Washington Ave  
Towson, MD 21204



Dear Mr. Schmidt:

As a resident of the Western Run area and a tax payer, I am vehemently opposed to the rezoning of Hayfields, and a Special Exception, that would allow a golf course on this property.

If Hayfields is developed into a golf course, we would be losing one of Baltimore County's most productive and historical farms. The proposed golf course would also breach the line of the agricultural preservation area that has been held at I-83 for 30 years. The character and charm of the scenic Western Run area would be severely blemished by this callous disregard of the agricultural history of this area. Keep the suburban sprawl out.

As a neighbor of the proposed golf course I am also concerned that the intense application of pesticides and fertilizers typical of golf courses would damage the extremely vulnerable Cockeysville Marble aquifer. We understand that the State and County studies have shown this aquifer at risk for ground water contamination. As a taxpayer, I am worried about the potential massive costs to the county should contamination occur.

There is no good reason to grant rezoning to allow more development at Hayfields. The County has set the precedent by rejecting the last 5 rezoning requests and should not grant one now. The quiet country charm of another area of Baltimore County is at risk.

Please do the right thing for the quality of life of all Baltimore County citizens, and oppose any rezoning changes or Special Exception for a golf course.

Sincerely,

*E. Holly Hall*

## Petition in Opposition to the Proposed Rezoning & Golf Course at Hayfields

Hayfields farm, one of the most productive farms in Baltimore County, consists of prime and productive soils and commands the entrance to the Western Run National Register Historic District and the Baltimore County Master Plan designated agricultural conservation area. Its location along a Master Plan designated scenic route confirms its aesthetic contribution to the neighborhood.

The approval of the rezoning request and the Special Exception request for a golf course at Hayfields would discount the RC2 agricultural zoning and the Master Plan designated agricultural conservation area. Approval would send a clear message to farmers throughout Baltimore County that Baltimore County did not plan to protect agriculture in the future, setting a precedent for similar requests.

Finally, the commercialization of the Shawan Road corridor will inevitably renew discussions about public water and sewer in the valleys and a cross county road through the valleys. The immediate concerns regarding increased traffic and environmental degradation are valid in their own right and ominous in a long range scope.

I strongly oppose the rezoning and special exception requests as Hayfields and urge Baltimore County agencies and officials to deny the requests.

| NAME               | ADDRESS            | PHONE          |
|--------------------|--------------------|----------------|
| John McShane       | 12912 Gent Rd      | 21136 560-2716 |
| James V. [unclear] | 13003 Talisman Rd. | 21136 252-0487 |
| James C. MacShane  | 13003 Talisman Rd. | 21136 252-0487 |
| Joy R. Wood        | 13010 Gent Rd      | 561-2318       |

To Whom It May Concern



I am enclosing 202 signatures by people who join me in opposing the loss of farmland at Hayfields if 50 houses and golf course are developed.

Some are people who live and/or work hereabouts who love and earn a living from the land either farming or horse training. Their livelihoods would be threatened if Hayfields is rezoned. The valley could fall like a house of cards.

Some are bikers who collect by the hundreds at Oregon Ridge and Hunt Valley to enjoy some scenic roads. The route starts on Western Run.

We are a privately maintained public park!

The most poignant note by a black biker (condo dweller) concerning the land:

"they" take it and leave the "nest" to us. The people who want this area to be maintained want the beauty it adds to their lives.

My personal passion is the farmland itself. I want the tillable land saved for food crops. 69% of Baltimore County farmland has been lost since World War II (1945). Tillable land is in the hands of a few operators who invest in the machinery landowners can not afford, and who must till 1000s of acres to profit. These acres they lease. The breadbasket value of Mr. Mangione's tillable land (c. 200 acres of the 400) is over \$1M. Grain exports help our balance of payments.

Isn't food more important than elitist golf?

Respectfully submitted  
-Tom W. Bodezell

May 23, 1995

Betty - I came by to drop this off for the Hayfields file + couldn't find anyone to give it to. Please

Call me (337-6877) if you have any questions.

Thanks!

Kristen Forsyth  
Valley Planning Council

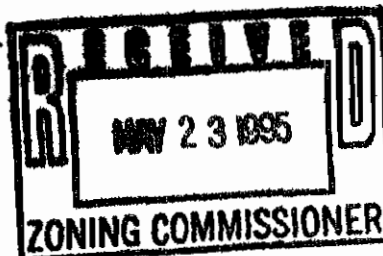
May 9, 1995

Barbara S. Waters  
Alice S. Lumpkin, Esq.  
2050 Geist Road  
Glyndon, MD 21071

Mr. William T. Hackett  
County Board Of Appeals  
Room 49, 400 Washington Ave.  
Towson, MD 21204  
RE: Hayfields #CR-95-138

Zoning Commissioner of  
Baltimore County  
Room 112, 400 Washington  
Towson, MD 21204  
RE: Hayfields #95-308-X

C. A. Dutch Ruppertsberger  
County Executive  
400 Washington Ave.  
Towson, MD 21204



Dear Sirs:

Enclosed with this memo is a petition of signatures collected from neighbors and friends on Geist Road in Baltimore County. Geist Road is located within a few miles of the historic Hayfields Farm. Every individual I spoke with is very concerned about the proposal to rezone Hayfields and the significant impact that development of a golf course will undoubtedly have upon the area.

Golf courses are environmentally detrimental. They require extensive application of pesticides, herbicides and fertilizers to maintain their artificially created looks. The application of these substances often result in contamination of groundwater. Contamination is significantly more likely as a result of the underlying and adjacent geology. Cockeysville Marble is highly susceptible to groundwater contamination and migration. In addition, golf courses require intensive use of water which results in aquifer depletion. The construction of a golf course will require changes in grade and disturbance of the topsoil which results in erosion and sedimentation. It will remove an area of prime agricultural soils from agricultural use. Expected traffic impacts will also be extensive and is likely to require the placement of a street light. Finally, the proposed golf course will severely impact the historic farm complex whose importance has been recognized by the state and County through listing on the National Register of Historic Places and identification in the County Plan. We as neighbors to Hayfields strongly oppose granting a Special Exception for the development of a golf course.

TOLL HOUSE, INC. - Hayfields \* BEFORE THE

NW/s Western Run Road & \* COUNTY BOARD OF APPEALS

Shawan Road @ its intersection \* OF BALTIMORE COUNTY

with I-83 \* Case No. 95-308-X

(301 Western Run Road) \* January 11, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County at  
the Old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., January 11, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

## VOLUME II

TOLL HOUSE, INC./HAYFIELDS \* BEFORE THE COUNTY  
NW/s Western Run Road & \* BOARD OF APPEALS  
Shawan Road at Intersection \* FOR BALTIMORE COUNTY  
With I-83 \* Case No. 95-308-X  
(301 Western Run Road) \* January 18, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County  
at 400 Washington Avenue, Towson, Maryland 21204, at  
10:00 a.m. on January 18, 1996.

\* \* \* \* \*

BEFORE: ROBERT O. SCHEUTZ, Chairman  
LAWRENCE M. STAHL  
KRISTINE K. HOWANSKI

## APPEARANCES:

G. SCOTT BARHIGHT, Esquire  
On behalf of Petitioner

GEORGE A. NILSON, Esquire  
On behalf of Protestants

MAX A. ZIMMERMAN, Esquire  
People's Counsel

KENNETH T. BOSLEY, Esquire  
Pro Se

Reported by: Heather R. McLaughlin



TOLL HOUSE, INC. - Hayfields \* BEFORE THE  
NW/s Western Run Road & \* COUNTY BOARD OF APPEALS  
Shawan Road @ its intersection \* OF BALTIMORE COUNTY  
with I-83 \* Case No. 95-308-X  
(301 Western Run Road) \* January 24, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County at  
the Old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., January 24, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

TOLL HOUSE, INC. - Hayfields \* BEFORE THE  
NW/s Western Run Road & \* COUNTY BOARD OF APPEALS  
Shawen Road @ its intersection \* OF BALTIMORE COUNTY  
with I-83 \* Case No. 95-308-X  
(301 Western Run Road) \* January 25, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County at  
the old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., January 25, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

TOLL HOUSE, INC. - Hayfields \* BEFORE THE

NW/4 Western Run Road & \* COUNTY BOARD OF APPEALS

Shawan Road @ its intersection \* OF BALTIMORE COUNTY

With I-83 \* Case No. 95-308-X

(301 Western Run Road) \* February 9, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing

Before the County Board of Appeals of Baltimore County at

the Old Courthouse, 400 Washington Avenue, Towson,

Maryland 21204 at 10 o'clock a.m., February 9, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

TOLL HOUSE ROAD - Hayfields \* BEFORE THE

NW/8 Western Run Road \* COUNTY BOARD OF APPEALS

Shawen Road intersection \* OF BALTIMORE COUNTY

with I-83 \* Case No. 95-308-X

(301 Western Run Road) \* February 15, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County at  
the Old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., February 15, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

TOLL HOUSE, INC. - Hayfields \* BEFORE THE

NW/s Western Run Road & \* COUNTY BOARD OF APPEALS

Shawan Road @ its intersection \* OF BALTIMORE COUNTY

with I-83 \* Case No. 95-308-X

(301 Western Run Road) \* April 16, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, 400 Washington Avenue, Towson,

Maryland 21204 at 10 o'clock a.m., April 16, 1996.

\* \* \* \* \*

Reported by:

C.E. Peatt

TOLL HOUSE, INC. - Hayfields \* BEFORE THE  
NW/s Western Run Road & \* COUNTY BOARD OF APPEALS  
Shawen Road & its intersection \* OF BALTIMORE COUNTY  
with I-83 \* Case No. 95-308-X  
(301 Western Run Road) \* April 30, 1996

\* \* \* \* \*

The above-entitled matter came on for hearing  
before the County Board of Appeals of Baltimore County at  
the Old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., April 30, 1996.

\* \* \* \* \*

Reported by:

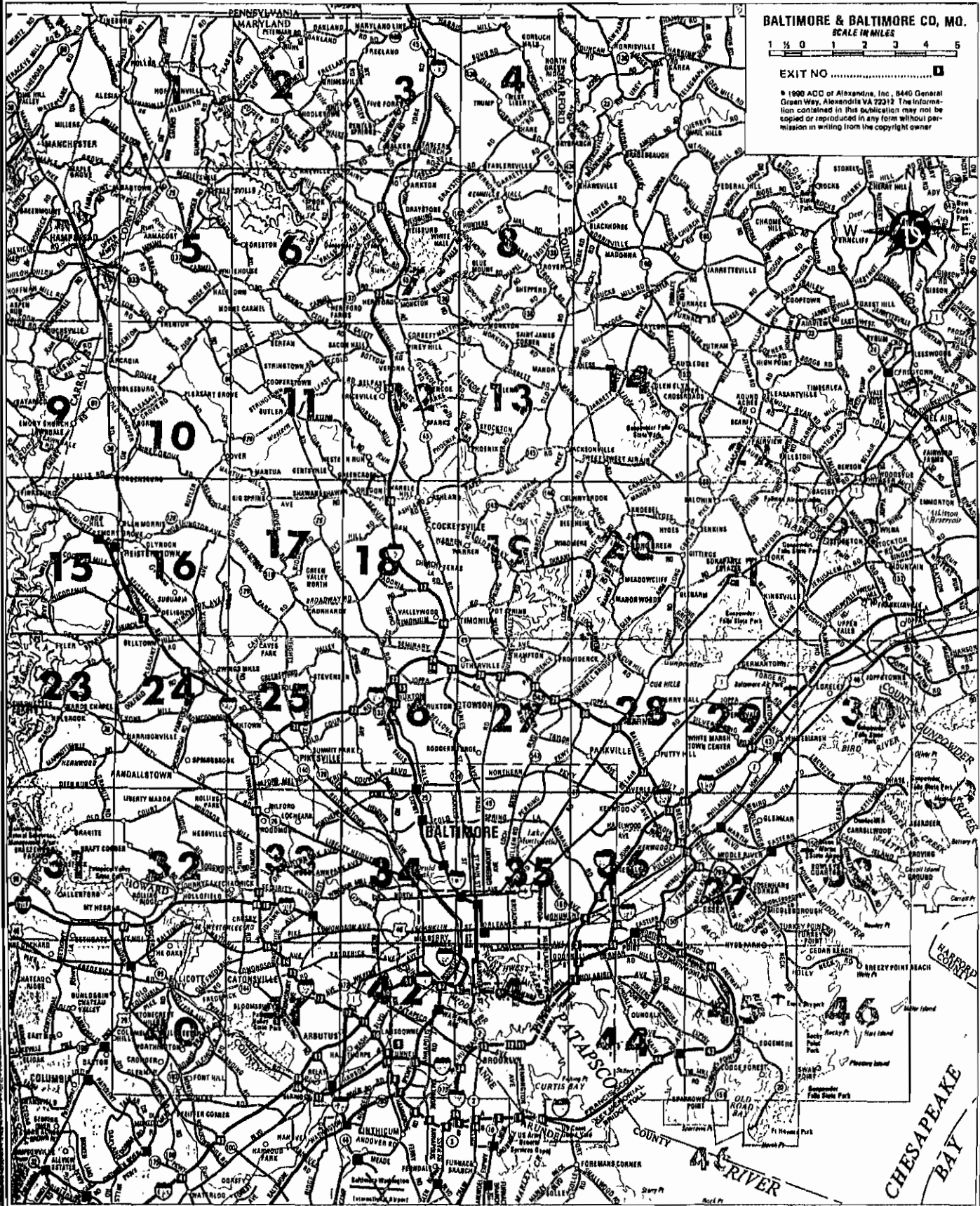
C.E. Peatt.

P.C.1

# BALTIMORE & BALTIMORE COUNTY, MD.

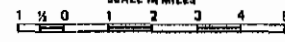
## INDEX TO MAP PAGES

For Additional Coverage See Inside Back Cover



BALTIMORE & BALTIMORE CO., MD.

SCALE IN MILES



EXIT NO. ....

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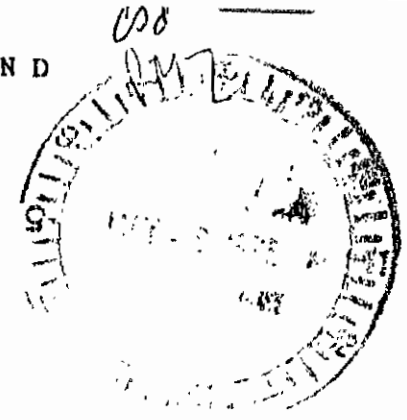
See page III for "MAP LEGEND"

See Centerfold for "DOWNTOWN BALTIMORE"

Stock No 20500

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE



TO: Arnold Jablon, Director  
Zoning Administration &  
Development Management

FROM: Pat Keller, Director  
Office of Planning and Zoning

DATE: May 4, 1995

SUBJECT: 301 Western Run Road

INFORMATION:

Item Number: 302 95-308-X  
Petitioner: Toll House, Inc.  
Property Size: 226.4 acres  
Zoning: RC-2 & RC-4  
Requested Action: Special Exception  
Hearing Date: / /

Based upon a review of the applicant's request for a special exception for a country club, staff offers the following:

Master Plan:

The subject site is located along three designated scenic routes. There are expansive views offering broad vistas across the site, focused views directed toward the historic structures, and views which are more enclosed by the topography along Western Run Road. The Northern Sector Development Policy Plan identifies a significant view along Western Run Road.

The Hayfields property is located at a "gateway" which marks the transition from the high-density urban character of Hunt Valley into the sweeping agricultural perspectives which are located west of Interstate 83.

Site Description:

The site is improved with the historic Hayfields mansion, associated outbuildings and active agricultural fields.

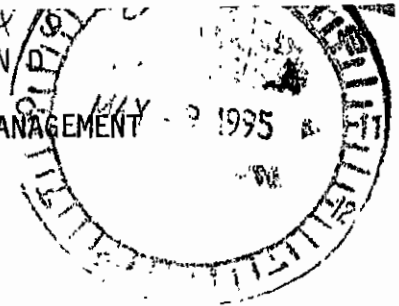
The Hayfields mansion and six of its outbuildings have been placed on the Baltimore County Landmarks List. The Hayfields farm is also an important part of the Western Run and Belfast Road District (a component of the National Register of Historic Places).



P.C. Ex. 3

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE



TO: Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management

FROM: J. Lawrence Pilson  
Development Coordinator, DEPRM

SUBJECT: Zoning Item #302 - Hayfields (Golf Course and Country Club)  
Hunt Valley, Maryland  
Zoning Advisory Committee Meeting of March 13, 1995

May 5, 1995

95-308-X

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Development of the property must comply with Regulations for Forest Conservation.

Development of the property must comply with DEPRM's golf course guidelines.

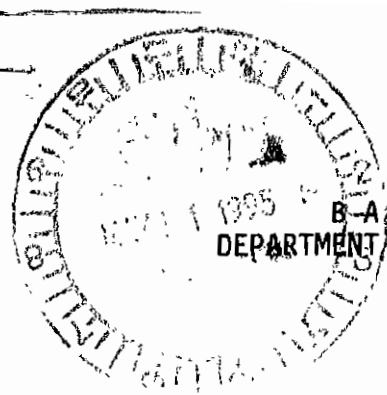
Submit a formal surface water monitoring protocol that outlines baseline and post-construction chemical, physical, and biological sampling.

A preliminary water quality concept plan for all tees and greens that includes locations and typical designs for the various methods to be used must be submitted.

A stream depletion analysis must be conducted, which demonstrates that stream and wetland hydrology will not be significantly altered by groundwater withdrawals for irrigation purposes.

Ground Water Management

The Hayfields special exception request is considered here relative to ground water issues.



*W/P*

P.C. Ex. 4

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management

May 10, 1995

FROM: J. Lawrence Pilson *JLP*  
Development Coordinator, DEPRM

SUBJECT: Zoning Item #95-308-X - Hayfields (Golf Course and Country Club)  
Zoning Advisory Committee Meeting of May 1, 1995

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Development of the property must comply with Regulations for Forest Conservation.

Typical designs and locations must be identified for the water quality management facilities for each tee and green.

A stream depletion analysis must be completed.

The development of the golf course must comply with the monitoring protocols outlined in DEPRM's golf course guidelines.

Also, refer to comments dated May 5, 1995, which still apply.

Ground Water Management

According to Maryland Department of Environment (MDE) design criteria, anticipated sewage flows for this facility will exceed 5,000 GPD. This being the case, in addition to comments dated May 5, 1995, the following comments also apply to this site.

Soil tests will be required to determine if soils are suitable to accommodate a design of an onsite sewage disposal system that will serve 200 people.

Prior to approval of the Development Plan, the Master Water and Sewer Plan must be amended to inventory the system under the multi-use category.

Maryland Department of the Environment will require a Groundwater Discharge Permit. Design restrictions for sewage disposal systems must be met and concurrent MDE approval of the development plan is required.

AFFIDAVIT

STATE OF MARYLAND  
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a  
duly elected member of the (Board of Directors) (Zoning Committee)  
of the Piney Run Preservation Association.

*MaryBee Gaines*  
per *John F. C. Ch*

Piney Run Preservation

ATTEST:

\_\_\_\_\_  
Association

*John F. C. Ch*  
\_\_\_\_\_  
Secretary

*MaryBee Gaines*  
\_\_\_\_\_  
President

DATE: Feb, 8, 1996

*People's Counsel Ex. B*



# National Agricultural Lands Study

The Protection of Farmland:  
A Reference Guidebook  
for State and Local Governments



# BALTIMORE COUNTY ZONING INFORMATION

Note: For detailed information, see Baltimore County Zoning Regulations, 1987 Edition, as amended.

| Zoning Terms and Classifications | Summary                                                                                                                                                                                                                                 |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Resource Conservation</b>     |                                                                                                                                                                                                                                         |
| R.C. 2 .....                     | Agricultural Protection                                                                                                                                                                                                                 |
| R.C. 3 .....                     | Deferral of Planning and Development                                                                                                                                                                                                    |
| R.C. 4 .....                     | Watershed Protection                                                                                                                                                                                                                    |
| R.C. 5 .....                     | Rural Residential                                                                                                                                                                                                                       |
| R.C. 20, R.C. 50.....            | Resource Conservation -- critical area                                                                                                                                                                                                  |
| <b>Density Residential</b>       |                                                                                                                                                                                                                                         |
| D.R. 1, 2, 3.5, 5.5, 10.5 & 16   | Density Residential -- for low, medium and high density urban residential areas. Numeral in each classification indicates maximum number of units permitted per acre. No standard minimum lot size is required except for small tracts. |
| Residential Transition Areas ... | Residential areas where dwelling type and lot size requirements must be compatible with existing residences or subdivision lots.                                                                                                        |
| <b>Elevator Apartment</b>        |                                                                                                                                                                                                                                         |
| R.A.E. 1 .....                   | Residence, Apartment, Elevator -- for mid-rise elevator apartment building development in designated town and community centers. Forty density units per acre.                                                                          |
| R.A.E. 2 .....                   | Residence, Apartment, Elevator -- for high-rise elevator apartment buildings within designated town centers only. Eighty density units per acre.                                                                                        |
| <b>Office</b>                    |                                                                                                                                                                                                                                         |
| R.O.A. ....                      | Residential Office -- (Class A) to accommodate house conversion to office buildings as of right.                                                                                                                                        |
| R.O. ....                        | Residential Office -- to accommodate house conversion to office buildings as of right; small conventional office buildings permitted by special exception.                                                                              |
| OR-1 .....                       | Office / Residential -- to accommodate development or limited enlargement of a single medium-size office building or residential development potential to D.R. 5.5.                                                                     |
| OR-2 .....                       | Office / Residential -- to provide for development of office buildings with supportive accessory commercial uses or residential development potential to D.R. 10.5.                                                                     |
| O-3 .....                        | Office Park Zone -- to provide a zone to be used exclusively for office development.                                                                                                                                                    |
| O.T. ....                        | Office and Technology -- to permit employment-intensive office development in combination with certain high technology and residential development.                                                                                     |
| S.E. ....                        | Service Employment -- to permit and encourage the development of offices, related business service uses and small, low impact, light industrial uses; stresses compatibility with residential uses.                                     |
| <b>Business</b>                  |                                                                                                                                                                                                                                         |
| R.C.C. ....                      | Resource Conservation -- Commercial                                                                                                                                                                                                     |
| C.B. ....                        | Community Business -- to provide for daily shopping and service needs of nearby residents through small businesses which do not generate large amounts of traffic; stresses compatibility with residential uses.                        |
| B.L.R. ....                      | Business Light Restricted -- to permit a range of retail and service uses; performance standards are required to protect adjacent communities.                                                                                          |
| B.L. ....                        | Business Local - small-scale commercial                                                                                                                                                                                                 |
| B.M. ....                        | Business Major - large-scale commercial                                                                                                                                                                                                 |
| B.R. ....                        | Business Roadside - the most permissive commercial classification                                                                                                                                                                       |
| B.M.M. ....                      | Business Maritime Marina -- is established to accommodate water-dependent facilities and associated uses at a scale in keeping with the surrounding residential community.                                                              |
| B.M.B. ....                      | Business Maritime Boatyard -- is established to accommodate water-dependent facilities and includes more intense uses than those permitted in the B.M.M. zone.                                                                          |
| <b>Manufacturing</b>             |                                                                                                                                                                                                                                         |
| M.R. ....                        | Manufacturing Restricted -- the most restrictive industrial classification.                                                                                                                                                             |
| M.L.R. ....                      | Manufacturing Light Restricted -- permits industrial plants and offices with convenient access to expressways to serve as industrial employment centers.                                                                                |
| M.L. ....                        | Manufacturing Light -- provides for light industrial uses such as assembly plants, processing, etc.                                                                                                                                     |
| M.H. ....                        | Manufacturing Heavy -- the most permissive industrial classification.                                                                                                                                                                   |

Districts -- to further the purposes of zones; they provide greater refinement in land use regulation.

|             |                            |           |                              |
|-------------|----------------------------|-----------|------------------------------|
| A.S. ....   | Automotive Service         | C.T. .... | Commercial, Town-Center Core |
| C.R. ....   | Commercial, Rural          | I.M. .... | Industrial, Major            |
| C.C.C. .... | Commercial, Community Core |           |                              |

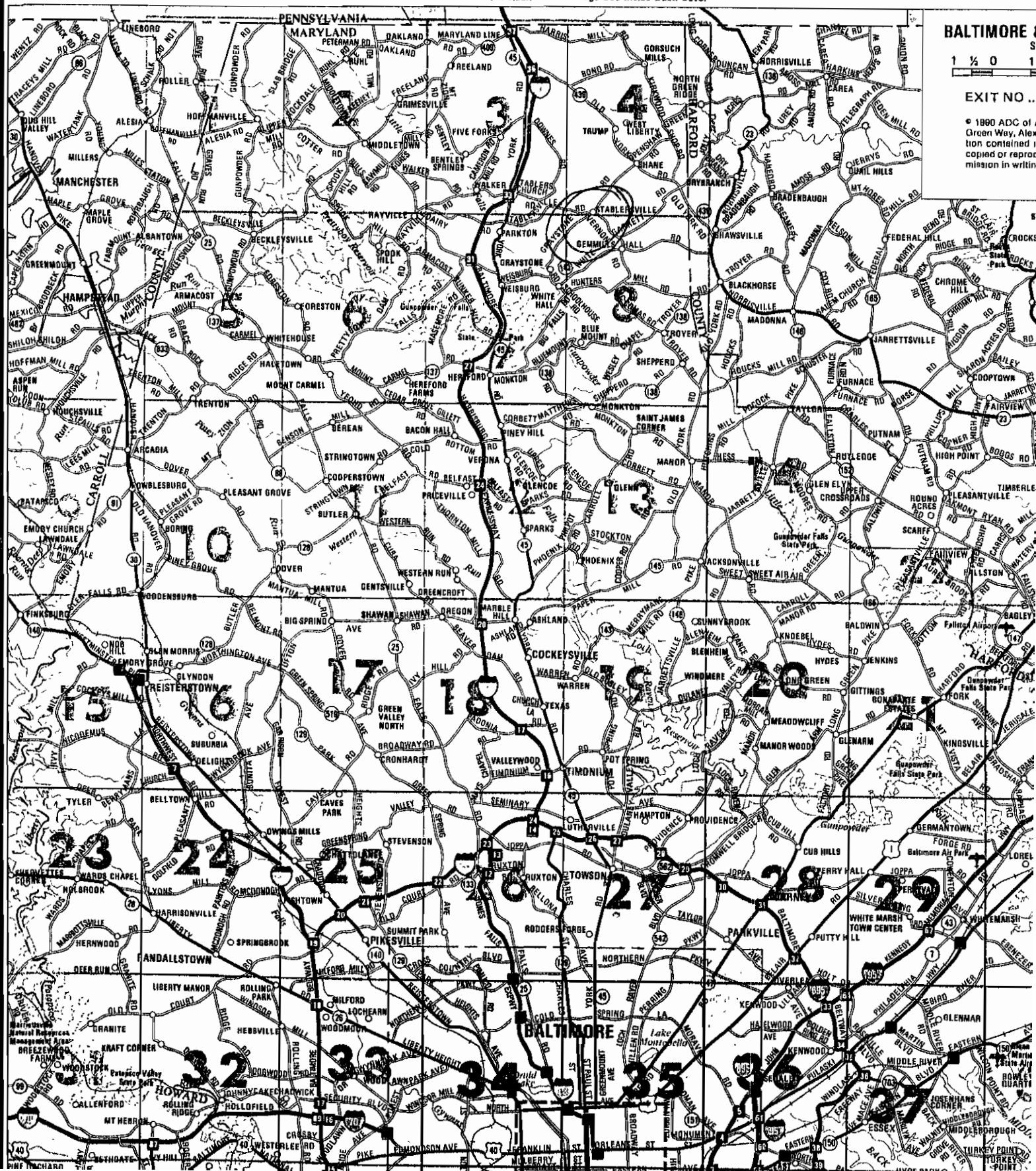
A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2

# BALTIMORE & BALTIMORE COUNTY

P.C. Ex. No. 8

## INDEX TO MAP PAGES

For Additional Coverage See Inside Back Cover



# SOIL SURVEY

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## Baltimore County Maryland

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The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-2791. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C., 20250, or call (202) 720-7327 (Voice) or (202) 720-1127 (TDD). USDA is an equal employment opportunity employer.



UNITED STATES DEPARTMENT OF AGRICULTURE  
Soil Conservation Service  
In cooperation with  
MARYLAND AGRICULTURAL EXPERIMENT STATION

96-347-SPHA



# Petition for Special Hearing

## to the Zoning Commissioner of Baltimore County

for the property located at 301 Western Run Rd, Cockeysville, MD 21030

which is presently zoned RC-4 and RC-2

This Petition shall be filed with the Office of Zoning Administration & Development Management. 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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Amendment to previously approved plan 95-308X.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of 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/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.

Contract Purchaser/Lessor:

(Type or Print Name)  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City State Zipcode  
\_\_\_\_\_

Legal Owner(s):

Hayfield, Inc.  
(Type or Print Name)  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
John M. Mangione President Org  
(Type or Print Name)  
\_\_\_\_\_  
Signature  
\_\_\_\_\_

Attorney for Petitioner:

G. Scott Barhight  
(Type or Print Name)  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
4th Floor  
210 W. Pennsylvania Ave 832-2050  
Address Phone No.  
\_\_\_\_\_  
Towson, MD 21204  
City State Zipcode  
\_\_\_\_\_

1205 York Road 825-8400  
Address Phone No.  
Lutherville, MD 21093  
City State Zipcode  
Name, Address and phone number of representative to be contacted.

G. Scott Barhight  
Name 4th Floor  
210 W. Pennsylvania Ave 832-2050  
Address Phone No.  
\_\_\_\_\_

ESTIMATED LENGTH OF HEARING  
TOWSON, MD 21204  
OFFICE USE ONLY  
Date for Hearing  
\_\_\_\_\_





## Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse  
400 Washington Ave.  
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN  
People's Counsel

CAROLE S. DEMILIO  
Deputy People's Counsel

April 10, 1996

Robert O. Schuetz, Chairman  
Board of Appeals of Baltimore County  
Room 49 Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

Lawrence E. Schmidt, Esquire  
Baltimore County Zoning Commissioner  
Room 118 Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

Re: HAYFIELDS, INC.  
Case No. 95-308-X heard before the  
County Board of Appeals on (Day 1  
through Day 6) January 10, 11, 18,  
& 24, 1996, February 9 & 15, 1996;  
Scheduled for hearing before the  
County Board of Appeals (Days 7 & 8)  
April 16 and 30, 1996

AND

Case Nos. VIII-661 / 96-347-SPHA  
Scheduled for hearing before the  
Zoning Commissioner/Hearing Officer  
May 8, 9, 10, 14, and 15, 1996

Dear Chairman Schuetz and Commissioner Schmidt:

The enclosed notice of hearing before the Zoning Commissioner in Case Nos. VIII-661 / 96-347-SPHA on May 8, 9, 10, 14, and 15, 1996 has come to our attention. Petitioner seeks development approval and amendment to a special exception for 40 single family lots and an 18-hole golf course on 474.4 acres. The amendment includes a number of variances.

At present, there is a de novo special exception hearing pending at the County Board of Appeals for the country club (including golf course). In effect, there is no approved special

May 8, 1995

PROTESTANTS  
EXHIBIT NO. 1

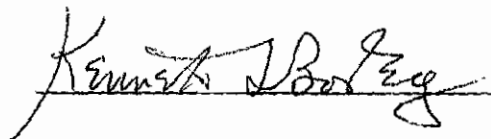
Mr. Lawrence E. Schmidt  
Zoning Commissioner  
Baltimore County Governemnt  
400 Washington Ave.  
Room 113  
Towson, MD 21204

Re: Toll House, Inc.  
95-308X  
Special Exception for a Country Club  
Initial Hearing: May 9, 1995

Dear Mr. Schmidt:

Please enter my appearance, in the above entitled  
proceeding, in proper person, as an adjacent property owner.

Thank You.



Kenneth T. Bosley  
P.O. Box 585  
Sparks, Maryland 21152

1 800 497-0880

May 10, 1995

Mr. Lawrence E. Schmidt  
Zoning Commissioner  
Baltimore County Governemnt  
400 Washington Ave.  
Room 113  
Towson, MD 21204



Re: Toll House, Inc.  
95-308X  
Special Exception for a Country Club

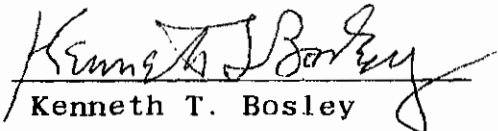
Dear Mr. Schmidt:

Please consider this a MOTION TO DISMISS in the above entitled proceeding.

There is not a corporation by the name of Toll House, Inc., registered with the State of Maryland's Department of Assessments & Taxation, Charter Division. Thus Toll House, Inc., as a corporation, is not authorized to do business in the State of Maryland and thus has no standing to be a party in any legal proceeding.

Under Section 4A-207, C & A (Corporations and Associations, Maryland Annotated Code), a Corporation can not exist if it failed to register with the State Department of Assessments and Taxation. Mr. John Mangione testified on May 9, 1995 that this Corporation ceases to exist.

All of the postings for this proceeding were in the name of Toll House, Inc. Therefore, this request to dismiss this Petition for a Specical Exception is compelling.

  
Kenneth T. Bosley  
P.O. Box 585  
Sparks, Maryland 21152  
1 800 497-0880

c.c. Scott Barhight, Esq.  
G. Macy Nelson, Esq.

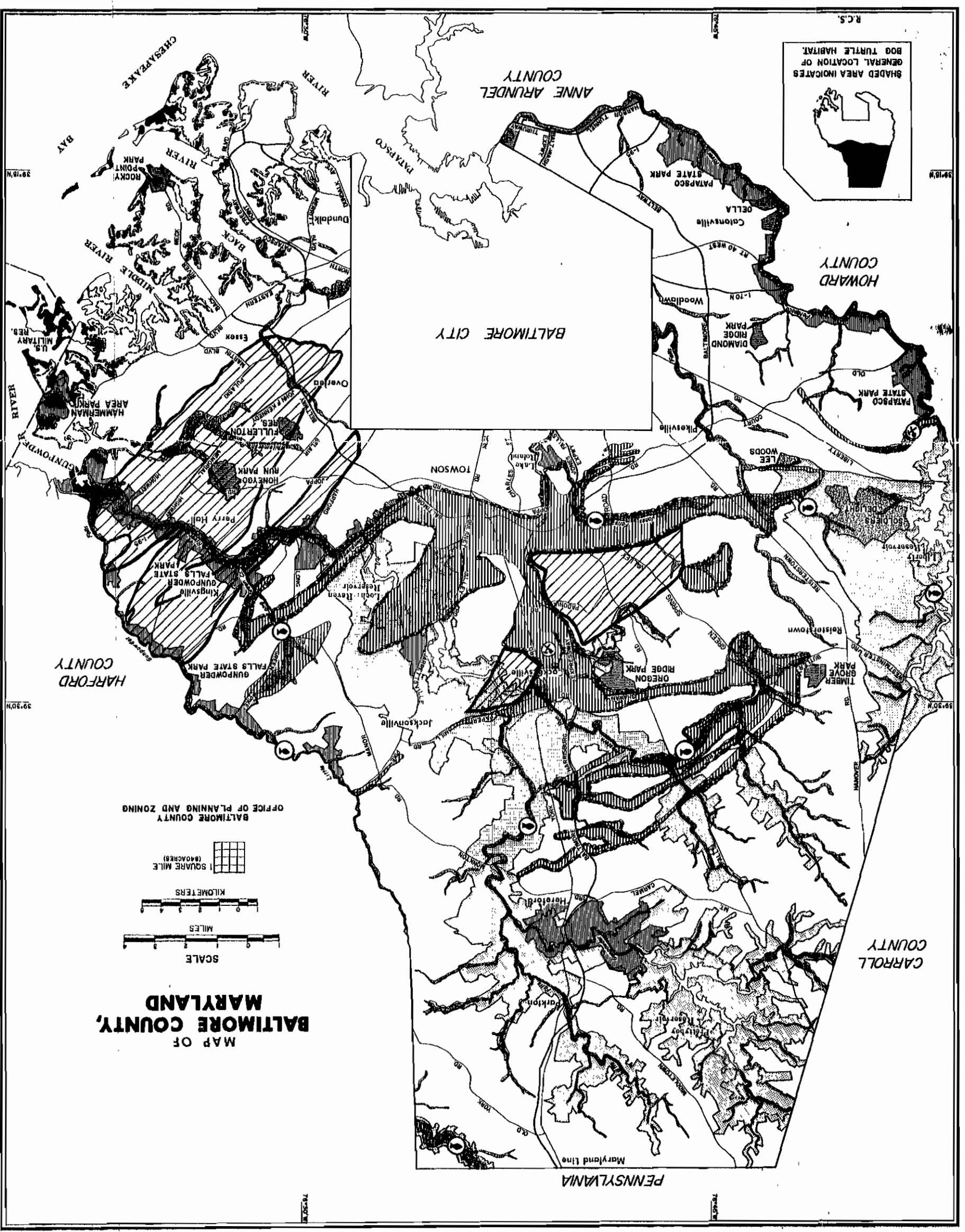
**PROTESTANTS  
EXHIBIT NO. 2**

Plot No 3

# RECOMMENDED AREAS OF CRITICAL STATE CONCERN BALTIMORE COUNTY, MARYLAND

AUGUST 1977

- LEGEND:
- GROUND WATER PROBLEM AREAS
  - NATURAL AREAS
  - LARGE COUNTY PARKS
  - STATE PARKS INCLUDING PROPOSED TAKE LINES
  - LIMESTONE VALLEYS
  - STEEP SLOPES
  - BALTIMORE CITY OWNED RESERVOIR PROPERTY
  - WATERSHED PROTECTION AREAS
  - TEN FOOT CONTOUR
  - WETLANDS
  - FLOODPLAINS
  - TROUT STREAMS





Pet 704

## Petition in Opposition to the Proposed Rezoning & Golf Course at Hayfields

Hayfields farm, one of the most productive farms in Baltimore County, consists of prime and productive soils and commands the entrance to the Western Run National Register Historic District and the Baltimore County Master Plan designated agricultural conservation area. Its location along a Master Plan designated scenic route confirms its aesthetic contribution to the neighborhood.

The approval of the rezoning request and the Special Exception request for a golf course at Hayfields would discount the RC2 agricultural zoning and the Master Plan designated agricultural conservation area. Approval would send a clear message to farmers throughout Baltimore County that Baltimore County did not plan to protect agriculture in the future, setting a precedent for similar requests.

Finally, the commercialization of the Shawan Road corridor will inevitably renew discussions about public water and sewer in the valleys and a cross county road through the valleys. The immediate concerns regarding increased traffic and environmental degradation are valid in their own right and ominous in a long range scope.

**I strongly oppose the rezoning and special exception requests as Hayfields and urge Baltimore County agencies and officials to deny the requests.**

| NAME               | ADDRESS               | PHONE    |
|--------------------|-----------------------|----------|
| Karen Bredstein    | 14223 GREENCROFT LN.  | 785-0851 |
| Pat Haw            | 14002 Greencroft Lane | 584-2506 |
| Dorothy M. Johnson | 14014 Greencroft Lane | 584-2647 |
| Harriet S. Phipps  | 14201 Greencroft Ln.  | 584-2933 |
| Diane Wheeler      | 12 Clipping Tree Ln.  | 785-0244 |
| John Boring        | 7 Sheepfold Lane      | 584-8223 |
| Brian Boring       | 7 Sheepfold Lane      | 584-8223 |
| Edie Dumble        | 3 CHIPPING TREE WINE  | 507-1138 |
| Mary Alice Doms    | 7 Clipping Tree       | 785-5112 |

BALTIMORE COUNTY LANDMARKS PRESERVATION COMMISSION  
MARYLAND HISTORICAL TRUST

Plot No 6  
[Signature]

INVENTORY FORM FOR STATE HISTORIC SITES SURVEY

**1 NAME**

HISTORIC

Hayfields

AND/OR COMMON

Same

**2 LOCATION**

STREET & NUMBER West Side of Western Run Road North of Shawan Road 3rd Councilmanic  
2nd Congressional

CITY, TOWN

(near) Cockeysville

☒ VICINITY OF

CONGRESSIONAL DISTRICT

STATE

Maryland

COUNTY

Baltimore

**3 CLASSIFICATION**

| CATEGORY                                        | OWNERSHIP                                   | STATUS                                              | PRESENT USE                                                                                |
|-------------------------------------------------|---------------------------------------------|-----------------------------------------------------|--------------------------------------------------------------------------------------------|
| <input type="checkbox"/> DISTRICT               | <input type="checkbox"/> PUBLIC             | <input checked="" type="checkbox"/> OCCUPIED        | <input checked="" type="checkbox"/> AGRICULTURE <input type="checkbox"/> MUSEUM            |
| <input checked="" type="checkbox"/> BUILDING(S) | <input checked="" type="checkbox"/> PRIVATE | <input type="checkbox"/> UNOCCUPIED                 | <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> PARK                          |
| <input type="checkbox"/> STRUCTURE              | <input type="checkbox"/> BOTH               | <input type="checkbox"/> WORK IN PROGRESS           | <input type="checkbox"/> EDUCATIONAL <input checked="" type="checkbox"/> PRIVATE RESIDENCE |
| <input type="checkbox"/> SITE                   | <b>PUBLIC ACQUISITION</b>                   | <b>ACCESSIBLE</b>                                   | <input type="checkbox"/> ENTERTAINMENT <input type="checkbox"/> RELIGIOUS                  |
| <input type="checkbox"/> OBJECT                 | <input type="checkbox"/> IN PROCESS         | <input checked="" type="checkbox"/> YES: RESTRICTED | <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> SCIENTIFIC                    |
|                                                 | <input type="checkbox"/> BEING CONSIDERED   | <input type="checkbox"/> YES: UNRESTRICTED          | <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> TRANSPORTATION                |
|                                                 |                                             | <input type="checkbox"/> NO                         | <input type="checkbox"/> MILITARY <input type="checkbox"/> OTHER                           |

**4 OWNER OF PROPERTY**

NAME

Mrs. John M. Franklin

Telephone #: 666-2388

STREET & NUMBER

c/o Nicholas B. Merryman Hayfields Farm, Western Run Road

CITY, TOWN

Cockeysville

☒ VICINITY OF

STATE, zip code

Maryland 21030

**5 LOCATION OF LEGAL DESCRIPTION**

COURTHOUSE,

REGISTRY OF DEEDS, ETC: County Courts Building

Liber #: CWB 1090

Folio #: 59

STREET & NUMBER

401 Bosley Avenue

CITY, TOWN

Towson,

STATE

Maryland 21204

**6 REPRESENTATION IN EXISTING SURVEYS**

TITLE

Hayfields - Buildings Survey Committee

DATE

1964 and continuing

☐ FEDERAL ☐ STATE ☐ COUNTY ☒ LOCAL

DEPOSITORY FOR

SURVEY RECORDS Baltimore County Historical Society/9811 Van Buren Lane

CITY, TOWN

Cockeysville

STATE

Maryland 21030



Baltimore County  
Planning Board

*Adopted  
by PB*

*Prot No 7*

401 Bosley Avenue  
Towson, Maryland 21204  
(410) 887-3495  
Fax: (410) 887-5862

March 6, 1995

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

FROM: Pat Keller, Secretary  
County Planning Board

SUBJECT: Amendment to Documented Site Plan -  
Toll House, Inc. (a.k.a. "Hayfields")  
(Case No. CR-95-138)

Enclosed, pursuant to County Code Section 2-356(m)(2), is the staff report which was adopted by Resolution of the Baltimore County Planning Board in a special meeting on March 2, 1995 to constitute the Board's report recommending denial of the Petition and the amended documented site plan in Case No. CR-95-138.

A handwritten signature in cursive script that reads "Pat Keller".

Pat Keller

PK/TD/mjm  
TOLL.HAY/PZONE/TXTMJM

Enclosure

cc: G. Scott Barhight  
Arnold Jablon  
Peter Max Zimmerman



5/18/95

## CURRICULUM VITAE

### WILLIAM PARKS BALL

Assistant Professor  
Department of Geography and Environmental Engineering  
313 Ames Hall  
Johns Hopkins University  
Baltimore, MD 21218-2686  
Tel: (410) 516-5434; Fax: (410) 516-8996; E-mail: bball@jhu.edu

### EDUCATION

- Ph.D. (Environmental Engineering) Stanford University, Stanford, California, January, 1990  
Dissertation: "Equilibrium Sorption and Diffusion Rate Studies with Halogenated Organic Chemicals and Sandy Aquifer Material"; Advisor: P.V. Roberts
- M.S. (Environmental Engineering) Stanford University, Stanford, California, 1977
- B.S. (Civil Engineering) University of Virginia, Charlottesville, Virginia, 1976

### PROFESSIONAL EXPERIENCE

Assistant Professor, Dept. of Geography and Environmental Engineering, Johns Hopkins University, Baltimore, MD, August 1992 to present.

Assistant Professor, Dept. of Civil and Environmental Engineering, Duke University, Durham, North Carolina, January 1990 - August 1992.

Lecturer, Dept. of Civil and Environmental Engineering, Duke University, Durham, North Carolina, September 1989 - December 1989.

Graduate Assistant, Stanford University, Stanford, California, September 1983 - September 1989.

Supervising Engineer, James M. Montgomery Consulting Engineers, Washington, D. C. Headed an on-site engineering team responsible for process research and testing, data analysis, and technical report writing associated with the operation, maintenance and performance evaluation of a 0.5 MGD experimental water treatment plant over a 3-year period. This project was conducted for the U.S. Army Corps of Engineers in response to a Congressional directive, and was reviewed by the National Research Council. October 1980 - July 1983.

Senior Engineer, James M. Montgomery Consulting Engineers, Reston, Virginia. Project engineer on the study of a pretreatment facility to treat wastewaters from a major brewery and a large cheese processing plant in Lehigh County, Pennsylvania. May 1980 - May 1981.

Associate Engineer, James M. Montgomery Consulting Engineers, Walnut Creek, California and Williamsburg, Virginia. Assistant project engineer for the design and resident engineer for the construction of a major upgrade to a 19 MGD wastewater treatment plant in Williamsburg, Virginia. August 1978 - May 1980.

Teaching Assistant, Ecole Nationale Supérieure des Arts et Industries de Strasbourg, Strasbourg, France. September 1977 - June 1978.

Laboratory Research Assistant, Infilco Degremont, S.A., Paris, France. June 1977 - August 1977.

### PROFESSIONAL REGISTRATION

Virginia Professional Engineer, License No. 12676.

*Prof No 10*

# JAMES THOMAS WOLLON, JR., A.I.A.

*Architect*

600 Craigs' Corner Road  
Havre de Grace, Maryland 21078

Baltimore area (410) 879-6748 Harford County (410) 734-7980 FAX (410) 879-0291

## C U R R I C U L U M V I T A E

Birth: Havre de Grace, Maryland, 3 December 1938

Education: University of Virginia School of Architecture,  
Bachelor of Architecture, 1962

Military Service: United States Army, 1962-1964, serving in Germany  
as a Second and First Lieutenant

Professional Experience: 1964-1972, working for several architectural firms  
in Baltimore, primarily in historic preservation

Licenses: Maryland, October 1970  
Virginia, May 1973  
North Carolina, September 1973  
Delaware, November 1974  
Pennsylvania, March 1980

National Council of Architectural Registration  
Boards Certificate, May 1972

Practice: Own firm established May 1972, specializing in  
preservation and restoration

Professional Memberships: American Institute of Architects  
Baltimore Architecture Foundation  
(member Board of Directors 1995)  
Historic Architects' Roundtable  
(Chairman 1994-current)  
National Trust for Historic Preservation  
Society of Architectural Historians  
Association for Preservation Technology  
Center for Palladian Studies in America  
Victorian Society in America  
Interfaith Forum on Religion, Art and Architecture  
Maryland Historical Society  
(past member, Board of Trustees)  
Society for the Preservation of Maryland Antiquities  
(past member, Board of Directors)  
Historical Society of Harford County, Inc.  
(past member of Board of Directors and past  
President)  
Baltimore Museum of Art, Friends of the American Wing  
(member Board of Directors 1995)

MARYLAND HISTORICAL TRUST WORKSHEET

NOMINATION FORM  
for the  
NATIONAL REGISTER OF HISTORIC PLACES, NATIONAL PARKS SERVICE

|                                                                                                                                                                                      |  |                                                                                                                                       |  |                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. NAME</b>                                                                                                                                                                       |  |                                                                                                                                       |  |                                                                                                                                                           |
| COMMON: Western Run - Belfast Road Historical District                                                                                                                               |  |                                                                                                                                       |  |                                                                                                                                                           |
| AND/OR HISTORIC: _____                                                                                                                                                               |  |                                                                                                                                       |  |                                                                                                                                                           |
| <b>2. LOCATION</b>                                                                                                                                                                   |  |                                                                                                                                       |  |                                                                                                                                                           |
| STREET AND NUMBER: Parts of 5th and 8th election districts, Baltimore County                                                                                                         |  |                                                                                                                                       |  |                                                                                                                                                           |
| CITY OR TOWN: _____                                                                                                                                                                  |  |                                                                                                                                       |  |                                                                                                                                                           |
| STATE: Maryland                                                                                                                                                                      |  | COUNTY: Baltimore                                                                                                                     |  |                                                                                                                                                           |
| <b>3. CLASSIFICATION</b>                                                                                                                                                             |  |                                                                                                                                       |  |                                                                                                                                                           |
| CATEGORY<br>(Check One)                                                                                                                                                              |  | OWNERSHIP                                                                                                                             |  | STATUS                                                                                                                                                    |
| <input checked="" type="checkbox"/> District<br><input type="checkbox"/> Site<br><input type="checkbox"/> Object                                                                     |  | <input checked="" type="checkbox"/> Public<br><input checked="" type="checkbox"/> Private<br><input type="checkbox"/> Both (multiple) |  | <input checked="" type="checkbox"/> Occupied<br><input type="checkbox"/> Unoccupied<br><input type="checkbox"/> Preservation work in progress             |
|                                                                                                                                                                                      |  | Public Acquisition<br><input type="checkbox"/> In Process<br><input type="checkbox"/> Being Considered                                |  | ACCESSIBLE TO THE PUBLIC<br>Yes<br><input checked="" type="checkbox"/> Restricted<br><input type="checkbox"/> Unrestricted<br><input type="checkbox"/> No |
| PRESENT USE (Check One or More as Appropriate)                                                                                                                                       |  |                                                                                                                                       |  |                                                                                                                                                           |
| <input checked="" type="checkbox"/> Agricultural<br><input checked="" type="checkbox"/> Commercial<br><input type="checkbox"/> Educational<br><input type="checkbox"/> Entertainment |  |                                                                                                                                       |  |                                                                                                                                                           |
| <input type="checkbox"/> Government<br><input type="checkbox"/> Industrial<br><input type="checkbox"/> Military<br><input type="checkbox"/> Museum                                   |  |                                                                                                                                       |  |                                                                                                                                                           |
| <input type="checkbox"/> Park<br><input checked="" type="checkbox"/> Private Residence<br><input checked="" type="checkbox"/> Religious<br><input type="checkbox"/> Scientific       |  |                                                                                                                                       |  |                                                                                                                                                           |
| <input type="checkbox"/> Transportation<br><input type="checkbox"/> Other (Specify) _____                                                                                            |  |                                                                                                                                       |  |                                                                                                                                                           |
| <input type="checkbox"/> Community                                                                                                                                                   |  |                                                                                                                                       |  |                                                                                                                                                           |
| <b>4. OWNER OF PROPERTY</b>                                                                                                                                                          |  |                                                                                                                                       |  |                                                                                                                                                           |
| OWNER'S NAME: Multiple public and private                                                                                                                                            |  |                                                                                                                                       |  |                                                                                                                                                           |
| STREET AND NUMBER: _____                                                                                                                                                             |  |                                                                                                                                       |  |                                                                                                                                                           |
| CITY OR TOWN: _____                                                                                                                                                                  |  | STATE: _____                                                                                                                          |  |                                                                                                                                                           |
| <b>5. LOCATION OF LEGAL DESCRIPTION</b>                                                                                                                                              |  |                                                                                                                                       |  |                                                                                                                                                           |
| COURTHOUSE, REGISTRY OF DEEDS, ETC: Baltimore County Courthouse                                                                                                                      |  |                                                                                                                                       |  |                                                                                                                                                           |
| STREET AND NUMBER: Washington Avenue                                                                                                                                                 |  |                                                                                                                                       |  |                                                                                                                                                           |
| CITY OR TOWN: Towson                                                                                                                                                                 |  | STATE: Maryland                                                                                                                       |  |                                                                                                                                                           |
| Title Reference of Current Deed (Book & Pg. #): _____                                                                                                                                |  |                                                                                                                                       |  |                                                                                                                                                           |
| <b>6. REPRESENTATION IN EXISTING SURVEYS</b>                                                                                                                                         |  |                                                                                                                                       |  |                                                                                                                                                           |
| TITLE OF SURVEY: Baltimore County Landmarks (partial)                                                                                                                                |  |                                                                                                                                       |  |                                                                                                                                                           |
| DATE OF SURVEY: 1971 <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> County <input checked="" type="checkbox"/> Local                       |  |                                                                                                                                       |  |                                                                                                                                                           |
| DEPOSITORY FOR SURVEY RECORD: Baltimore County Historical Society                                                                                                                    |  |                                                                                                                                       |  |                                                                                                                                                           |
| STREET AND NUMBER: York Road                                                                                                                                                         |  |                                                                                                                                       |  |                                                                                                                                                           |
| CITY OR TOWN: _____                                                                                                                                                                  |  | STATE: _____                                                                                                                          |  |                                                                                                                                                           |

Pink Ex No 12

ASU ENVIRO  
IN-PLAN FOR  
WILDS



# History Trails

## Baltimore County Historical Society

Location:  
Agriculture Building  
9811 Van Buren Lane

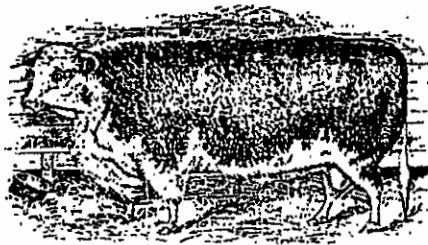
Mail Address:  
Box 81  
Cockeysville, Md. 21030

Editors: JOHN W. McGRAIN and WILLIAM HOLLIFIELD

VOL 19

WINTER 1984-1985

NO. 2



THE GREAT HEREFORD BULL, -SIR BENJAMIN.



THE PRIZE HEREFORD OX.

John Merryman of Hayfields sent these drawings, which he called "electrotypes," to the Maryland Farmer in 1877 to illustrate Sir Benjamin, the ancestor of his herd, as well as a typical Hereford ox. They were published in the issue of January, 1878, pages 14 and 15 of Volume 15, along with Merryman's article in support of Hereford cattle.

## Hayfields History

by Nicholas Bosley Merryman

Hayfields, located near Cockeysville on the northwest quadrant of the Shawan Cloverleaf of 1-83, was originally a part of the tracts *Nicholsons Manor* and *Taylor's Discovery*. It was assembled in the early 1800's by Col. Nicholas Merryman Bosley from purchases made from William Bosley of Joseph, John Naylor, Zachariah Doughady, and John S. Gittings and totalled approximately 560 acres. The soil is Hagerstown and Munor loam with an underlying limestone base. Bluegrass grows naturally and thrives on this land. Colonel Bosley was his own builder and architect and the main house took ten years to build with the expert help of his slaves. He drew the plans for his house with his cane in the sand.

The census of 1798 shows just one house on the property, a single-room fieldstone house with dirt floor and immense fireplace. Col. Bosley enlarged this house with a three-story addition, also of fieldstone and he lived in this comfortable cottage while the main house was being erected. The other numerous structures were built in two periods. The first and oldest buildings were built of fieldstone picked up off the farm and comprise the cottage, smoke house, ice house, servant quarters (later called bachelors' quarters), and the main cattle barn. The brick stable with two lofts was also built in the first period.

Colonel Bosley must have run short of fieldstone because a quarry was opened just south of the garden and the second period buildings were all built of stone from this quarry. This stone is an impure form of the famed Cockeysville white marble which was used to construct the Washington Monument and the famous white marble steps of Baltimore row homes. The second group of buildings consist of the main dwelling, gas house, slave quarters, wagon shed and granary, sheep fold, lower horse barn and wagon shed, small stable and coach shed, and the spring house. The garden is enclosed by a six-foot high stone wall built from this quarried stone.

All of these structures are exceptionally well built — to last for generations. The stone walls are two feet thick as are the partitions in most of the buildings. Timber used was cut from trees on the place and the main center beams in the main house, the slave quarters, and the brick stable extending the length of these buildings were cut from a single giant tree. The Main house and slave quarters have full cellars while the cottage, bachelor quarters, and, surprisingly, the wagon shed have part cellars. In those days, cellars were tremendously important to store and keep produce for winter use. The gardens were valued even more highly and all kinds of fruits and vegetables were raised and excess stored. Even a small orangery was located in the garden.

Colonel Nicholas Merryman Bosley (1774-1847) was the son of Elijah Bosley, a large landowner, and Elizabeth Merryman Bosley, a daughter of Nicholas Merryman of Bacon Hall near the

HAYFIELDS

BALTIMORE COUNTY, MARYLAND

The Robert B. Balter Company  
Geotechnical Engineers

© Hayfields, Inc., 1979

Owings Mills, Maryland 21117

Prot. Ex. 17  
~~17~~

**DRAFT**

DEC 09 1991



**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

**GUIDELINES**

**FOR**

**ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS**

**WITH FLOW EXCEEDING 5000 GALLONS PER DAY**

*Protestant's Ex. 18*



Thomas L. Daniels  
606 State Street  
Lancaster, PA 17603  
Phone: (717) 299-8355 (W)  
(717) 293-7177 (H)

Marital Status: Married  
Nationality: American  
Age: 42

### Education

1984 Ph.D. in Agricultural and Resource Economics, Oregon State University.

1977 M.S. in Agricultural and Resource Economics, University of Newcastle-upon-Tyne, England. Study on a Rotary Foundation Fellowship.

1976 B.A. cum laude in Economics, Harvard University.

### Work Experience

May 1989-  
Present

Director, Agricultural Preserve Board of Lancaster County, Pennsylvania.  
Administer a nationally-recognized farmland preservation easement acquisition program with an annual budget of over \$3 million. Preserved over 11,500 acres in 120 easement projects. Also, assist Planning Commission staff with growth management and agricultural zoning issues. The program received the 1993 Outstanding Program Award from the Small Town and Rural Planning Division of the American Planning Association and received the 1996 National Achievement Award from the American Farmland Trust.

Aug. 1987-  
May 1989

Associate Professor with Tenure, Department of Regional and Community Planning, Kansas State University.  
Taught: State and Regional Planning, Introduction to Planning, Rural Planning, Small Town Planning, Local Economic Development, Environmental Planning.

Jan. 1985-  
July 1987

Assistant Professor, Department of Community and Regional Planning, Iowa State University.  
Taught: State and Regional Planning, Rural Planning, Small Town Planning, Planning Theory.

*Protestant's Ex. No. 19*





February 7, 1996

Mr. John Bernstein  
The Valleys Planning Council, Inc.  
212 Washington Avenue  
Towson, MD 21285-5402

Dear Mr. Bernstein,

Attached to this letter, please find: (1) three tables describing bore-log interpretations in support of revised isopach maps of clay thickness at the proposed Hayfields golf course site in Baltimore Co. Maryland; and (2) six figures (maps) showing alternative possible "realizations" of clay thickness at the site. It is my professional opinion that neither CEM's original isopach map (Figure 7 of a May 8 report from Chesapeake Environmental Management, Inc. [CEM]) nor the revised maps presented here represent a truly "accurate" depiction of clay thickness. This is because I suspect that clay thickness is considerably more heterogeneous and variable than any of these maps suggest.

Within this context, it is nonetheless important to note that the clay thicknesses implied by Figure 7 of CEM's report are not in agreement with data currently available from the site, even at locations where soil boring was conducted. In particular, the USDA soil classification system has not been correctly applied in all cases, sampled segments have sometimes been assumed to apply over inappropriately large depth ranges (based on associated core logging), and available information about rock outcrops has not been used. Boring data from prior work conducted by The Robert B. Balter Co. also shed some additional insight.

In this context, I have worked with a doctoral student at Johns Hopkins University (Mr. Neal Durant) to develop isopach maps that are more consistent with the currently available information. Six possible isopach diagrams were developed, as presented subsequently. Of these, cases "4", "5" and "6" are what I believe to be "best" estimates of clay thickness, based on currently available data. I argue that if truth were somehow to be known, the revised estimates would compare more favorably than CEM's Figure 7, by any fair measure of error. Nonetheless, and as previously noted, the actual field situation is assuredly a still different "realization".

Sincerely,

William P. Ball, P.E., Ph.D.

IN THE MATTER OF  
THE APPLICATION OF  
HAYFIELDS, INC.  
NORTHWEST SIDE WESTERN RUN  
ROAD AND SHAWAN ROAD AT ITS  
INTERSECTION WITH I-83  
(301 WESTERN RUN ROAD)  
8TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT

\* BEFORE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 95-308-X

\*\*\*\*\*

STIPULATION OF THE PARTIES

The following clubs limit the use of their respective banquet facilities to members and their guests and functions that are sponsored by a member. Baltimore Country Club, Bonnie View Country Club, Caves Valley Golf Club, Chestnut Ridge Country Club, Elkridge Club, Greenspring Valley Hunt Club, Sparrows Point Country Club, Rolling Road Golf Club, Suburban Country Club, and Woodholme Country Club.

The following clubs make their banquet facilities available for public use: Country Club of Maryland, Hillendale Country Club, Hunt Valley Golf Club and Towson Golf and Country Club.

Caves Valley Golf Club provides overnight accommodations through a limited number of guest rooms and cottages available exclusively for use by members and their guests, with such accommodations having been permitted by the Zoning Commissioner based on the intended national and regional membership of the club, its intended nature as a world class golf course and the applicants' submission to the aforesaid limitations.

The Country Club of Maryland is not operated by a "not for profit" entity but is operated on a "for profit" basis. It was founded in the 1920's, is located on Stevenson Lane and there is no available zoning history for the Club in the zoning records of the County.

**PATRICK B. FORD**

20 Roger Valley Court  
Baltimore, MD 21234  
(O) 410-252-6060  
(H) 410-661-8541

**EXPERIENCE**

November 1989 -  
Present

**Whitney, Bailey, Cox & Magnani**

Director of Planning & Development Advisory Services Timonium, MD  
Direct teams of development strategists, planners, landscape architects, engineers, surveyors, and draftsmen for one of the "Top 500" design firms in the United States as listed by the "Engineering News Record." Direct and coordinate all aspects of urban design, land use planning, development impact assessment, development feasible studies, community planning, revitalization strategies, market and economic analyses, and economic development programs. Conduct studies in several states between the mid-Atlantic and Great Lakes region for a unique assortment of public and private sector clients. Provide "expert testimony" in the field of comprehensive planning, exclusionary zoning, and development feasibility. Responsible for the marketing and business development efforts of the Planning and Development Advisory Services Department, which includes proposal development, client communication, and market/strategic planning.

June 1987 -  
October 1989

**The Cox Company**

**Project Director**

Charlottesville, VA

Directed team of engineers, surveyors, landscape architects, planners, and draftsmen. Directed and coordinated all aspects of comprehensive plans, growth management studies, transportation analyses, facilities master plans, demographic and economic assessment, and environmental analyses. Extensive experience in master planning for urban areas and ordinance drafting. In addition to consultation in public planning efforts, private sector projects included master planning, civil engineering, development impact assessments, and development advisory services for residential planned developments, commercial, industrial, institutional, and mixed-use projects. Work in these disciplines encompassed projects in Virginia, West Virginia, Pennsylvania, and Kansas.

January 1987 -  
May 1987

**Albemarle County Office of Planning and Community Development**

**Site Planner**

Charlottesville, VA

Conducted reviews of site plans and subdivisions. Reviewed requests for rezoning and special use permits. Performed and assisted in the development of studies, analyses, and recommendations in connection with the current physical, social, and economic development of the County. Prepared reports and supporting graphic display materials descriptive of research and recommendations. Prepared and assisted in the preparation of technical reports and long-range planning projects. Prepared and conducted public presentations. Explained planning problems and procedures to the general public on inquiry.



Baltimore County  
Planning Board

401 Bosley Avenue  
Towson, Maryland 21204  
(410) 887-3495  
Fax: (410) 887-5862

Advance Tentative Agenda\*  
for the  
Thursday, March 21, 1996  
MEETING  
beginning at 4:00 p.m., and  
PUBLIC HEARING  
beginning at 6:00 p.m., in  
Room 106, County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland

\*\*\*\*\*

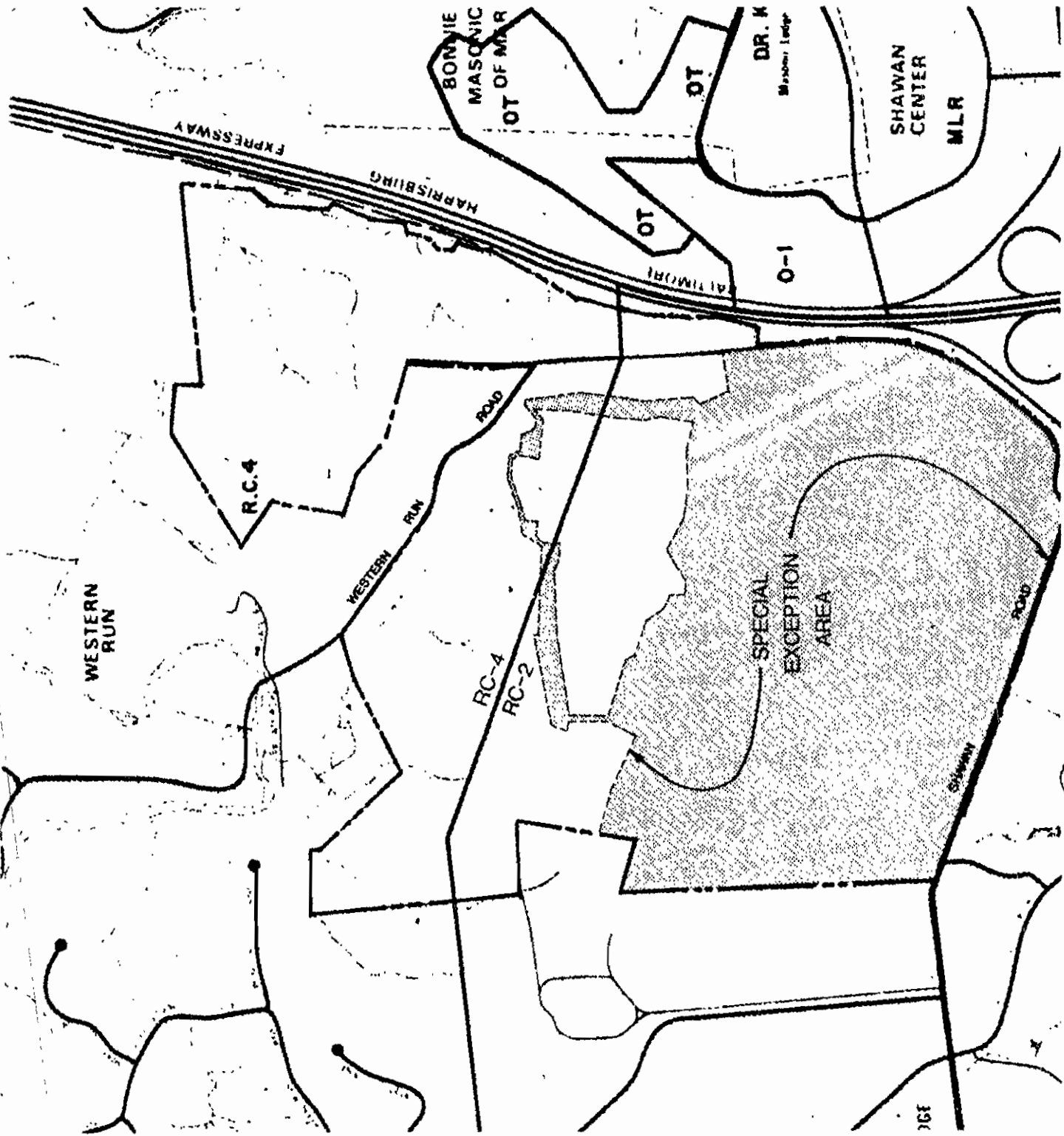
Meeting  
of the  
BALTIMORE COUNTY PLANNING BOARD  
Mr. Worrall, Chairman

Call to order, introduction of Board members, pledge of allegiance to the flag, and announcements.

1. Review of today's Agenda
2. Minutes of the March 7, 1996 meeting
3. Items for initial or continued discussion
  - \*\* a. Development - "Hayfields" - involving County Landmarks structures (Main House, etc.): Initial presentations on elements for the Board's decision to the Hearing Officer
  - b. Amendment to the Master Plan 1989-2000 - Eastern Baltimore County Revitalization Strategy: Briefing in preparation for today's Public Hearing
4. Items for final vote by the Planning Board
5. Reports by Officers and Committees
6. Other business
  - a. Maryland Office of Planning's slide show on "Preventing Sprawl"
7. Adjournment of the Board meeting

\*\*\*\*\*





SCALE: 1" = 1000'



95-308-X

# HAYFIELDS - PORTION OF 1000' SCALE ZONING MAP C-2

RECEIVED  
FEB 11 1983  
No 8

**BALTIMORE COUNTY  
GOLF COURSE MASTER PLAN**

*Prepared for:*

**BALTIMORE COUNTY DEPARTMENT OF  
RECREATION AND PARKS**

301 Washington Avenue  
Towson, Maryland 21204



# *The Traffic Group*

*Traffic Impact Analysis*  
for Proposed Special Exception  
for the  
Hayfields Golf Course Community  
*Baltimore County, Maryland*

Prepared for  
Mangione Family Enterprises

May 8, 1995

RECEIVED  
EXHIBIT  
No 9



Revised 12/15/88

County Executive  
*Dennis F. Rasmussen*  
and the  
*Baltimore County Council*

**RECREATION, PARKS  
AND  
LAND PRESERVATION  
IN  
BALTIMORE COUNTY  
A PLAN FOR THE 1990'S**

95-308-X



***ENVIRONMENTAL  
IMPACT REPORT  
for  
Hayfields Manor Golf Course***

Prepared for:

Hayfields, Inc.  
1205 York Road  
Lutherville, Maryland  
21093

Prepared by:

Chesapeake Environmental Management, Inc.  
260 Gateway Drive, Suite 21-C  
Bel Air, Maryland  
21014

May 8, 1995

***GOLF COURSE  
MANAGEMENT PLAN  
FOR  
HAYFIELDS MANOR***

Prepared for:

Hayfields, Inc.  
1205 York Road  
Lutherville, Maryland  
21093

Prepared by:

Chesapeake Environmental Management, Inc.  
260 Gateway Drive, Suite 21-C  
Bel Air, Maryland  
21014

May 8, 1995



Maryland Historical Trust

*John McLean*

|          |       |
|----------|-------|
| RECEIVED | DATE  |
| ENTERED  | FILED |
| OFFICE   | NO.   |

March 13, 1979

Dear Property Owner:

It is a pleasure to inform you that Western Run-Belfast Road Historic District, Baltimore County, Maryland has been accepted onto the National Register of Historic Places, Office of Archeology and Historic Preservation, a division of the Heritage Conservation and Recreation Service, United States Department of the Interior.

This listing carries with it certain protections at the federal level and in time will help measurably with preservation and protection at the state and local levels. Listing on the National Register makes all property owners eligible to be considered for federal matching grants-in-aid for historic preservation and special consideration for certain federal low-interest loan programs. Listing also provides federal income tax incentives for rehabilitation of historic structures within National Register historic districts if they are used for commercial purposes and state tax incentives for rehabilitation of all historic structures within National Register historic districts.

A map showing the boundaries of the National Register district is located on the back of this letter.

Please let us know if you should have any questions or want any additional information.

Sincerely,

*J. Rodney Little*  
J. Rodney Little  
State Historic  
Preservation Officer

JRL/PMJ/lkm

cc: Catherine F. Black  
James T. Wollon, Jr.  
William C. Trimble  
Henry R. Lord  
J. Hurst Purnell  
Charles L. Wagandt  
John V. Murphy  
Arnold Fleischmann  
Leslie H. Graef

*Per No 15*



## Standards for Rehabilitation

The following Standards for Rehabilitation, developed by Technical Preservation Services, Department of the Interior, apply to the rehabilitation of all historic and other old buildings. The standards are intended to create a framework for responsible preservation efforts, to be used in conjunction with the accompanying guidelines for applying the standards. The underlying concern of the standards is preservation of the significant historic architectural characteristics of a structure as being rehabilitated.

In addition to providing guidance to individual property owners as they plan their rehabilitation work, the standards are used by the Secretary of the Interior to determine whether a rehabilitation project qualifies as a "certified rehabilitation" for federal tax benefits under the Economic Recovery Tax Act of 1981. They are used to assist state and local governments in planning and carrying out rehabilitation work on historic buildings.

The Standards for Rehabilitation make up Section 1 in the comprehensive Secretary of the Interior's Standards for Historic Preservation Projects and appear in Title 36 of the Code of Federal Regulations, Part 68.

Every reasonable effort shall be made to use a compatible use for a property which requires minimal alteration of the building, its site and its environment, or to use the property for its originally intended purpose. The distinguishing original qualities or character of a building, structure or site and its interior shall not be destroyed. The restoration or alteration of any historic material or architectural features should be done, when possible.

All buildings, structures and sites shall be maintained as products of their own time, and shall have no historical basis and shall seek to create an earlier appearance is discouraged.

MDAROS

Per 16

4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archaeological resources affected by or adjacent to any project.
9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
10. Whenever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

## Guidelines for Rehabilitating Historic Buildings

These guidelines for applying the Secretary of the Interior's Standards for Rehabilitation are designed to help individual property owners formulate plans for the rehabilitation, preservation and continued use of historic buildings consistent with the intent of the standards. The guidelines pertain to buildings of all occupancy and construction types, sizes and materials. They apply to permanent and temporary construction on the exterior and interior of historic buildings as well as new attached or adjacent construction.

Techniques, treatments and methods consistent with the Secretary's Standards for Rehabilitation are listed in the "recommended" column on the left. Not all recommendations listed under a treatment will apply to each project proposal. Rehabilitation approaches, materials and methods that may adversely affect a building's architectural and historic qualities are listed in the "not recommended" column on the right. Every effort will be made to update and expand the guidelines as additional techniques and treatments become known.

### THE ENVIRONMENT

#### Recommended

Retaining distinctive features such as the size, scale, mass, color and materials of buildings, including roofs, porches and stairways, that give a neighborhood its distinguishing character.

Retaining landscape features such as parks, gardens, street lights, signs, benches, walkways, streets, alleys and building setbacks that have traditionally linked buildings to their environment.

Using new plant materials, fencing, walkways, street lights, signs and benches that are compatible with the character of the neighborhood in size, scale, material and color.

Specific information on rehabilitation and preservation technology may be obtained by writing to Technical Preservation Services, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, or the appropriate state historic preservation office; see also *Reading About Rehabilitation* (p. 173). Advice should also be sought from qualified professionals, including architects, architectural historians and archaeologists skilled in the preservation, restoration and rehabilitation of old buildings.

#### Not Recommended

Introducing new construction into neighborhoods that is incompatible with the character of the district because of size, scale, color and materials.

Destroying the relationship of buildings and their environment by widening existing streets, changing paving material or introducing inappropriately located new streets and parking lots that are incompatible with the character of the neighborhood.

Introducing signs, street lighting, benches, new plant materials, fencing, walkways and paving materials that are out of scale or are inappropriate to the neighborhood.

## MARYLAND HISTORICAL TRUST WORKSHEET

NOMINATION FORM  
for the  
NATIONAL REGISTER OF HISTORIC PLACES, NATIONAL PARKS SERVICE

|                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. NAME</b>                                                                                                                                                                                                          |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| COMMON:<br>Western Run - Belfast Road Historical District                                                                                                                                                               |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| AND/OR HISTORIC:                                                                                                                                                                                                        |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| <b>2. LOCATION</b>                                                                                                                                                                                                      |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| STREET AND NUMBER:<br>Parts of 5th and 8th election districts, Baltimore County                                                                                                                                         |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| CITY OR TOWN:                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| STATE:<br>Maryland                                                                                                                                                                                                      |                                                                                                                                                                                                                                                |                                                                                                                                                                                | COUNTY:<br>Baltimore                                                                                                                                           |                                                                                                                                                                                           |
| <b>3. CLASSIFICATION</b>                                                                                                                                                                                                |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| <b>CATEGORY</b><br>(Check One)<br><input checked="" type="checkbox"/> District <input type="checkbox"/> Building<br><input type="checkbox"/> Site <input type="checkbox"/> Structure<br><input type="checkbox"/> Object | <b>OWNERSHIP</b><br><input checked="" type="checkbox"/> Public    Public Acquisitions<br><input type="checkbox"/> Private <input type="checkbox"/> In Process<br><input type="checkbox"/> (multiple) <input type="checkbox"/> Being Considered |                                                                                                                                                                                | <b>STATUS</b><br><input checked="" type="checkbox"/> Occupied<br><input type="checkbox"/> Unoccupied<br><input type="checkbox"/> Preservation work in progress | <b>ACCESSIBLE TO THE PUBLIC</b><br><input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> Restricted<br><input type="checkbox"/> Unrestricted<br><input type="checkbox"/> No |
| PRESENT USE (Check One or More as Appropriate)                                                                                                                                                                          |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| <input checked="" type="checkbox"/> Agricultural<br><input checked="" type="checkbox"/> Commercial<br><input type="checkbox"/> Educational<br><input type="checkbox"/> Entertainment                                    | <input type="checkbox"/> Government<br><input type="checkbox"/> Industrial<br><input type="checkbox"/> Military<br><input type="checkbox"/> Museum                                                                                             | <input type="checkbox"/> Park<br><input checked="" type="checkbox"/> Private Residence<br><input checked="" type="checkbox"/> Religious<br><input type="checkbox"/> Scientific | <input type="checkbox"/> Transportation<br><input type="checkbox"/> Other (Specify) _____                                                                      | <input type="checkbox"/> Community                                                                                                                                                        |
| <b>4. OWNER OF PROPERTY</b>                                                                                                                                                                                             |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| OWNER'S NAME:<br>Multiple public and private                                                                                                                                                                            |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| STREET AND NUMBER:                                                                                                                                                                                                      |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| CITY OR TOWN:                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |                                                                                                                                                                                | STATE:                                                                                                                                                         |                                                                                                                                                                                           |
| <b>5. LOCATION OF LEGAL DESCRIPTION</b>                                                                                                                                                                                 |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| COURTHOUSE, REGISTRY OF DEEDS, ETC:<br>Baltimore County Courthouse                                                                                                                                                      |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| STREET AND NUMBER:<br>Washington Avenue                                                                                                                                                                                 |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| CITY OR TOWN:<br>Towson                                                                                                                                                                                                 |                                                                                                                                                                                                                                                |                                                                                                                                                                                | STATE:<br>Maryland                                                                                                                                             |                                                                                                                                                                                           |
| Title Reference of Current Deed (Book & Pg. #):                                                                                                                                                                         |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| <b>6. REPRESENTATION IN EXISTING SURVEYS</b>                                                                                                                                                                            |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| TITLE OF SURVEY:<br>Baltimore County Landmarks (partial)                                                                                                                                                                |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| DATE OF SURVEY: 1971 <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> County <input checked="" type="checkbox"/> Local                                                          |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| DEPOSITORY FOR SURVEY RECORDS:                                                                                                                                                                                          |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| Baltimore County Historical Society                                                                                                                                                                                     |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| STREET AND NUMBER:<br>York Road                                                                                                                                                                                         |                                                                                                                                                                                                                                                |                                                                                                                                                                                |                                                                                                                                                                |                                                                                                                                                                                           |
| CITY OR TOWN:<br>Cockeysville                                                                                                                                                                                           |                                                                                                                                                                                                                                                |                                                                                                                                                                                | STATE:<br>Maryland                                                                                                                                             |                                                                                                                                                                                           |

## BALTIMORE COUNTY LANDMARKS PRESERVATION COMMISSION

MAYLAND HISTORICAL TRUST

BA-94

## INVENTORY FORM FOR STATE HISTORIC SITES SURVEY

#8 14

0300945335

## 1 NAME

HISTORIC

Hayfields

AND/OR COMMON

HAYFIELDS

## 2 LOCATION

HEREFORD BLINDRIDGE  
ELECTION DISTRICT 8

STREET &amp; NUMBER West Side of Western Run Road North of Shawan Road. 3rd Councilmanic

2nd Congressional

CITY, TOWN

(near) Cockeysville

X VICINITY OF

CONGRESSIONAL DISTRICT

STATE

Maryland

COUNTY

Baltimore

## 3 CLASSIFICATION

## CATEGORY

DISTRICT

X BUILDING(S)

STRUCTURE

SITE

OBJECT

## OWNERSHIP

PUBLIC

X PRIVATE

BOTH

PUBLIC ACQUISITION

IN PROCESS

BEING CONSIDERED

## STATUS

X OCCUPIED

UNOCCUPIED

WORK IN PROGRESS

ACCESSIBLE

X YES; RESTRICTED

YES; UNRESTRICTED

NO

## PRESENT USE

X AGRICULTURE

COMMERCIAL

EDUCATIONAL

ENTERTAINMENT

GOVERNMENT

INDUSTRIAL

MILITARY

MUSEUM

PARK

X PRIVATE RESIDENCE

RELIGIOUS

SCIENTIFIC

TRANSPORTATION

OTHER

## 4 OWNER OF PROPERTY

NAME

Mrs. John M. Franklin

Telephone #: 666-2388

STREET &amp; NUMBER

c/o Nicholas B. Merryman Hayfields Farm, Western Run Road

CITY, TOWN

Cockeysville

X VICINITY OF

STATE, zip code

Maryland 21030

## 5 LOCATION OF LEGAL DESCRIPTION

COURTHOUSE,

REGISTRY OF DEEDS, ETC. County Courts Building

Liber #: CWB 1090

Folio #: 59

STREET &amp; NUMBER

401 Bosley Avenue

CITY, TOWN

Towson,

STATE

Maryland 21204

## 6 REPRESENTATION IN EXISTING SURVEYS \*

TITLE BALTIMORE COUNTY HISTORIC SITES INVENTORY

DATE (ongoing since 1964)

extended 7/29/65 as BA-94

FEDERAL X STATE COUNTY LOCAL

DEPOSITORY FOR  
SURVEY RECORDS

MARYLAND HISTORICAL TRUST

CITY, TOWN

21 STATE CIRCLE  
BALTIMORE

STATE

Maryland

: 21401

\* NR pending (in Western Run Historic District, GCC approved)

\* HABS, US DEPT. OF THE INTERIOR, WASHINGTON, D.C.

# STEPHANIE NOVAK HAU

Pet No 11

## **Education**

Ph.D. Candidate, Environmental Sciences, 1986-1992; University of Virginia  
M.S. Geology, 1986; Kent State University  
B.S. Geology, 1984; Allegheny College

## **Professional Experience**

|                |                                                                        |
|----------------|------------------------------------------------------------------------|
| 1993 - Present | President Chesapeake Environmental Management, Inc.; Bel Air, MD       |
| 1989 - 1993    | From Project to Senior Hydrogeologist; Hydro-Terra, Inc.; Columbia, MD |
| 1986 - 1989    | Hydrologist; USEPA; Watershed Manipulation Project, ME                 |
| 1985 - 1986    | Hydrogeologist; Eckstein and Associates; Kent, OH                      |

## **Professional Affiliations**

Association of Groundwater Scientists and Engineers, NGWA  
American Geophysical Union, AGU  
National Association of Female Executives, NAFE  
The Computer Oriented Geological Society, COGS  
Sigma Xi Honorary Research Society

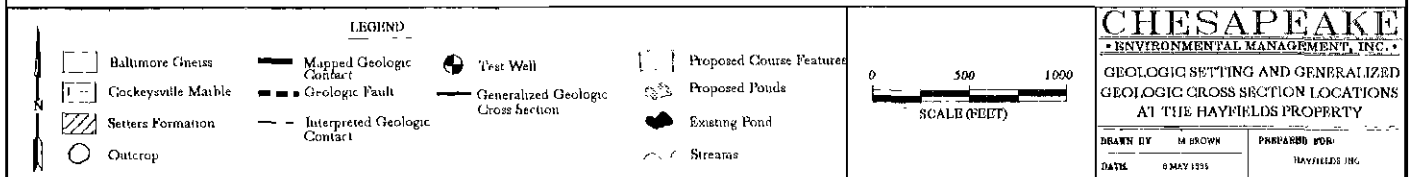
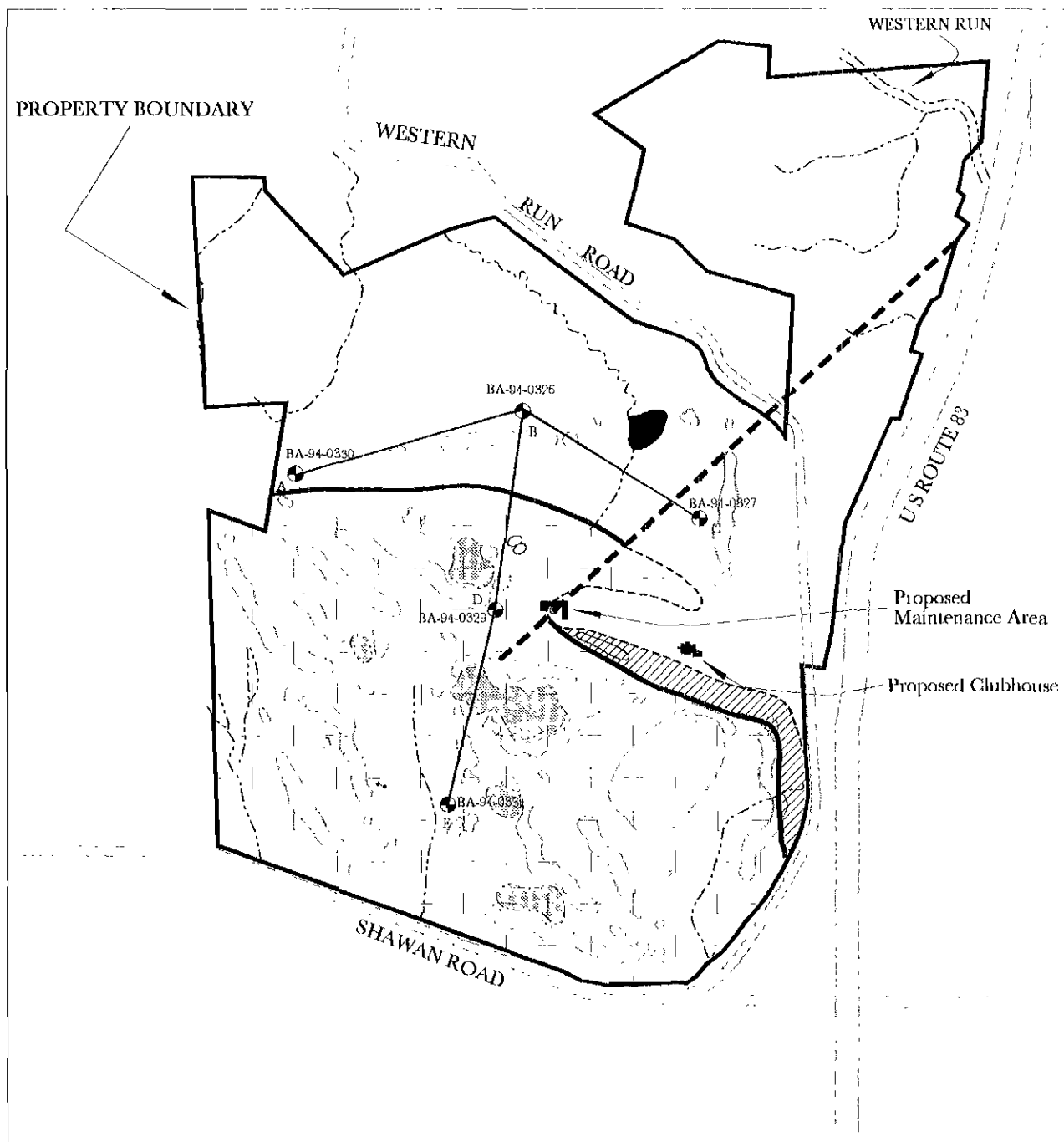
## **Management Experience**

Ms. Hau is the President and Senior Hydrogeologist of Chesapeake Environmental Management, Inc. (CEM). She is the Chief Executive Officer of the firm, and is responsible for directing CEM's water resource management division. Her corporate responsibilities with CEM include: management of corporate finances, business development, definition of target markets, and development of water-supply marketing strategies and budgets. Her senior project management responsibilities include: proposal preparation, contracting, budget tracking and cost control, client liaison, and senior technical review. Ms. Hau is also responsible for management of project staff, coordination of field activities, progress report preparation, coordination with federal, state and local governments, and deliverance of expert testimony before county and state regulatory agencies. She has provided senior management for more than 20 ground water development projects, lasting up to 4 years in length and ranging up to \$100,000. These projects have allowed Ms. Hau to develop a reputation within local and state regulatory communities as one of the regions strongest technical experts.

## **Technical Expertise**

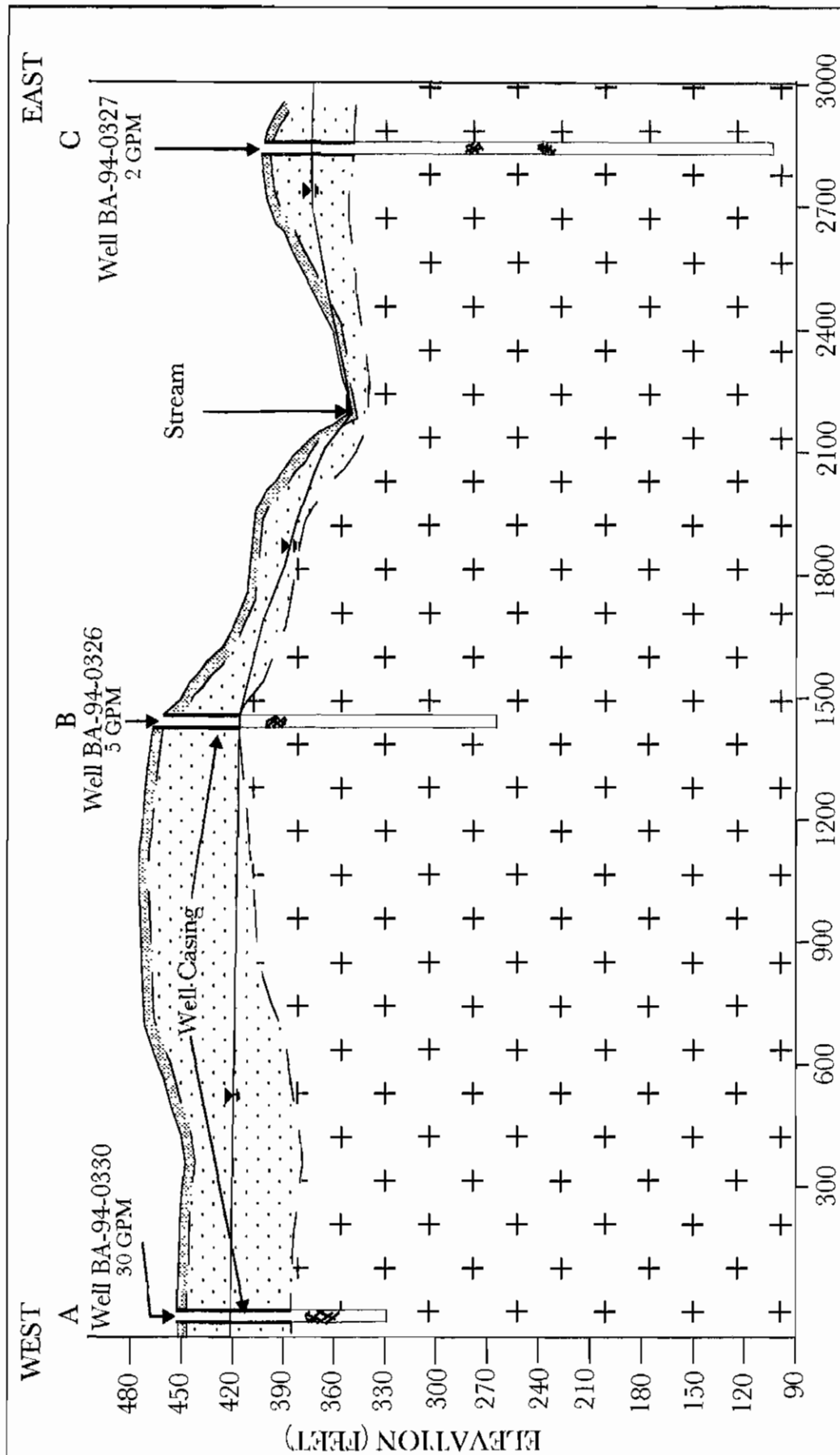
Ms. Hau has nearly ten years of academic training and professional experience in conducting water-supply and environmental investigations. Ms. Hau is highly experienced in all phases of water resource management investigations, from data collection and analysis to report preparation. Her areas of expertise include: water availability studies; land-use assessments; location of high-capacity wells in difficult geologic settings using geophysical and photogeologic techniques; resource impact analysis; test drilling and well construction; aquifer testing and analysis; computer ground-water flow modeling; statistical analysis, wellhead protection planning; contaminant transport modeling; and environmental data synthesis. Her broad capabilities allow for the development of project scopes-of-work that include advanced state-of-the-art technologies, while remaining timely and cost-effective.





Petitioner's

12A

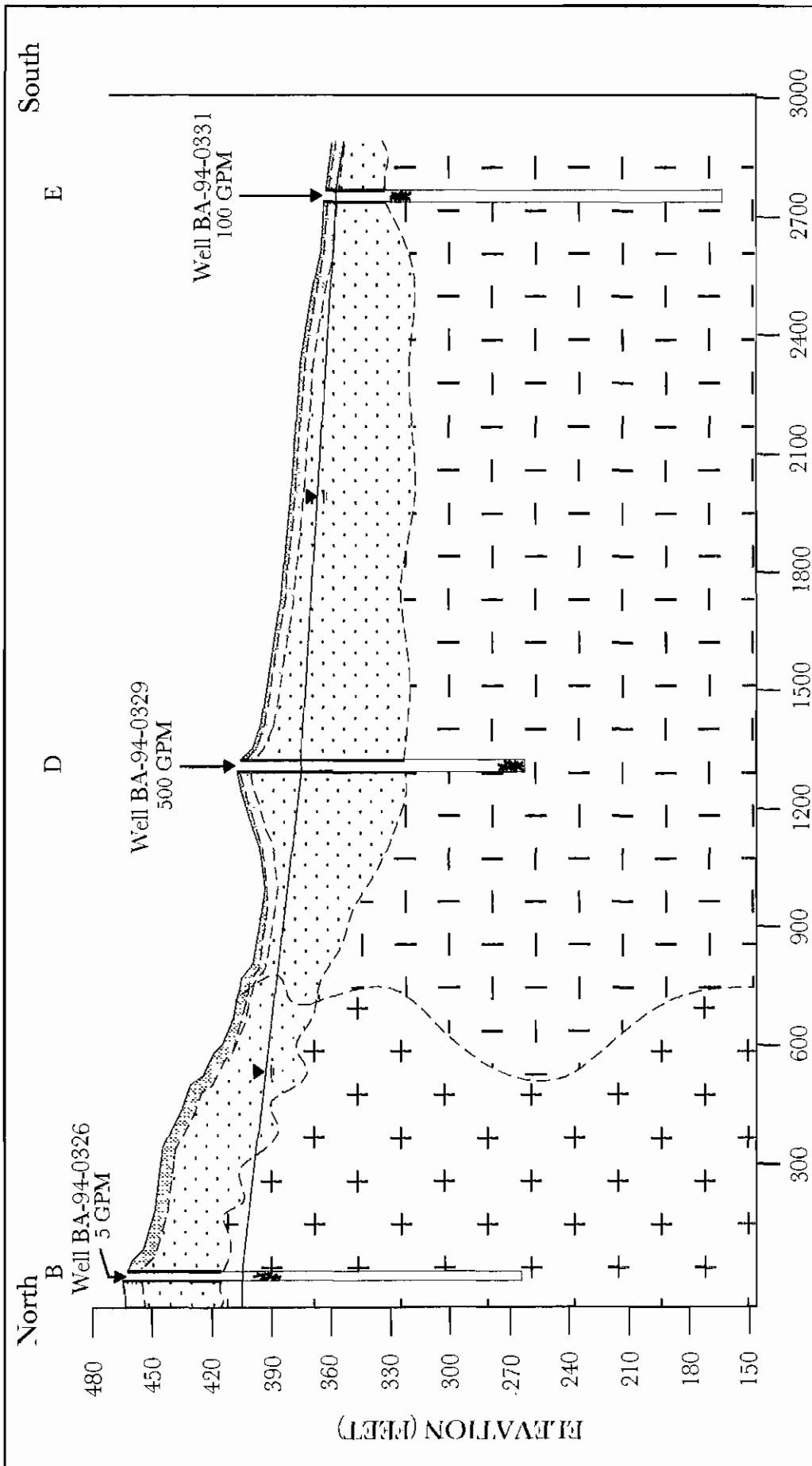


Vertical Exaggeration = 3.33x

# LEGEND

- Sapsprohe
- Baltimore Gneiss
- Inferred Geologic Contact
- Soil
- Well (width not to scale)
- Water Table
- Fracture Zones

|                                              |               |
|----------------------------------------------|---------------|
| CHESAPEAKE                                   |               |
| • ENVIRONMENTAL MANAGEMENT, INC. •           |               |
| GENERALIZED GEOLOGIC CROSS SECTION A - B - C |               |
| DRAWN BY                                     | DATE          |
| IN CHARGE                                    | DATE          |
| PROJECT NO.                                  | MAP SHEET NO. |
| MAP SHEET NO. 100                            |               |

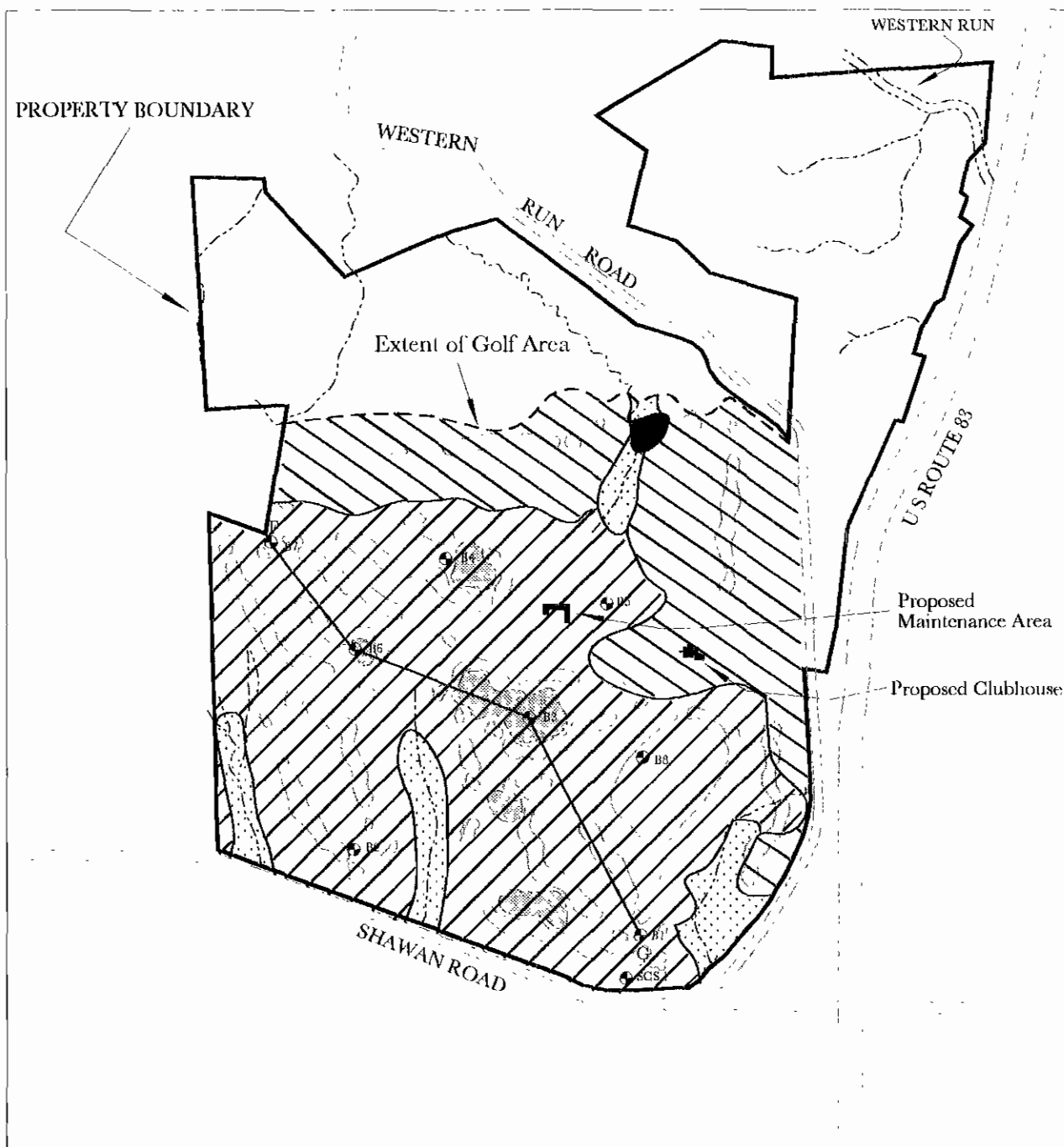


Vertical Exaggeration = 5x

### LEGEND

- |  |                     |  |                           |
|--|---------------------|--|---------------------------|
|  | Cockeysville Marble |  | Well (width not to scale) |
|  | Baltimore Gneiss    |  | Inferred Geologic Contact |
|  | Saprolite           |  | Water Table               |
|  | Clay Layer          |  |                           |
|  | Soil                |  |                           |
|  | Fracture Zones      |  |                           |

|                                                         |                              |
|---------------------------------------------------------|------------------------------|
| <b>CHESAPEAKE</b><br>• ENVIRONMENTAL MANAGEMENT, INC. • |                              |
| GENERALIZED GEOLOGIC<br>CROSS SECTION B - D - E         |                              |
| DRAWN BY: M. BROWN                                      | PREPARED FOR: JAYWELLS, INC. |
| CHECKED BY:                                             | DATE:                        |



# LEGEND

Hagerstown soil series  
 Glenelg soil series  
 Codorus soil series

Proposed Course Features  
 Proposed Ponds  
 Existing Pond

Streams  
 GEM Borings  
 SCS Boring  
 Generalized Geologic Cross Section

0 500 1000  
 SCALE (FEET)

**CHESAPEAKE**  
 • ENVIRONMENTAL MANAGEMENT, INC. •

DOMINANT MAPPED SOILS AND  
 GENERALIZED GEOLOGIC CROSS SECTION  
 AT THE HAVFIELDS PROPERTY

|          |             |              |                |
|----------|-------------|--------------|----------------|
| DRAWN BY | M. BROWN    | PREPARED FOR | HAVFELDS, INC. |
| DATE     | 11 MAY 1993 |              |                |

# HAGERSTOWN SILT LOAM

# GLENELG LOAM

FEET

Silt loam

1.25

Clay

4.50

Heavy clay loam

6.67

Saprolite

30.00

Cockeysville  
Marble

FEET

Loam

0.58

Lt. silty clay loam

1.67

Lt. clay loam

2.08

Loam

6.67

Saprolite

50.00

Baltimore  
Gneiss

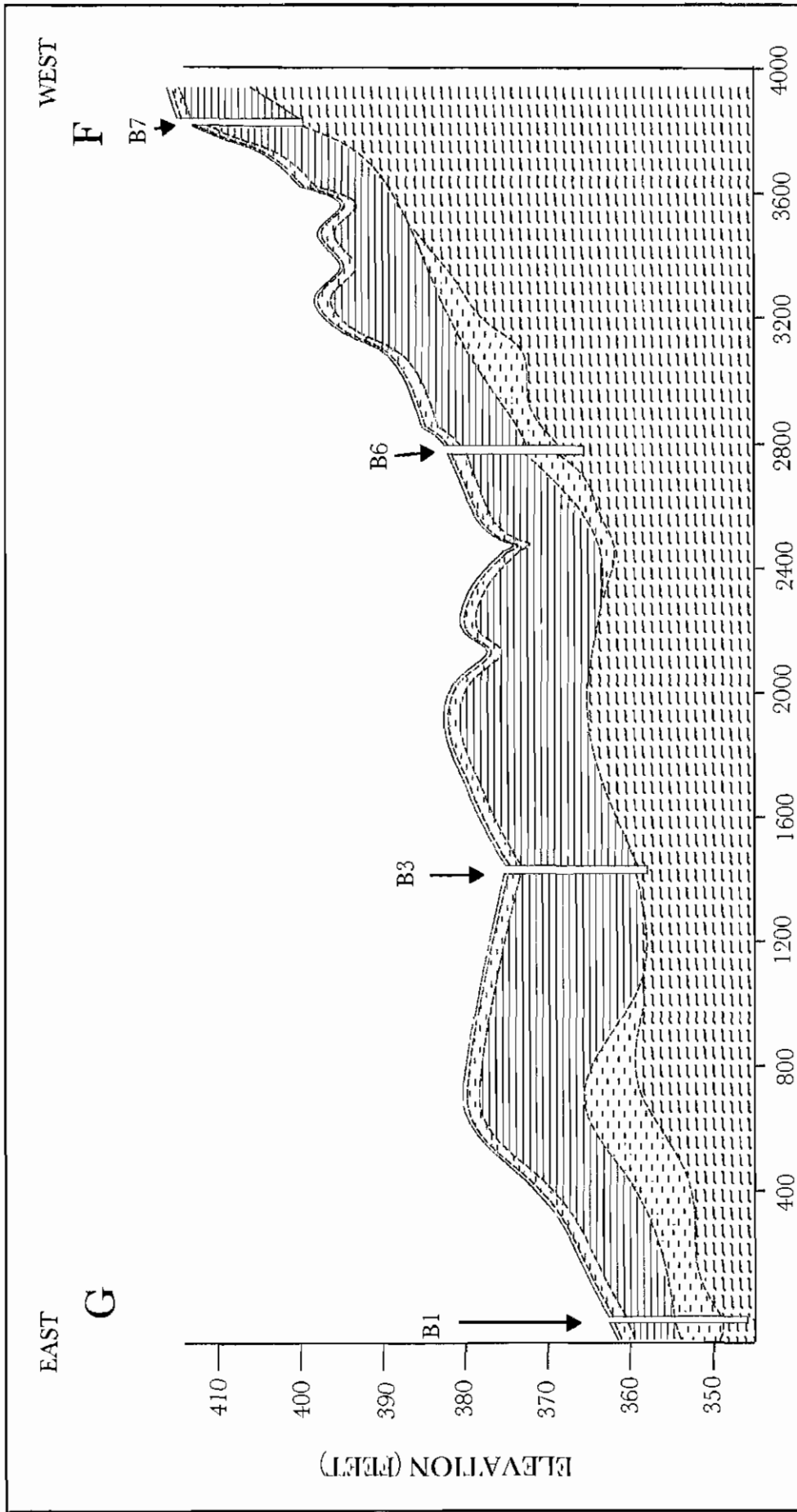
Representative profile data come from the Baltimore County Soil Survey. The boring from which the Hagerstown profile was constructed was obtained from the Hayfields property.

**CHESAPEAKE**  
ENVIRONMENTAL MANAGEMENT, INC.

GENERAL SOIL COLUMN PROFILE  
OF THE HAGERSTOWN SILT LOAM  
AND THE GLENELG LOAM

DRAWN BY: M. BROWN PREPARED FOR: HAYFIELD, INC.  
DATE: 5 MAY 1995

12 E

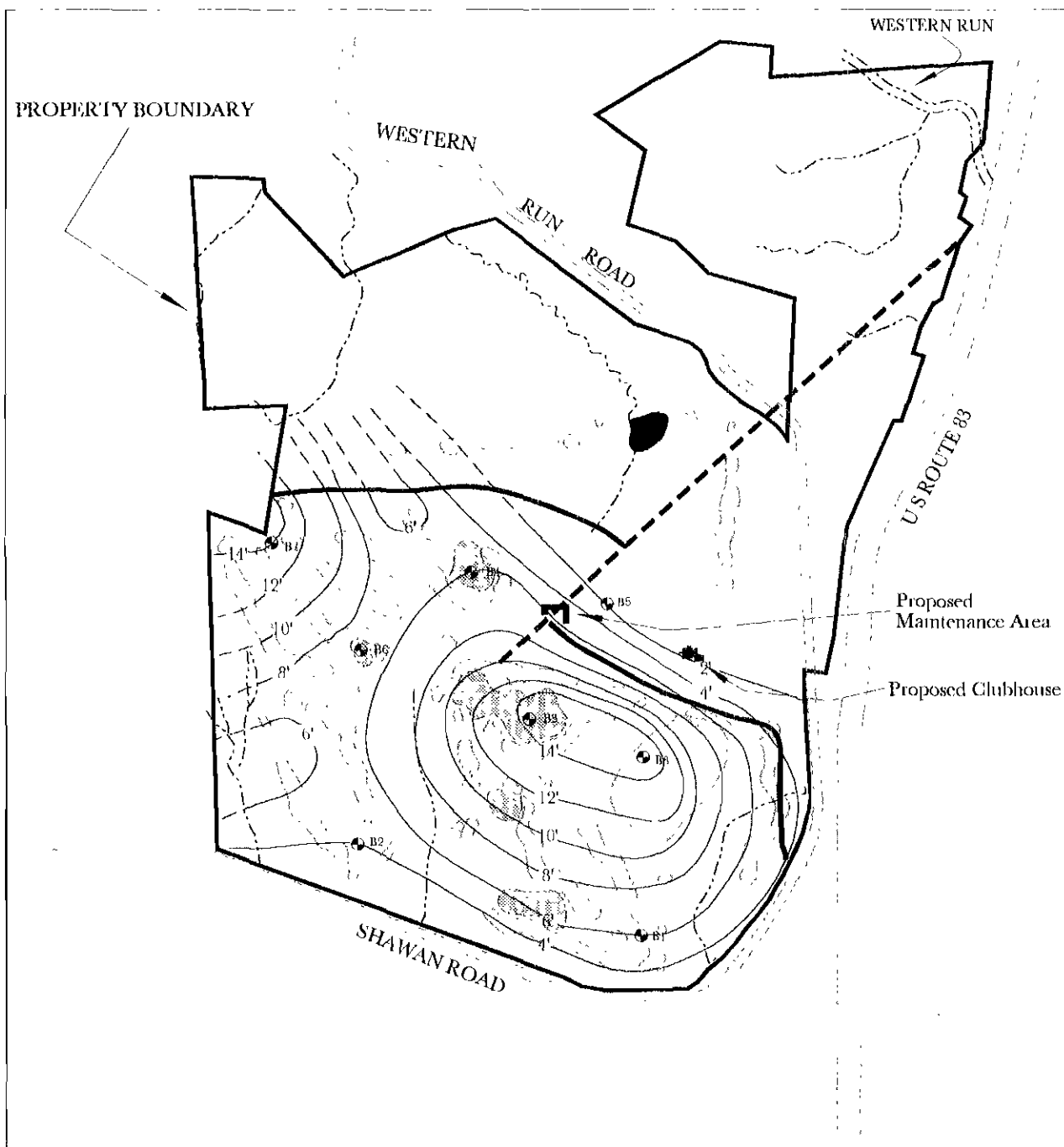


Vertical Exaggeration = 27x

### LEGEND

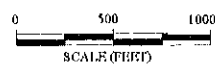
-  Topsoil
-  Silty Sand
-  Clay
-  Clavey Sand
-  Silty Sand (Saprolite)
-  Boring (width not to scale,
-  Inferred Geologic Contact

|                                                                 |                                |
|-----------------------------------------------------------------|--------------------------------|
| <b>CHESAPEAKE</b><br>• ENVIRONMENTAL MANAGEMENT, INC. •         |                                |
| GENERALIZED GEOLOGIC<br>CROSS SECTION OF THE<br>UPPER SAPROLITE |                                |
| DRAWN BY: M. BROWN                                              | PREPARED FOR: SATTELBERG, INC. |
| DATE: 1 MAY 1981                                                |                                |



# LEGEND

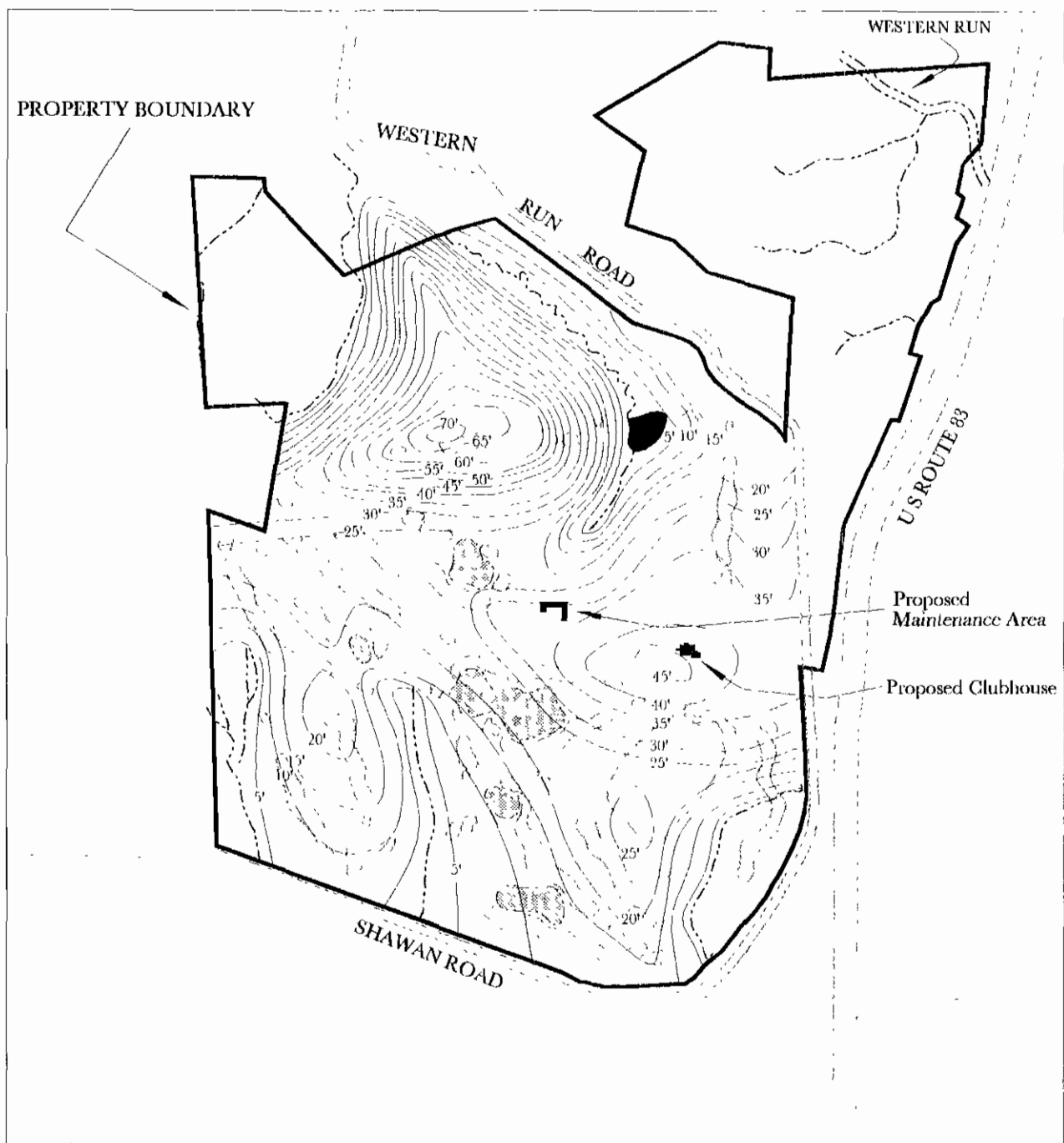
- |                        |                          |
|------------------------|--------------------------|
| Clay thickness contour | Proposed Course Features |
| Geologic Fault         | Proposed Ponds           |
| Geologic Contact       | Existing Pond            |
| CEM Boring             | Stream                   |



**CHESAPEAKE**  
• ENVIRONMENTAL MANAGEMENT, INC. •

## ISOPACH MAP OF CLAY THICKNESS AT THE HAYFIELDS PROPERTY

|          |             |              |                 |
|----------|-------------|--------------|-----------------|
| DRAWN BY | M. BROWN    | PREPARED FOR | HAYFIELDS, INC. |
| DATE     | 03 MAY 1995 |              |                 |



**LEGEND**

- |       |                          |       |                |
|-------|--------------------------|-------|----------------|
| (25') | Depth to Ground Water    | (---) | Proposed Ponds |
| (---) | Proposed Course Features | (●)   | Existing Pond  |
|       |                          | (---) | Streams        |

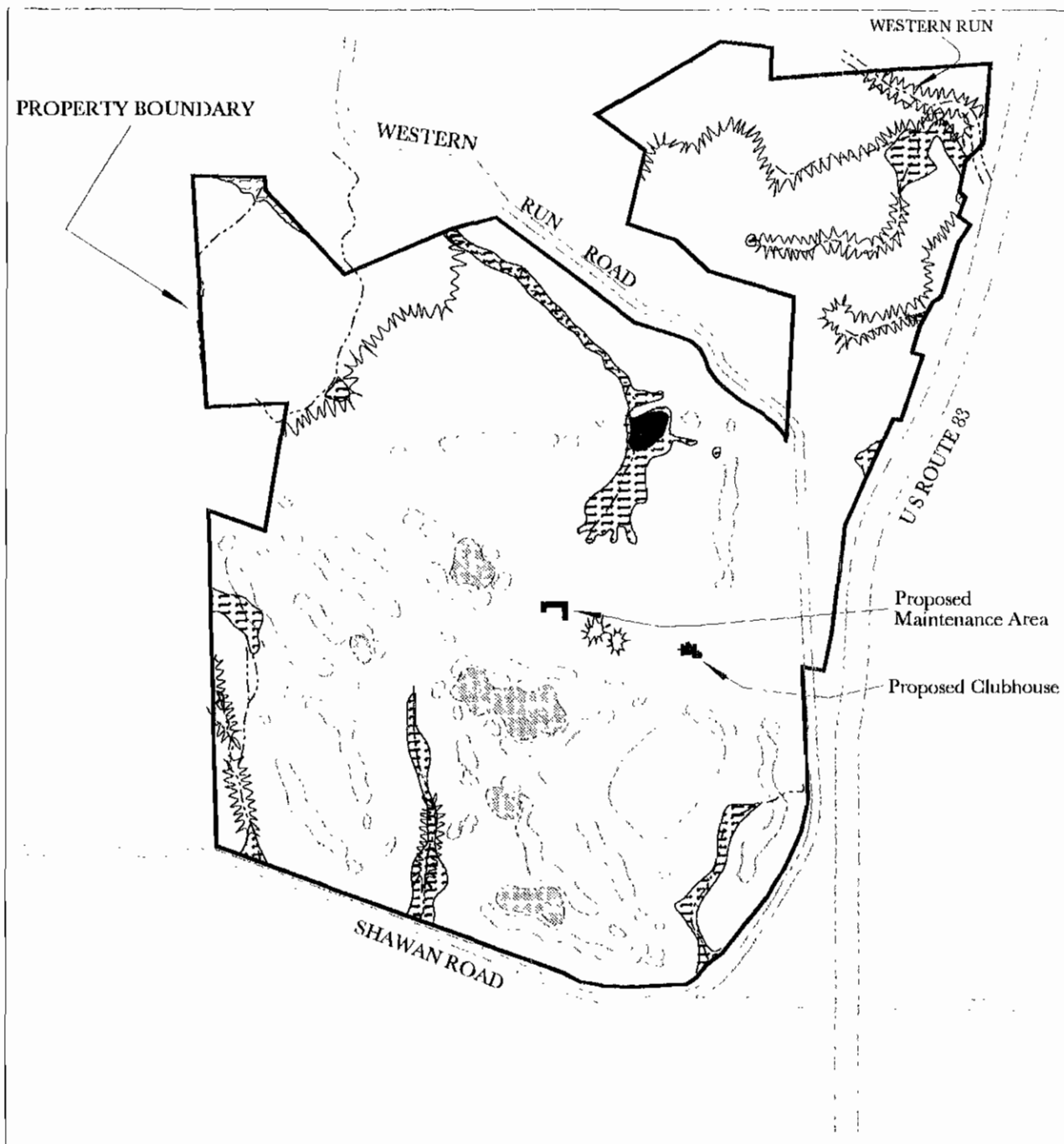
0 500 1000  
SCALE (FEET)

**CHESAPEAKE**  
• ENVIRONMENTAL MANAGEMENT, INC. •

DEPTH TO GROUND WATER  
AT THE HAYFIELDS PROPERTY

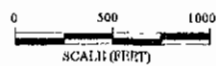
|          |            |              |
|----------|------------|--------------|
| DRAWN BY | RE DRAWN   | PREPARED FOR |
| DATE     | 0 MAY 1995 | HAYFIELD 100 |





# LEGEND

- |  |               |  |                          |
|--|---------------|--|--------------------------|
|  | Forested Area |  | Proposed Course Features |
|  | Wetland Area  |  | Proposed Ponds           |
|  | Streams       |  | Existing Pond            |



**CHESAPEAKE**  
• ENVIRONMENTAL MANAGEMENT, INC. •

WETLAND AND FORESTED AREAS  
AT THE HAYFIELDS PROPERTY

|           |            |              |                |
|-----------|------------|--------------|----------------|
| DESIGN BY | M. SECOR   | PREPARED FOR | HAYFIELDS INC. |
| DATE      | 5 MAY 1995 |              |                |

# ***GOLF COURSE MANAGEMENT PLAN***

## **1.0 OVERVIEW**

- 1.1 INTRODUCTION
- 1.2 SITE DESCRIPTION

## **2.0 AUDUBON COOPERATIVE SANCTUARY PROGRAMS**

- 2.1 INTRODUCTION
- 2.2 EXISTING GOLF COURSES
- 2.3 NEW GOLF COURSES

## **3.0 INTEGRATED PEST MANAGEMENT**

- 3.1 INTRODUCTION
- 3.2 TURFGRASS SPECIES SELECTION
- 3.3 COMMON TURFGRASS PESTS AND DISEASES
- 3.4 ACTION THRESHOLDS
- 3.5 MONITORING
- 3.6 DISEASE AND PEST TREATMENT
- 3.7 PESTICIDE SELECTION GUIDELINES

## **4.0 BEST MANAGEMENT PRACTICES**

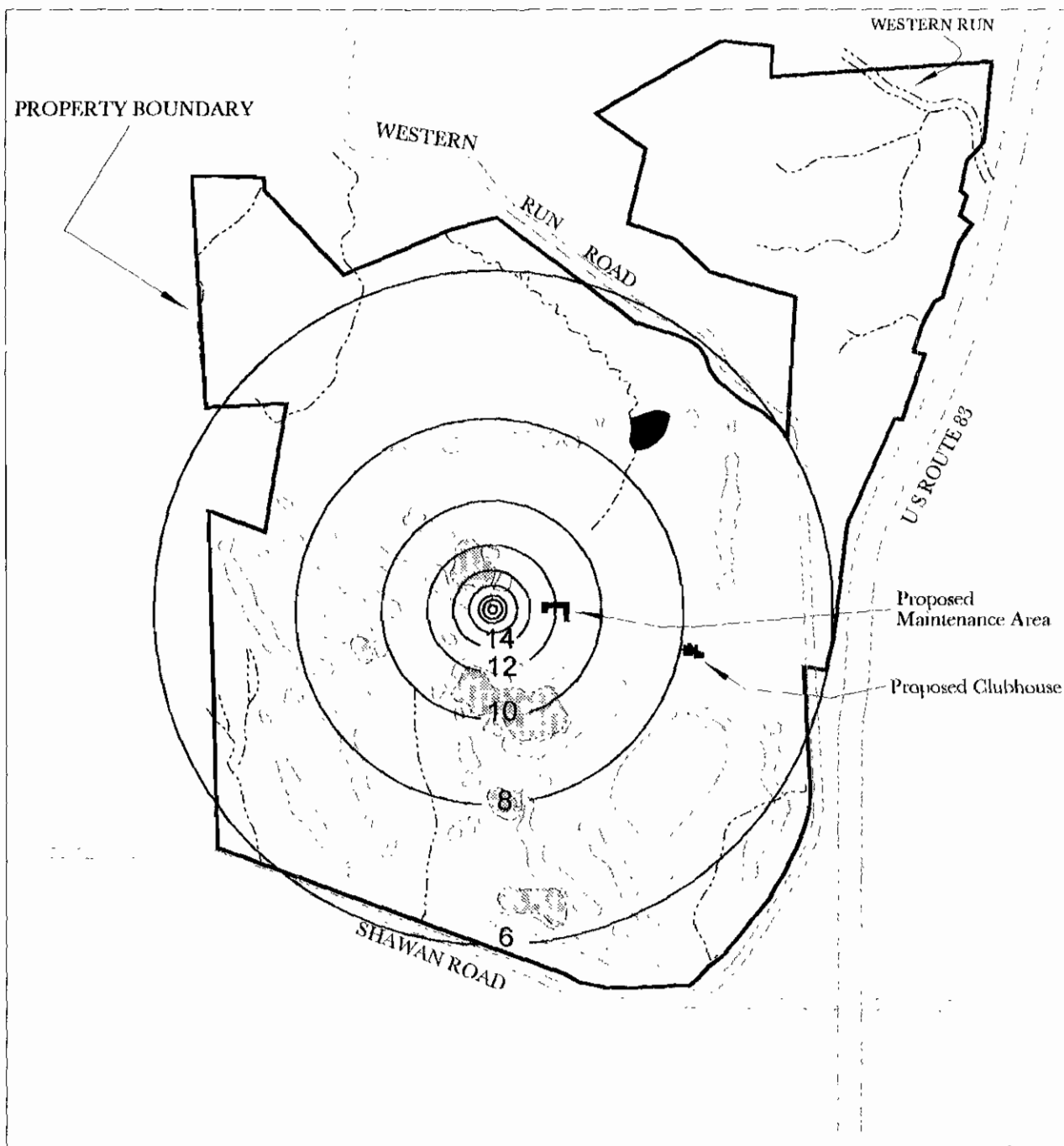
- 4.1 GOLF COURSE SUPERINTENDENT
- 4.2 CULTURAL PRACTICES
- 4.3 MAINTENANCE FACILITY
- 4.4 EQUIPMENT MAINTENANCE
- 4.5 EMERGENCY RESPONSE PLAN

## **5.0 ENVIRONMENTAL MONITORING PROGRAM (EMP)**

- 5.1 PRE-CONSTRUCTION
- 5.2 THREE-YEAR POST-CONSTRUCTION EMP
- 5.3 SAMPLING PROCEDURES
- 5.4 ACTION LEVELS - POST CONSTRUCTION PERIOD
- 5.5 REPORTING

## **6.0 QUALITY ASSURANCE PLAN**

- 6.1 INTRODUCTION
- 6.2 KEY PERSONNEL AND RESPONSIBILITIES
- 6.3 SAMPLE COLLECTION
- 6.4 SAMPLE PRESERVATION AND HOLDING TIMES
- 6.5 SAMPLE CUSTODY
- 6.6 SAMPLE TRANSFER PROCEDURES
- 6.7 CALIBRATION PROCEDURES AND FREQUENCY
- 6.8 INTERNAL QUALITY CONTROL CHECKS
- 6.9 PREVENTIVE MAINTENANCE
- 6.10 DATA PRECISION, ACCURACY AND COMPLETENESS
- 6.11 CORRECTIVE ACTIONS



# LEGEND

- Water Table Drawdown
- Proposed Course Features
- Proposed Ponds
- Streams
- Existing Pond

0 500 1000  
SCALE (FEET)

**CHESAPEAKE**  
ENVIRONMENTAL MANAGEMENT, INC.

COMPUTER SIMULATED DROUGHT  
WATER TABLE DRAWDOWN

DRAWN BY M. BROWN  
DATE 3 MAY 1995

PREPARED BY:  
HAYFIELD, INC.

12N

## ***ENVIRONMENTAL ENHANCEMENTS***

- ◆ Reduced runoff and sediment loading to streams by creating 58 acres of permanent turfgrass.
- ◆ Creation of new wildlife water habitat through creation of ponds and improvement of existing stream quality.
- ◆ Creation of new wildlife food and cover through afforestation, riparian and wetland enhancement.
- ◆ Increased species diversity through provision of aquatic and terrestrial improvements.
- ◆ Replacement of widespread agricultural chemical applications with minimal applications of chemicals that have low toxicity, low solubility and low persistence by trained and certified personnel.

**MINUTES**  
**Landmarks Preservation Commission**  
**January 17, 1996**

**PRESENT:**      **MEMBERS:**      Mrs. Ruth B. Mascari  
                                          Mr. Paul F. McKean  
                                          Ms. Elise A. Butler  
                                          Mr. Jeffrey A. Lees  
                                          Mr. Daniel Colhoun  
                                          Mrs. Judith Kremen  
                                          Ms. Suzanne Boyer  
                                          Mr. Francis LeMire

**GUESTS:**      Mr. Tim Dugan, OP  
                                          Mr. Frank Cant  
                                          Mr. John Mangione  
                                          Mr. Henry Lewis  
                                          Mr. John Bernstein  
                                          Mr. Jeff Savoye  
                                          Mr. Richard Rynd  
                                          Mr. Jules W. Lichter  
                                          Mr. Bob Devlin  
                                          Mr. Lawrence Link  
                                          Mrs. Karin Brown  
                                          Mr. Richard Matz  
                                          Mr. J. Hollick

**DRAFT**

The meeting was convened at 7:10 p.m.

**1. Harryman House**

Acting as a permit committee, the first members to arrive examined plans for 340 Main Street, Reisterstown.

Mr. Henry Lewis of Owings Mills explained an addition he wished to add at the rear of an existing restaurant tacked onto a log building in the National Register Historic District. The addition was similar in scale and material to the first addition. The plan was made by Bill Keeney. There was general agreement to accept the plan provided lunette windows were deleted. It was also agreed to break up the rear windows with Mullions and Muntins. Mr. Dugan was to take the opinion to the DRC.

**2. Standard Operating Procedure**

Mrs. Mascari noted for the record that the Commission operated under Section 26 of the County Code and the Secretary of the Interior's Standards.

|                   |                |         |           |            |   |
|-------------------|----------------|---------|-----------|------------|---|
| Post-It® Fax Note | 7671           | Date    | 1/24/96   | # of pages | 7 |
| To                | SCOTT BARNHART | From    | TIM DUGAN |            |   |
| Co/Dept.          |                | Co      |           |            |   |
| Phone #           | 832-2050       | Phone # | 887-3425  |            |   |
| Fax #             | 832-2015       | Fax #   |           |            |   |

**Description****To Accompany Petition for Special Exception****228.531 Acre Parcel****Part of Hayfields, Inc., Property****North Side of Shawan Road, West of Western Run Road****Eighth Election District, Baltimore County, Maryland**

i-McCune-Walker, Inc.

East Pennsylvania Avenue

Towson, Maryland 21286

410 296 3333

Fax: 296 4705

A Team of Land Planners,

Landscape Architects,

Engineers, Surveyors &amp;

Environmental Professionals

Beginning for the first in the centerline of Shawan Road (30 feet wide) at a point distant 1780 feet, more or less, as measured northwesterly along said centerline of Shawan Road from its intersection with the centerline of the Baltimore Harrisburg Expressway (I-83), thence leaving said point of beginning and binding on said centerline of Shawan Road the three following courses and distances, viz: (1) North 70 degrees 17 minutes 24 seconds West 873.42 feet, thence (2) North 69 degrees 44 minutes 49 seconds West 713.63 feet, and thence (3) North 70 degrees 45 minutes 49 seconds West 950.24 feet, thence leaving said centerline, and running the twenty-nine following courses and distances, viz: (4) North 02 degrees 28 minutes 49 seconds West 2204.40 feet, thence (5) South 72 degrees 07 minutes 25 seconds East 385.07 feet, thence (6) North 08 degrees 33 minutes 28 seconds East 281.31 feet, thence (7) South 73 degrees 49 minutes 02 seconds East 336.92 feet, thence (8) South 65 degrees 23 minutes 05 seconds East 423.13 feet, thence (9) North 26 degrees 02 minutes 32 seconds East 222.09 feet, thence (10) North 00 degrees 08 minutes 32 seconds West 283.57 feet, thence (11) North 83 degrees 30 minutes 45 seconds West 66.58 feet, thence (12) North 18 degrees 26 minutes 02 seconds East 119.69 feet, thence (13) North 79 degrees 15 minutes 02 seconds East 660.53 feet, thence (14) South 07 degrees 03 minutes 48 seconds West



# Ault, Clark & Associates, Ltd. Golf Course Architects

Brian T. Ault • Thomas E. Clark

## **BRIAN T. AULT**

Golf Course Architect

### EDUCATION

AA Civil Engineering - Montgomery College, Maryland

### PROFESSIONAL ASSOCIATIONS/AFFILIATIONS

American Society of Golf Course Architects (currently on Executive Committee)  
Mid-Atlantic Golf Course Superintendents Association  
National Golf Foundation  
United States Golf Association  
Indian Spring Country Club, Silver Spring, MD. (Brd. of Gov.; Greens Chairman)

### EXPERIENCE

Brought into the family business in 1973 and tutored by his father, Ed Ault, Brian now has nearly twenty-three years experience in all phases of golf course architecture: site evaluation; cost estimating; design of new facilities, and the remodeling of existing courses; and general, related consultant services. Brian became the president of the firm in 1989.

He has been the Architect-In-Charge for well over two hundred projects, all across the country -- including development of new golf courses, improvement/remodeling of existing golf courses, and preparation of feasibility studies. As such, Brian was directly in charge of preparing the various plans and specifications, overseeing the solicitation of bids, and then making frequent on-site inspection visits during the construction to help ensure the work was being properly implemented, was on time, and on budget.

Golf facilities that Brian was directly involved with include tournament players courses for the PGA Tour, resort complexes, golf course/homesite developments, private country clubs, municipal and daily fee courses, and a broad range of practice facility complexes.

Brian has been called upon as an Expert Witness on numerous occasions, providing testimony for golf course developers, as well as state highway departments and municipalities. His testimony has been in conjunction with such golf course related issues as personal injury lawsuits, condemnation proceedings, and zoning and permitting hearings.

He has been frequently invited to give talks and presentations at various university and professional seminars, and has had numerous articles printed in golf magazines and other related publications.

Brian received an award through *Golf Digest*, for having designed the Wyncote Golf Club (Oxford, PA.) -- which was voted "Third Best New Public Golf Course in America" for 1993.

# EAGLE GOLF GUIDE

*The Total Golf Resource*

**WASHINGTON METRO & REGION**

**FREE  
GOLF!**  
Bonus  
Coupons

GOLF HOMES

RESORTS/TRAVEL

COURSES

YELLOW PAGES

1992-1993 ISSUE



- Public, Private & Semiprivate Courses
- Finest Golf Resorts & Homes In The Region
- Locator Maps
- NEW: Golf Yellow Pages



Petitioner's Ex. No. 22

**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

Arnold Jablon, Director

TO ZADM

Date May 5, 1995

John F. Weber, Director

FROM Department of Recreation and Parks

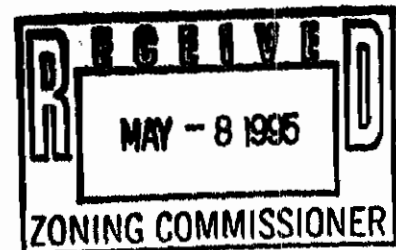
*John F. Weber*

SUBJECT Hayfields - Request for Special  
Exception for Golf Course Development

This Department has reviewed the Hayfields Request for Special Exception (for Golf Course Development). Our review focused on the issue of whether the development of a golf course in an agricultural preservation area represented an appropriate land use. Preliminarily, it should be noted that there is a deficiency of public golf courses in Baltimore County. Further, public golf course facilities enhance the quality of life for the County's overall citizenry and also provide a positive economic impact.

Essentially, it is this Department's judgement that the development of a golf course in an agricultural preservation area may be an appropriate land use. Additionally, we feel that a properly designed and operated course could preserve the rural and aesthetic integrity of the landscape and be congruous with agricultural use.

Thank you for your attention in this matter.



JFW:mft

c: Hon. Lawrence Schmidt, Zoning Commissioner



Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21286-5500

(410) 887-4500

DATE: 03/10/95

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: TOLL HOUSE INC.

LOCATION: CENTERLINE SHAWN RD., 1780' NW.Y OF CENTERLINE I-83  
(301 WESTERN RUN RD.)

Item No.: 302 Zoning Agenda: SPECIAL EXCEPTION

Gentlemen:

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

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

RECEIVED  
MAR 14 1995

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD  
Fire Marshal Office, PHONE 887-4681, MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND  
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director      DATE: March 20, 1995  
Zoning Administration and Development Management

FROM: *RWB* Robert W. Bowling, P.E., Chief  
Developers Engineering Section

RE: Zoning Advisory Committee Meeting  
for March 20, 1995  
Item No. 302

The Developers Engineering Section has reviewed the subject zoning item. This site is subject to Landscape Manual review comments from the Development Review process.

RWB:sw



**Maryland Department of Transportation**  
**State Highway Administration**

*Petitioner's Ex. No. 25*

O. James Lighthizer  
Secretary

Hal Kassoff  
Administrator

*4-25-95*

Ms. Joyce Watson  
Zoning Administration and  
Development Management  
County Office Building  
Room 109  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Baltimore County  
Item No.: *+302 (CAM)*

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*Bob Small*

*for*

Ronald Burns, Chief  
Engineering Access Permits  
Division

BS/

Baltimore County Government  
Office of Zoning Administration  
and Development Management

Petitioner's Ex. No. 26



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

May 3, 1995

G. Scott Barhight, Esquire  
Whiteford, Taylor & Preston  
210 West Pennsylvania Avenue  
Towson, MD 21204-4515

RE: Preliminary Petition Review (Case #95-308-X)  
Legal Owner: Toll House, Inc.  
301 Western Run Road (Hayfields)  
8th Election District

Dear Mr. Barhight:

At the request of the attorney/petitioner, the above referenced revisions were accepted for filing without a final filing review by the staff. The revisions were accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed no unaddressed zoning issues and/or incomplete information. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "C. Milton", written over a horizontal line.

Catherine A. Milton  
Planner I

CAM:scj

Enclosure (receipt)

c: Zoning Commissioner





Baltimore County  
Department of Environmental Protection  
and Resource Management

BUREAU OF WATER QUALITY  
AND RESOURCE MANAGEMENT  
Ground Water Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-2762  
Fax: (410) 887-4804

September 12, 1995

Ms. Stephanie Novak Hau  
Chesapeake Environmental Management, Inc.  
260 Gateway Drive, Suite 6-B  
Bel Air, MD 21014

re: Hayfields

Dear Ms. Hau:

In response to your request, I am providing some additional information and clarifications, on the required hydrogeologic investigations (our May 5 memorandum). We discussed these additions and clarifications on September 8.

Please submit the geologic log for well BA 94-0325, the drawdown data from your Hayfields aquifer test, and the Caves Valley data you referred to in your last report.

We agreed that the baseline well network would consist of wells BA 94-0326, 0328, 0329, 0330, and 0331. The operational well network will be established after the golf course layout is finalized; more well installations will be required.

Please submit a streamflow depletion analysis, using the method of Glover, Transient Ground Water Hydraulics (1974).

After my vacation and training commitments (September 14 - October 2) I wish to visit the site on October 4. Please do not hesitate to contact me if you have any further questions.

Sincerely,

*Stephen L. Mogilnicki*  
Stephen L. Mogilnicki  
Geohydrologist II  
GROUND WATER MANAGEMENT

SLM:pj

c: George G. Perdikakis  
Donald C. Outen  
Rocky O. Powell

HAU.LTR/DEPRM/GWMADM



Baltimore County  
Department of Environmental Protection  
and Resource Management

BUREAU OF WATER QUALITY  
AND RESOURCE MANAGEMENT  
Ground Water Management  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-2762  
Fax: (410) 887-4804

November 20, 1995

Ms. Stephanie Novak Hau  
Chesapeake Environmental Management, Inc.  
260 Gateway Drive, Suite 6-B  
Bel Air, Maryland 21014

Dear Ms. Hau:

When we last spoke, I mentioned that I would provide some references for stream depletion prediction techniques.

A paper in the July-August 1995 issue of the journal Ground Water (pp. 579-588) evaluates such techniques. The article's references are a good summary of available techniques. I'm enclosing a copy.

Feel free to call me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Mogilnicki".

Stephen L. Mogilnicki,  
Geohydrologist II  
GROUND WATER MANAGEMENT

SLM:pj

enclosure

c: Rocky O. Powell, w/ attachment  
Donald C. Outen, w/o attachment

a/c:hau-pj

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND  
Legislative Session 1989, Legislative Day No. 16  
BILL NO. 134-89

---

Mr. William R. Evans, Councilman  
By Request of County Executive

---

By the County Council, September 5, 1989

---

A BILL  
ENTITLED

AN ACT concerning

Development Regulations-Agricultural Preservation

FOR the purpose of preserving agricultural lands and protecting  
prime and productive soils in the development process.

BY adding

Section 22-37(b) (5)  
Division 1

Section 22-39 new definition "Prime and Productive Soils"  
Division 1

Section 22-99(c)  
Division 3

BY repealing and reenacting with amendments

Section 22-55(b) (3)  
Division 2

All of Article IV.  
Title 22 "Planning, Zoning and Subdivision Control"  
Baltimore County Code, 1978, 1987 Cumulative Supplement  
as amended

1. SECTION 1. Be it enacted by the County Council of Baltimore
2. County, Maryland, that Sections 22-37(b) (5), 22-39 new definition
3. "Prime and Productive Soils, and 22-99 (c), be and they are hereby
4. added to Article IV. title "Planning, Zoning and Subdivision Control"
5. of the Baltimore County Code, 1978, 1987 Cumulative Supplement, to read
6. as follows:
7. Sec. 22-37. Development policies.
8. (b) These regulations are intended to protect and promote public
9. health, safety and welfare and to ensure provision for public

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter stricken from existing law.  
~~Strike-out~~ indicates matter stricken from bill.  
Underlining indicates amendments to bill.



**MINUTES**  
**Landmarks Preservation Commission**  
**January 17, 1996**

**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari  
                                          Mr. Paul F. McKean  
                                          Ms. Elise A. Butler  
                                          Mr. Jeffrey A. Lees  
                                          Mr. Daniel Colhoun  
                                          Mrs. Judith Kremen  
                                          Ms. Suzanne Boyer  
                                          Mr. Francis LeMire

**GUESTS:**           Mr. Tim Dugan, OP  
                                          Mr. Frank Gant  
                                          Mr. John Mangione  
                                          Mr. Henry Lewis  
                                          Mr. John Bernstein  
                                          Mr. Jeff Savoye  
                                          Mr. Richard Rynd  
                                          Mr. Jules W. Lichter  
                                          Mr. Bob Devlin  
                                          Mr. Lawrence Link  
                                          Mrs. Karin Brown  
                                          Mr. Richard Matz  
                                          Mr. J. Hollick

The meeting was convened at 7:10 p.m.

**1. Harryman House**

Acting as a permit committee, the first members to arrive examined plans for 340 Main Street, Reisterstown.

Mr. Henry Lewis of Owings Mills explained an addition he wished to add at the rear of an existing restaurant tacked onto a log building in the National Register Historic District. The addition was similar in scale and material to the first addition. The plan was made by Bill Keeney. There was general agreement to accept the plan, provided lunette windows were deleted. It was also agreed to break up the rear windows with mullions and muntins. Mr. Dugan was to take the opinion to the DRC.

**2. Standard Operating Procedure**

Mrs. Mascari noted for the record that the Commission operated under Section 26 of the County Code and the Secretary of the Interior's Standards and its standard operating procedure.

2001-01-17 11:10

REPORT OF THE SPECIAL SUBCOMMITTEE  
OF THE  
BALTIMORE COUNTY LANDMARKS  
PRESERVATION COMMISSION

"HAYFIELDS"

CA 1810

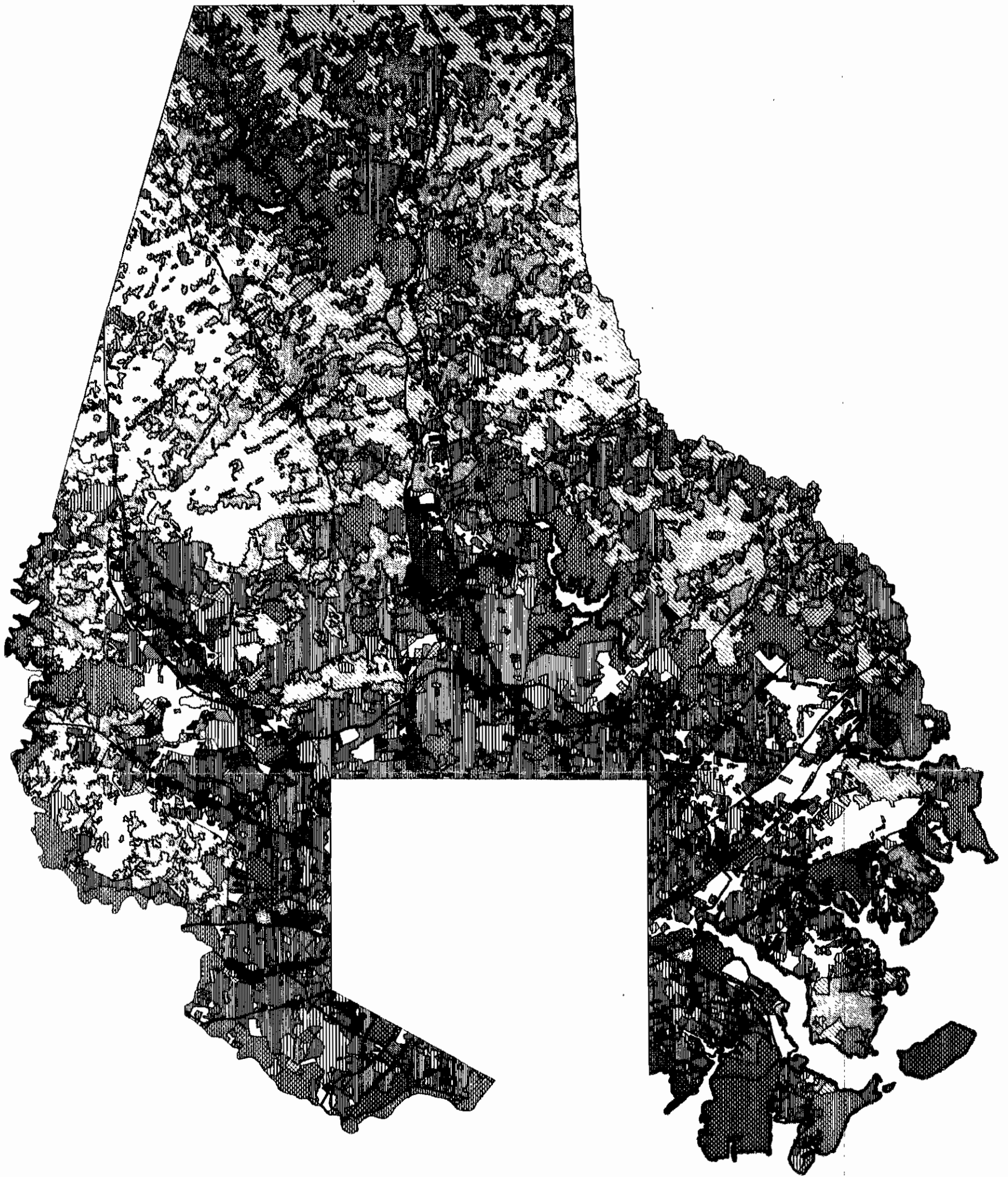
JANUARY 17, 1996

|                  |        |      |         |            |
|------------------|--------|------|---------|------------|
| Post-It Fax Note |        | 7671 | Date    | # of pages |
| To               | George |      | From    |            |
| Co./Dept.        |        |      | Co.     | 576        |
| Phone #          | Nelson |      | Phone # |            |
| Fax #            |        |      | Fax #   | 7695       |

**ENVIRONMENTAL GUIDELINES  
FOR THE  
DESIGN AND MAINTENANCE  
OF GOLF COURSES**

**Baltimore County  
Department of Environmental Protection  
and Resource Management**

**September 1989**



# BALTIMORE COUNTY GROWTH MANAGEMENT PROGRAM

## Existing Land Use

### EXISTING

SINGLE FAMILY DETACHED

SINGLE FAMILY ATTACHED

MULTIFAMILY

MIXED USE, COMMERCIAL

OFFICE

REGIONAL COMMERCIAL

INDUSTRIAL

INSTITUTIONS

PARK / RECREATION

AGRICULTURE / OPEN SPACE

FOREST

UNDEVELOPED URBAN LAND

### PIPELINE

SINGLE FAMILY DETACHED

SINGLE FAMILY ATTACHED

MULTIFAMILY

MIXED USE, COMMERCIAL

OFFICE

INDUSTRIAL

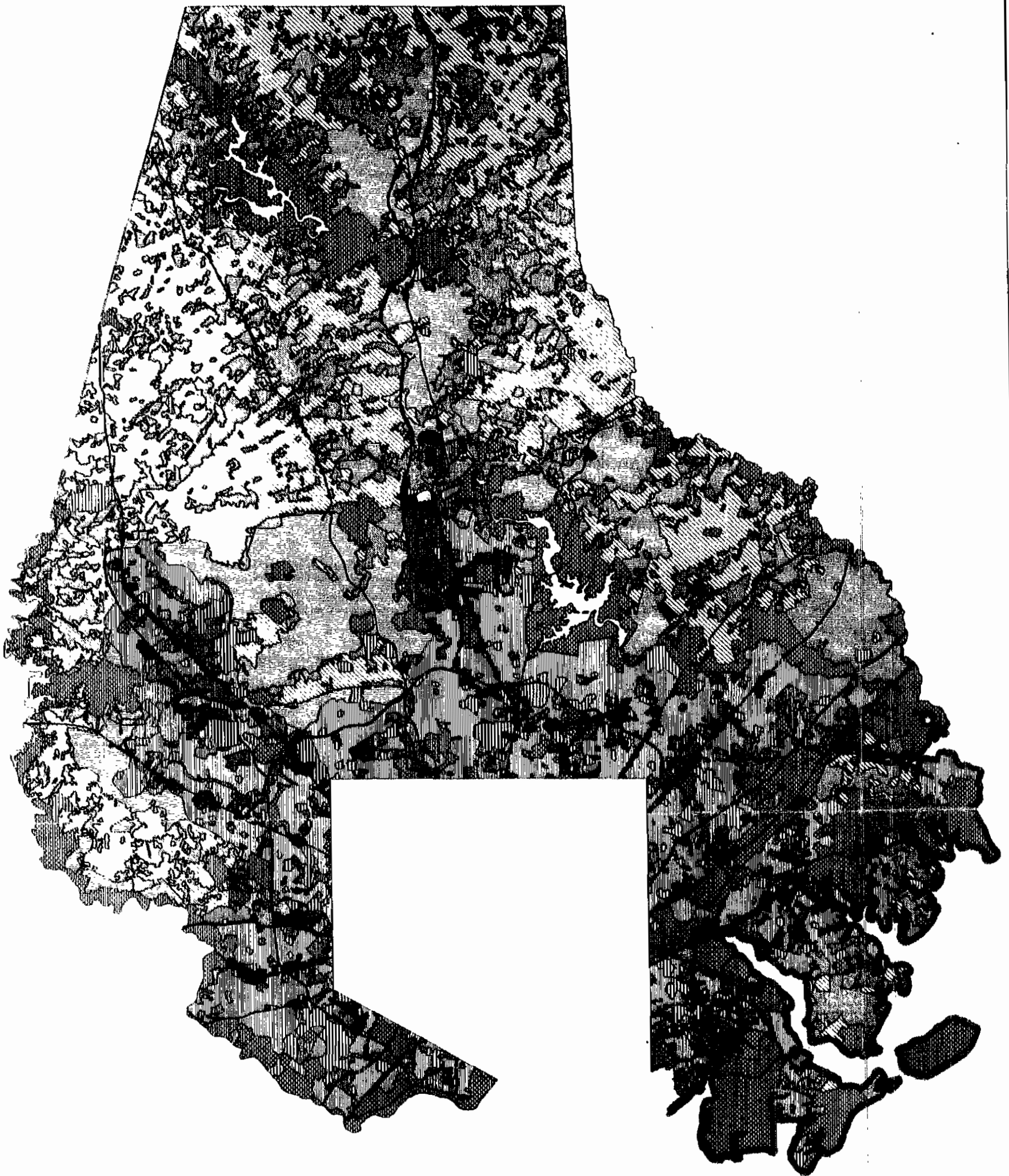
INSTITUTIONS

Prepared by Information Systems, Baltimore County Office Of Planning and Zoning

Date: July, 1991

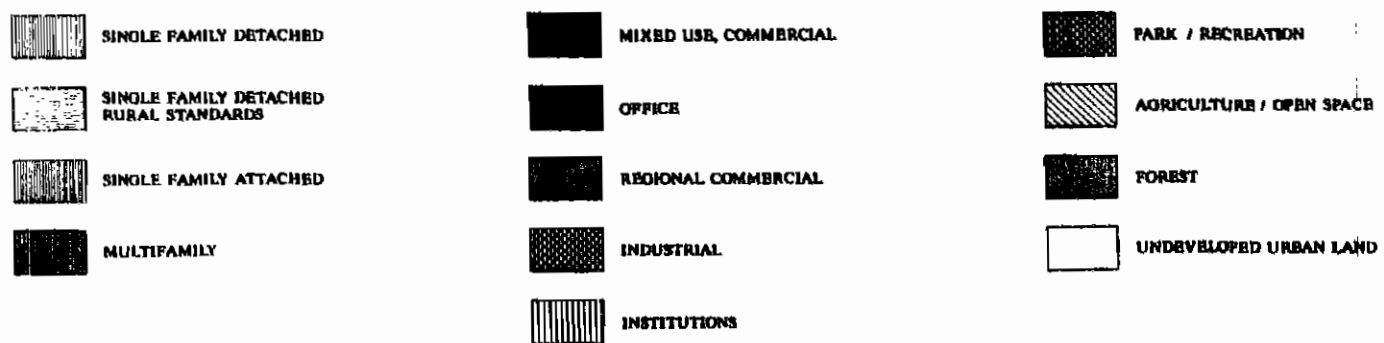
Scale: 1" = 1 Mile

Petitioner's Ex. No. 33A



# BALTIMORE COUNTY GROWTH MANAGEMENT PROGRAM

## Proposed Land Use

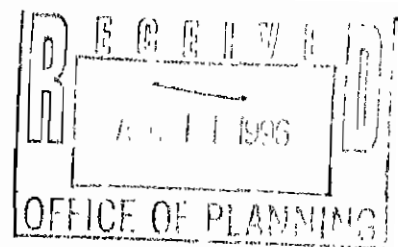


Prepared by Information Systems, Baltimore County Office of Planning and Zoning

Date: July, 1991

Scale: 1" = 1 Mile

Petitioner's Ex. No. 33B



IN THE MATTER OF  
HAYFIELDS, INC.  
PETITIONER/HAYFIELDS  
NW/S WESTERN RUN ROAD &  
SHAWAN ROAD @ ITS  
INTERSECTION WITH I-83  
(301 WESTERN RUN ROAD)  
8th E; 3rd C

\* BEFORE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO: 95-308-X

\* \* \* \* \*

**SUBPOENA**

**STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:**

**TO:** John W. McGrain  
Executive Secretary  
Landmarks Preservation Commission  
Office of Planning  
401 Bosley Avenue  
Room 406  
Towson, Maryland 21204

**YOU ARE HEREBY COMMANDED TO:** ( ) Personally appear;  
( ) Produce documents and/or objects only; (X) Personally appear and produce  
documents or objects;

**in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland  
21204 on Tuesday the 16th day of April, 1996, at 10:00 a.m.**

**YOU ARE COMMANDED TO** produce the following documents or  
objects:

1. Any and all records, including but not limited to minutes and handwritten  
notes, of the Landmarks Preservation Commission concerning:
  - a. Hayfields Reclassification Petition; Case No: 3-95-008791;
  - b. Hayfields Special Exception for Country Club; Case No: 95-308-X;
  - c. Hayfields Concept Plan and/or Development Plan; PDM File No.  
VIII-661

MINUTES

2.  
DRAFT

LANDMARKS PRESERVATION COMMISSION

January 12, 1995

PRESENT: MEMBERS:

Mrs. Ruth B. Mascari, Chairman  
Ms. Elise A. Butler  
Mrs. Barbara Weeks  
Mr. Jeff Lees  
Mrs. Judith Kremen

GUESTS:

Mr. Tim Dugan, OPZ  
Ms. Diane Gilbert, County Council Office  
Ms. Martha Colhoun  
Dr. Richard McQuaid  
Mrs. Gloria McQuaid

1. Minutes of November 10

Mr. Lees noted that the item about the Oregon Ridge Store building should read that the committee gave preliminary approval "pending the submission of shop drawings for the framing system for completing the porch." Mr. Lees agreed to call Will Baukhages, the project architect, about this final point.

2. Announcements

Mrs. Mascari distributed an excerpt from a book about the White House by Daniel Boorstin.

3. Bernoudy Road House

Citizens of the White Hall vicinity had called the chairman about a house on Bernoudy Road, the actual Bernoudy family house, now on a site to be developed by Jack Ensor. One caller reported that the house had good architectural features. Mr. McGrain had gone there for photos on January 10 and found it to be a Maryland-Pennsylvania-German style structure mixed with Federal elements. The house was vacant, the porch sagging. A 1994 Jeffersonian article quoted Mr. Ensor's promise to preserve the house. The chair noted that we would have to keep an eye on the property.



4. Oliver House

Mr. Lees reported receiving a call from the Crums, owners of Oliver House. They planned to replace the roof. Even with grant money in hand, some types of roofing could be prohibitively expensive. Mr. Lees asked if the owners could find other grants. Mrs. Kremen noted that any extra costs over the existing grant money could be taken as a State income tax deduction. There was discussion of other fund sources. Mr. Lees agreed to explain it to the owners. It was also noted that the "model" house of the adjoining development had been built. It was noted that the Planning Board had not assigned house design review to OPZ. Mrs. Kremen noted that the new officers of Friends of Oliver House should have the Planning Board report and other papers pertinent to the listing of the mansion. Ms. Butler noted that the LPC still had an advisory role.

5. OPZ Informational Plans

Mr. Dugan reported on a number of plans with various degrees of historical connections.

a. Mount Carmel Meadows

This was a 30-acre development at Hereford west of York Road. Fourteen houses were proposed. The Community Input Meeting had not been held. Mr. Dugan stated that he could bring the plan to some later meeting of the LPC. The OPZ staff comments noted the proximity of the houses to the Hereford Baptist Church (MHT Site No. BA 909) and the former Odd Fellows Hall (MHT Site No. BA 2034). The "Dr. Calder Little House" (BA 2065) was on the opposite side of Everett Road. OPZ wanted the orientation of the houses shown accurately. They also commented on Mt. Carmel Road as a scenic route. The development would have to wait for the end of the school moratorium. OPZ also intended to inquire about a lot marked "reserved." There was an agreement to omit street lights.

b. Whiteley Property

This was a 200-acre tract of RC-2 in the My Lady's Manor Historic District where zoning allowed for four units. No structures were shown on the concept plan. Ms. Mascari was recusant during consideration, being a neighbor to the tract. It was noted that some of the property was still being farmed.



c. DeFlora Tract

Mr. Dugan noted that OPZ had received the development plan which was scheduled for a conference at Zoning on January 10 and the Hearing Officer level on February 18. The cul-de-sac was accepted by the developer in the final plan. Ms. Butler and Mrs. Kremen noted that the LPC's subcommittee was to have met with the developer about side and rear elevations. Mr. McGrain was to check on the committee's findings. Mr. Dugan said that OPZ was pleased to have protected the historic resources.

d. Hayfields

Mr. Dugan reported that OPZ had made recommendations to the Planning Board; the office was aware that an amended plan would be submitted and OPZ was unwilling to accept a zoning reclassification. The Board of Appeals will meet solely for the purpose of accepting the amended petition (January 24) but will not discuss the merits of the case. OPZ will be able to inform the LPC on its comments and those of other agencies.

The chairman noted that Martha Colhoun, a guest, had attended the meeting. Ms. Colhoun reported she had searched various newspaper clippings and noted that Hayfields has been significant in agriculture since the colonial era; it was the "model farm" in the competition of 1824 and the importation of the sire "Sir Richard II" by John Merryman was significant in the history of pure bred cattle. The farm produced numerous wagon loads of wheat, timothy hay, rye, and oats. She also cited Nick Merryman's round of restoration in the 1930s when additional livestock was imported and pioneering work was done in artificial insemination. The property was still farmed under lease by Lippy Brothers, producing soy beans and corn.

Mrs. Kremen noted that Mr. Merryman would be a great candidate for an oral history. It was also noted that Mr. Merryman had produced a book.

The chairman thanked Ms. Colhoun and suggested that OPZ would need to see the amended plan. She felt that the LPC should view any alteration of the agricultural nature of the place as unacceptable. Mrs. Mascari also noted that the text of ex parte Merryman by Chief Justice Taney shows that Federal troops had invaded the house at 2 a.m. to seize John Merryman in 1861. She suggested that the agricultural terracing cited in the nomination was probably one of the last three examples left in the county.

**Landmarks Preservation Commission  
Minutes of January 12, 1995 Meeting**

Diane Gilbert, aide to Councilman McIntyre, asked for the text of Ms. Colhoun's report. It was agreed to invite Mr. McIntyre or Ms. Gilbert's successor as aide to the February meeting.

Mrs. Kremen wondered what other historical sources might be searched; Mrs. Mascari believed more data could be found in papers in the Maryland Historical Society manuscript collection.

**6. Texas Sites**

Mrs. Kremen had copies of correspondence from the Maryland Historical Trust concerning the Burns-Poe House along the railroad south of Church Lane, Texas. Baltimore County Public Works [in 1987] had agreed to move this house back from the extension of Beaver Dam Road; now the agency believed the cost was prohibitive. Ms. Kremen had discussed the site with Jo Ellen Freese of the MHT. There had been a suggestion to sell the house to Genstar. The State Department of Transportation was also considering an adaptive reuse in connection with the Light Rail line; the State agency was aware of the ISTEA fund for restoration of historic structures near transportation projects. Mrs. Kremen thought the building might have some commercial value serving light rail commuters. It was agreed to wait and see what the various agencies decided.

**7. Maryland Line Historic District**

The chair noted that she had received a complete package nominating Maryland Line as a Baltimore County Historic District. Dr. and Mrs. McQuaid spoke on behalf of the nomination which had been assembled by Bruce Guthrie. The proponents expected that the trustees of a cemetery would agree to nominate a large parcel, one that was not contiguous. It was agreed that Mr. McGrain would check out the arithmetic of the acres presented.

**8. Ordinance Revision**

Mrs. Mascari noted that Mr. Arnold "Pat" Keller, director of OPZ, would meet with the LPC on the question of revising the present ordinance.

MINUTES

LANDMARKS PRESERVATION COMMISSION

February 9, 1995

**PRESENT: MEMBERS:** Mrs. Ruth B. Mascari, Chairman  
Mrs. Margaret East  
Dr. Rhoda Dorsey  
Ms. Elise A. Butler  
Mrs. Judith Kremen  
Mrs. Kathy Levin  
Mrs. Barbara Weeks  
Mrs. Dorothy Foos  
Mr. Daniel Colhoun  
Mr. Jeffrey Lees  
Mr. Timothy Rodgers  
Ms. Suzanne Boyer

**GUESTS:** Mrs. Kelly Mays  
Mrs. Harriett McGinnis  
Mr. Steven Westerberg  
Mrs. Martha Slade Hackett  
Dr. Robert Vaughn  
Mr. Tim Dugan, OPZ

The meeting was convened at 7:32 p.m.

1. Opening Remarks

The chairman noted that it had been a very busy month with many inquiries about the Sparks School. The LPC had written to Mr. Ruppertsberger and Dr. Stuart Berger; the chairman thought that the walls of the school were reusable.

Various citizens had called asking if a plaque in memory of Dr. Dickinson Gorsuch had been salvaged; Mrs. Mascari had called Mr. Kelly; at first it was believed the plaque had been saved; now it wasn't sure; there was no certainty as to the ownership. Dr. Robert Vaughn said the Baltimore County Historical Society was eager to preserve the plaque on behalf of the Gorsuch family.

2. Cloisters

Mrs. Kremen reported that the Cloisters would be the Baltimore Symphony Show House. She noted that the will whereby it was given to Baltimore City was circumvented and the interior contents sold. The BCHT, LPC, CHAP and Baltimore Heritage worked on the problem and were concerned with the disappearance of various objects. The Cloisters is a City property within Baltimore County. Mr. Lees and Kathleen Kotarba met there and got photographs.

3. Piney Grove Church

The chairman reported hearing from Sandi Sims that Piney Grove U.M. Church was to merge with St. Luke's in Reisterstown. Mrs. Mascari noted that the trustees would still be responsible for the upkeep of the old buildings.

4. Ross Valley Farms

Various citizens had inquired about Ross Valley Farms, originally called Hereford Farm, where there was an effort to reactivate 39 building sites on a lapsed development plan. The Office of Law and the Sparks-Glencoe group appealed the matter to the Circuit Court. One of the audience noted that the tract contained a family cemetery.

5. Oregon Store

Mr. Lees noted that Mr. Will Baukhedges has not completed the last drawing for the porch. The project was being held up by the Liquor Board. Mr. Lees agreed to keep in touch with Mr. Baukhedges.

6. Legislation Revision

Mrs. Mascari, Mr. Dugan, Robert Bendler and Ms. Butler had met earlier on February 9 to propose alterations for the LPC basic legislation. Mr. Lees suggested a revision of the criteria to make a building in an existing National Register Historic District eligible for listing, e.g., Wycliffe Tenant House on Green Spring Valley Road. A structure that falls within an historic district should be eligible if it contributes to the historic district.

7. Minutes of January 17

On a motion by Dr. Dorsey, seconded by Ms. Butler, the minutes were unanimously accepted.

8. Reelection of Chairman

On a motion by Ms. Boyer, seconded by Mr. Rodgers, Mrs. Mascari was nominated to serve as chairman in 1995. Mrs. Foos moved that the nominations be closed. The chair was unanimously reelected only herself abstaining.

9. Turkey Cock Hall

Mr. Herbert A. Davis had taken Mrs. Mascari to see Turkey Cock Hall, a Final Landmarks List site, in Rockland. A potential buyer wanted to build at the rear of this ca. 1750 house.

The roof probably needed some repairs, although it had supported Bruce Boswell during an inspection. Mr. Lees felt it was too early to pass on the concept. Mr. Rodgers asked if there were recorded covenants in Rockland.

10. BCHS Farm Museum

Dr. Robert Vaughn wanted the LPC to be aware of the BCHS library and house museum and the recently established farm museum. He distributed copies of color photos showing the exhibits. The unheated barn would reopen in the spring. The society hoped to have school tours. He noted that they did not have a long-term lease. The Society would like to move the museum to Cromwell Valley if invited, or to some other suitable farm setting; the museum was established with the Dickinson Gorsuch fund. One suggestion was using the Sparks School ruin. Mrs. Kremen noted that a site analysis of Cromwell Valley was not yet done and in fact the awarding of a contract to a consultant had been on the Council agenda earlier in the week. Another site suggested was the Merryland Farm. Mrs. Mascari noted that our real estate member and agricultural representative can keep their eyes open for possible sites.

11. Hereford Barn

Mrs. Marty Hackett, Mrs. Kelly Mays and Steve Westerberg reported on the years of neglect of the barn at Hereford High School and the failure of the county to have it fixed at a reasonable cost. The citizens and parents groups wanted the barn used as an exhibit building. Mrs. Mascari summed up the issue and noted that Mr. McKean reported in autumn 1994 that the barn could be restored. It was finally agreed to post the site for a hearing and have the staff report the former owner of the property. The motion to hold a hearing was made by Ms. Boyer, seconded by Dr. Dorsey. The motion was unanimously passed, only the chair abstaining. Mr. Rodgers and Mrs. Weeks agreed to view the site.

12. OPZ Concept Plans

Mr. Tim Tugan presented four plans for either information or comment:

- a. Campfields. This was a development near the Augusburg Home in Lochearn in a DR 5.5 area, a request for 18 lots, a lower density than allowed. The density requested is compatible with the rest of the neighborhood. Mr. Dugan showed a 1994 photo of an existing house, which did not look "pre-Civil War" as once suggested. OPZ was asking the LPC for an opinion on whether a waiver should be granted to demolish the house. There was some concern that the house might have

been an older farm dwelling modernized in the 1920s. It was finally agreed that a committee consisting of Messrs. Rodgers and Lees would look at the site and report to Mr. McGrain if they had any concerns about the age and significance of the house.

- b. DeBalla Tract. This site at Mount Vista Road and Green Oak Road was near Gunpowder Falls and "King's County." Some 113 acres of R.C. zoning, adjoining a house on the MHT Inventory called Greenwood Farm. Mr. McGrain's written comments noted that the plan preserved a boundary of existing vegetation on both the development property and on the property of the historic house, which was owned by a Mr. Love. Mrs. Foos noted that as an east side resident she had no concerns and reported no opposition at the Civic Association; it was agreed that the lots were very large. It was unanimously agreed that the impact was minimal but urged that the screening would be an authentic tree line and vegetation.
- c. John Thompson Property. This project near Parkton stretched from York Road to I-83 and was one lot away from the MHT Inventory site, St. James Episcopal Church, also opposite the National Register site "Hill House." The OPZ staff had commented but the Community Input Meeting had not been held. The property had BM zoning and CR overlay. The OPZ wanted more drawings of the appearance. OPZ holds that the project does not meet the terms of CR zoning. Mr. Dugan quoted the staff report and noted that franchise businesses were not suitable. Mr. Dugan noted that only the Exxon station and post office were commercial. Mrs. Mascari noted that the plan violated the letter and the spirit of the rural business plan. Mr. Dugan will keep the LPC informed.
- d. Hayfields. At I-83 and Shawan Road, Mr. Dugan displayed a plan and showed the division between RC-2 and RC-4 parcels and noted that the historic buildings had been recognized on the amended petition for a zoning request. The petition noted the historic buildings and states that they will be given adaptive reuse. The proponents want 50 private dwellings and a golf course on 470 acres. On 295 acres of RC-2 they could have 6 houses, and on 180 acres of RC-4 there could be a larger number (undetermined).

There was mention that a representative of the Valleys Planning Council had expected to attend the LPC meeting. Mr. Colhoun noted that at the last VPC meeting that group had agreed to vigorously oppose the plan to alter the zoning, especially to allow a golf course. Mr. Dugan noted that the plan was filed in cycle zoning and the Planning

Board had to comment by the end of January. After that, the owner filed an amendment which gave the Planning Board another 45 days to comment; some technical questions remain if the Board of Appeals can rule on the issue, when the zoning issue and the golf course issue are heard separately. The Office of Planning would have to report to the Planning Board before March 10, but they can't be ready by February 16. The Board of Appeals hearing was to be April 4. OPZ was asking the LPC for an opinion that they could relay to the Planning Board. Mr. Dugan had heard from John Mangione this morning; Mr. Dugan had urged him to make a presentation to tonight's meeting in person. The proponents would have been welcome to come, he said.

Mr. Colhoun noted the historic importance of the farm and felt that a golf course would be out of character. Ms. Butler noted that the LPC could provide historic data that would meet the legal test necessary because the burden of proof is upon the person who opposes a specific use. A Court of Appeals test requires that evidence that a special exception would have a serious effect on the site, in summary, a "site-specific" test. You have to show that the site is "uniquely situated." We (LPC) have to overcome the burden with substantial evidence, such as the file of materials collected by Ms. Martha Colhoun. There was also a video tape of the property which could be submitted to OPZ to help them prove the staff position. Mr. Colhoun noted that the County Agent could vouch for the productivity of the farm.

Mrs. Mascari reported interviewing Mr. Nick Merryman about the rich yields of Hayfields farm. She read a proposed statement to attach to her notes of the interview.

The chair also entered a letter from John Bernstein of Valleys Planning Council. There was discussion of picking a date to meet with the developer. Mr. Dugan suggested reaching a preliminary position or appearing at the Planning Board. Mrs. Weeks thought that in fairness to the property owner we should go see the property. After much discussion of dates, it was agreed to try for President's Day, February 20. Mrs. Foos suggested filing a statement now and if necessary after a site visit, change our recommendations.

Ms. Butler made a formal presentation of the historical background papers and its summary to supply Mr. Dugan with site-specific material, to which Mrs. Mascari's pages (now on a disc) would be appended.

Mrs. Levin moved and Mr. Colhoun seconded a motion stating that the LPC believed the Hayfields site was specifically significant for agriculture and that we opposed its use as a golf course based on its agricultural history and the importance of the farm as a farm. The motion was unanimously passed. It was also agreed to meet-on-site at 3 p.m. on February 20 if the owner was available. Mr. Dugan agreed to mail the invitations on confirming with Mr. Mangione. Mrs. Mascari and Ms. Butler agreed to attend the Planning Board meeting of March 2.

13. Adjournment

On a motion by Dr. Dorsey, seconded by Mr. Lees, and unanimously approved, the meeting was adjourned at 9:45 p.m.

JM/mjm  
MINFEB9/PZONE/LANDMARK



**THE VALLEYS  
PLANNING COUNCIL, INC.**

212 Washington Avenue  
P.O. Box 5402  
Towson, Maryland 21285-5402  
410-337-6877  
410-296-5409 (FAX)

February 13, 1995

Mrs. Ruth Mascari  
Chairman, Baltimore County Landmarks  
Preservation Commission  
401 Bosley Ave., Rm. 406  
Towson, MD 21204

**RECEIVED**  
FEB 14 1995  
OFFICE OF  
PLANNING & ZONING

**Re: Hayfields Farm**

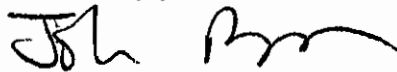
Dear Mrs. Mascari:

The Valleys Planning Council, representing more than 2000 individuals in the Northwest area of Baltimore County, wishes to register its firm stand against the current development proposals for Hayfields. Our Board of Directors has voted unanimously to oppose both the requested rezoning and the golf course.

Hayfields is certainly the most historically important farm in Baltimore County. Further, it is perhaps the most critical property in the Worthington Valley National Register District. Its agricultural history is extensively written up and widely known, and its National Register nomination form makes specific mention of its history as a farm. The effect of the current development proposals will be to remove almost all of this property from farming. Thus most of the significance for which this farm has been protected by the Landmarks Commission and the Federal Government will be swept away.

The Baltimore County Master Plan designates the Hayfields area as one "devoted to preserving agriculture" in Baltimore County. We are hopeful that the Landmarks Commission will vote to preserve this use too.

Sincerely yours,



John Bernstein  
Executive Director

cc: Judith Kremen, BCHT  
Tim Duggan, OPZ  
Bill Hughey, OPZ

Baltimore County Planning Board  
Members of the Landmarks Commission  
Jeff Long, OPZ

## MEMORANDUM FOR RECORD

As mandated by the Baltimore County Code, Section 26, the Baltimore County Landmarks Preservation Commission is to preserve the historical integrity of Baltimore County through its continual efforts to protect architectural sites.

One of the most significant and currently most threatened buildings in the County is the farm called "Hayfields" located at the entrance to the Greenspring Valley on Shawan Road. The history of this site and of the Merryman family is so extensive that it would fill volumes. Part of the information may be found in the records and files of the Commission and much more at the Baltimore County Historical Society (BCHS) and the Maryland Historical Society. Attached to this memo is an unpublished interview conducted by Ruth B. Mascari, Chairman and a copy of an old survey from BCHS.

For the purpose of this note, let it be said that the significance of this site lies in several areas - associative, architectural, singular natural beauty but most importantly in the broad pattern of local history of agriculture. Because a major portion of the County's past springs from its agriculture and, indeed, even continues today, the agrarian importance of this farm places it as the premier agri-history landmark of Baltimore County. Farming and all of the accessory activities which attend to it are and have been so intrinsically interwoven in the birth, the growth and the life of "Hayfields" that it is physically and psychologically impossible to separate its farming history from the main house, the out buildings, the grounds, the landscaping or the setting.

Any alteration or deviation from this original intent, either on the land or in or around the built environment would be a violation of the spirit and the intent of the Baltimore County Code, the Masterplan and the nomination of "Hayfields" as a listed Baltimore County Landmark.

a

Baltimore County Government  
Landmarks Preservation Commission



401 Bosley Avenue  
Towson, MD 21204

(410) 887-3495  
Fax (410) 887-5862

February 27, 1995

TO ALL MEMBERS OF THE LANDMARKS PRESERVATION COMMISSION:

The regular March meeting will take place on Thursday, the 9th in our usual meeting place, Room 406, County Courts Building, 7:30 p.m. The agenda will probably consist of the following items:

1. Opening Remarks
2. Minutes of February 9
3. Report on Hayfields Trip
4. Report on Hereford Barn Trip
5. Report on Berman House, Campfield Road
6. Issue of Lutherville fence, St. John's U.M. Church
7. New Business: Glyndon Kitchen plan
8. Breakfast Items
9. OPZ Plans
10. Adjournment

The St. John's United Methodist Church fence was put up in one day when the permit counter mistook a letter from the Lutherville advisory committee for an o.k. from the LPC. The fence is the ordinary sort we routinely approve, but was built under a permit that should not have been issued. There are about fifteen families in the area that object to the fence. The chairman feels that the entire commission should deal with this item to give the neighbors a chance to express their side. The church is on Seminary Avenue if anyone wants to view the site.

Sincerely,

A handwritten signature in black ink that reads "John McGrain". The signature is fluid and cursive.

John McGrain, Executive Secretary  
Landmarks Preservation Commission

JM/mjm  
MARCHLPC/PZONE/LANDMARK



# LANDMARKS PRESERVATION COMMISSION

## AGENDA

March 9, 1995

1. Opening Remarks
2. Minutes of February 9
3. Report on Hayfields trip, comments, etc.
4. Report on Hereford Barn trip
5. Report on Berman House, Campfield Road
6. Issue of Lutherville fence, St. John's U.M. Church
7. New Business: Glyndon Kitchen plan
8. UMBC site plan, archaeology sites
9. OPZ plans by Tim Dugan
10. Old business: follow-up on DeFlora new house designs
11. Opinion solicited on need for curbing at Mt. Gilboa Church Cemetery
12. Breakfast items
13. Other new business, if any
14. Adjournment

MINUTES  
LANDMARKS PRESERVATION COMMISSION  
MARCH 9, 1995

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**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari, Chairman  
Mrs. Judith Kremen  
Mrs. Kathy Levin  
Mrs. Margaret East  
Mr. Jeffrey Lees  
Mrs. Barbara Weeks  
Mr. Daniel Colhoun  
Mr. Martin P. Azola  
Mr. Timothy Rodgers  
Mrs. Dorothy Foos  
Ms. Suzanne Boyer  
Mr. Paul F. McKean  
Dr. Rhoda Dorsey

**GUESTS:**           Mr. John Mangione  
Mr. Frank Gant  
Mrs. Eileen Wuerthele  
Mr. Bernard L. Berkowitz  
Mr. Mark Behm  
Mr. Christopher Polglasc  
Col. Joseph F. Dannenfelser  
Mr. Stephen Thrasher  
Mr. John Bernstein  
Ms. Chris Schauble  
Mr. Bill Colonna  
Mr. William Barton  
Mr. Tim Dugan, OPZ  
Mr. Lenwood Johnson, OPZ

The meeting was convened at 7:30 p.m.

1. Minutes

On a motion by Mrs. East, seconded by Mr. Colhoun, the minutes of February 9 were unanimously adopted.

2. Montrose Mansion

Colonel Dannenfelser of the Maryland National Guard reported on their plan to restore the Montrose Mansion at Camp Fretard on Hanover Pike. About \$1 million was expected to be raised by private donations. There were some roof problems. They were keeping the heat going during the winter to prevent rot. There is a \$50,000 sum on hand for roof repairs. They would need some expertise in the long term. There was an architect's plan to fix the roof. Mrs. Mascari noted that Jo Ellen Freese of the MHT was pleased with the plan, which was done by the Military

Department of Maryland. Colonel Dannenfelser noted that the area to be repaired would not be visible from the ground. He believed the roof was intended to have a silver appearance; they will install a standing-seam roof of stainless steel that would be shiny at first, then weather to look like brushed aluminum. Mr. Lees thought the metal strips showing on the cupola should be painted and was probably originally "turned metal." Mr. Azola suggested lead-coated copper to avoid showing a shiny surface in the upper part of the cupola. Mr. Lees agreed that the roofing itself would not be visible. Colonel Dannenfelser thought that the cupola was probably originally white. He was not sure if the present roof was the original. There was a detailed task list for a 5-year restoration program. Mr. Lees wondered about the originality at the "cricket" adjoining the base of the cupola. It was generally agreed that the plan was suitable.

### 3. Hayfields Issues

The chairman reported that six members had toured Hayfields prior to submitting comments for OPZ to forward to the Planning Board. Following the February 20 meeting, the chairman had testified before the Planning Board committee on March 2 concerning a requested change of zoning. The Planning Board voted to deny the change of zoning. Ruth introduced John Mangione who wanted to describe the Hayfields project to the full commission.

Mr. Mangione, along with his architect Frank Gant, presented site plans and renderings of a plan to use the historic building as the headquarters of a proposed golf course on the property held by his family corporation since 1987. The owners intended to apply to the Board of Appeals for special exception. Mr. Mangione hoped the commission would address the adoptive reuse in the next opinion to the Planning Board or the Office of Planning. Mr. Gant had designed a banquet hall that could be tacked on to the main house via a connecting link but also thought such a facility could be sited somewhere else on the property. Mrs. Mascari opened the floor to comments related to the issue going before the Planning Board: a request for a special exception to permit a golf course. If the special exception were to be granted, the LPC would have to comment on the design of buildings. Mr. Azola asked if we were commenting on the proposed use or the design. Mrs. Mascari replied that last month we had commented against a different use for the farm and quoted the previous opinion based on a history of farm usage.

Mr. Mangione countered that Hayfields was no longer a living farm but was merely rented to a crop farmer. A golf course would be a good adaptive reuse. Mr. Colhoun commented on the "change of character." Mr. Azola noted how many old houses had been rescued for use as offices, etc. Adaptive reuse might be the only way to proceed. Mrs. Levin thought houses could be put

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there instead of a golf course. Mr. Colhoun noted that a golf course would be in the RC-2 portion, only six allowed. John Mangione argued that a golf course would leave 175 acres of open space and still leave 300 acres for crop farming. With a golf course, they could stop renting the significant structures. The owner and architect displayed a land use plan showing both houses and a golf course. An extensive discussion ensued about parking, etc., with Mrs. East suggesting some other location for the banquet hall. Mr. Azola suggested having the adaptive reuse designs meet the Secretary of the Interior's standards. John Bernstein, representing the Valleys Planning Council, had a strong objection to the project and noted that Hayfields was the "flagship farm of the Valleys." He thought that the property would still be a viable farm and potential buyers existed who would buy it as a grand estate. He noted that five attempts had been made to rezone it and pointed out a history of downzoning. He noted that the Master Plan urged the continuance of agriculture. He feared the historic structures would suffer some deterioration through heavy use. He noted that the property was mentioned in the National Register report and described as significant in the history of agriculture. He noted the pioneering in the development of superior livestock. He felt that houses plus a golf course failed to preserve the character. He thought the hillside would be derogated by houses in the rear of a golf course.

Mr. Lenwood Johnson noted the irony of a slave house becoming a pro-shop and wondered where the Hayfield slaves had been buried. The Cuba Road families were probably descendants of slaves "off the plantation."

The chairman called the discussion back to the comment needed for the special exception hearing. Mr. Azola noted that most of the discussion was about the change of context. Mr. Mangione noted that he was already able to build 40 houses and the LPC should accept the end of Hayfields as a farm. Mr. Colhoun noted that RC-2 was devised to preserve farming, not to provide development.

Mrs. Mascari noted that 40 houses "were a given, but we cannot logically link the golf course idea to that." She urged a motion reflecting on the special exception issue, noting that the National Register form mentioned agriculture in the opening sentence.

Mr. Colhoun moved that the LPC recommend denial of the special exception because it violated the agricultural and historic significance of the property and would be more detrimental here than in any other place.

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The motion was seconded by Mrs. Weeks. Mr. Rodgers commented that a future plan might put the golf course in the RC-4 space. Mrs. Mascari thought that would be a separate issue. In the absence of further discussion, the motion was carried, 10-3. Abstaining were:

Mr. McKean  
Mr. Azola  
Mrs. Mascari

4. Campfield, Lochearn

Mr. Lees and Mr. Rodgers reported visiting the Berman house at Campfield Road, Lochearn, to determine its age and significance in connection with a concept plan and waiver request for demolition. Mr. Lees found that his suspicion of an older house inside the present structure was true. There was an older interior with Greek Revival elements and a good stairway. He would not recommend obstructing the development and did not think we should try to preserve it. He thought the stairway could be reused somewhere. The commission was about to drop the issue but Mr. Dugan noted that we needed a vote for or against as our advice to the hearing officer. Mr. Lees moved to agree with the waiver request. Mr. McGrain noted that a person [name unknown] had appeared at the Community Input Meeting and commented on the archaeological possibilities of the site. Mrs. Mascari asked Mr. Thrasher if he would allow archaeologists to survey the place. Mr. Thrasher noted that nothing of interest had turned up in the rest of the neighborhood but agreed that qualified archaeologists could examine the premises provided they sign waivers to hold him harmless. No one had contacted him since the CIM but the opportunity was there.

Dr. Dorsey seconded the motion. in discussion, Mrs. Kremen asked if any materials could be salvaged. Mr. Thrasher had already taken a mantel for his future home. His associate, Mr. \_\_\_\_\_ thought the stair rail might be reusable; they intended to save hand-made elements. Mrs. Kremen noted that the BCHT could store items for reuse and make the contribution tax deductible.

Dr. Dorsey called for the question. The motion was passed 12-0, only the chairman abstaining.

5. UMBC Research Park

Mark Behm of UMBC introduced Bernie Berkowitz and Christopher Polglasc, an archaeologist from the Christopher Goodwin consulting firm. Mr. Behm displayed an aerial photo of the site. Mr. Polglasc noted that 60 to 65 acres of the campus were scheduled for development. There were originally three



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archaeological sites known; one was identified by the UMBC staff in 1970 and a large number of artifacts recovered. There was also the ruin of the Sulphur Spring Hotel dating from the early 19th century. A third site (No. 18BA158) was a scatter of pre-historic material found early in the century by a Mr. Jones. The university was involved in compliance with Federal Regulations, including "106." The scope of work was drafted by Beth Cole of the MHT and called for Phase I and Phase II surveys.

The archaeological consultant started late in 1994 and continued into 1995, doing archival background study, including intensive testing with several hundred shovel pits. An executive report was provided to the MHT. They have identified 14 sites, including the three known before. However, the Jones site can not be relocated because of its inadequate mapping 70 years ago. Some sites are still intact, one larger than suspected, yielding projectile points and flakes. Near the springs was "a sweep of prehistoric behavior." They also found three cisterns or wells near the hotel plus the "Wartman Lurman site," residence of the hotel owners. Some sites are significant enough for the National Register. They advise Phase II archaeology on six sites. Construction will avoid the hotel site. The university plans to put up interpretative signage and also avoid building on Site No. 18BA71.

Dr. Dorsey asked what they do with the findings. Mr. Polglasc said that they ultimately go to the MHT collection under Federal regulations and are stored as "an interpretative package." Mrs. Mascari thought it was a marvelous opportunity for the student body. Mr. Polglasc said the university had material stored from the 1970 dig and they hoped to conduct a field school. There were no further comments. Mrs. Mascari noted that the LPC heard the report acting as a Certified Local Government.

Mr. Lenwood Johnson mentioned the nearby existence of Cowdensville A.M.E. Church, the community of Cowdensville, and Arbutus Memorial Park. He noted that the citizens had been dialoguing with UMBC and were still concerned with protection from the project. They had some concerns with the concept plan which they would express on March 21. Mr. Behm noted that the community was concerned with traffic. Mrs. Mascari urged Mr. Johnson to report the outcome of the CIM.

6. Permit for Wuerthele Kitchen, Glyndon

Mrs. Eileen Wuerthele of 14 Glyndon Avenue, Glyndon, presented a plan to expand a kitchen into a screened porch. Mrs. Weeks moved to accept the plan, which was seconded by Mrs. Boyer, and unanimously passed 12-0, only the chairman abstaining.

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7. Franklinville Historic District

A number of citizens of Franklinville noted that they still supported the historic district proposal but were concerned that Mr. Barton's barn would bring down the charge of demolition by neglect. Mr. Bill Colonna circulated a plastic bag of wood shavings created by insect infestation. A discussion ensued about how to exempt the barn from charges of neglect. The members agreed that the language of the law could not be changed. Suggestions were made that Mr. Barton could get a demolition permit that would be good for a year. Mr. Azola noted that various companies would dismantle barns at no charge to salvage the material. Mrs. Mascari noted that some opposition to having an historic district had developed in Franklinville and various rumors were flying about. Mr. Rodgers thought the opponents should talk to the community leaders in the historic districts already established.

8. Old Business

- a. Mr. Lees reported that the Board of Appeals had approved John Alexander's house plan for Lutherville provided an overjetted upstairs window be deleted.
- b. The Oregon Store plan was still on hold due to non-historical complexities.

9. OPZ Informational Plans

Mr. Dugan presented the following plans:

- a. Maryvale Prep School. The developer would need a waiver to demolish the old tenant house at 1128 Green Spring Valley Road. OPZ will inform Clark MacKenzie next week that a waiver is needed. The site map failed to show the Green Spring Valley National Register District Line. More data would be presented to the LPC next month.
- b. Trinity House. This elderly housing facility in downtown Towson would have to go to the design review committee on March 27. Plans with elevations would be available next month.
- c. Oregon Ridge Store received a variance for a restaurant but lost on the parking issue. There was a new trend toward strict decisions on granting of variances.
- d. Glyndon Meadows. The plan was approved by the Board of Appeals, which denied the setbacks for the larger homes.

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- e. John Thompson property at Parkton. The CIM was set for March 28 at 7 p.m., Parkton Elementary School.
- f. Hayfields. The special exception petition is labeled "country club."
- g. Poe-Burns House, Texas. The old Memorandum of Agreement with the Maryland Historical Trust envisioned moving the house out of the path of Beaver Dam Road. Since the 1980s, the cost had increased and no use was found for the structure if moved. A new agreement, proposed to demolish the house and reuse the materials in the MTA light rail station. Mr. Dugan had drafted a response to the MHT and hoped the LPC would concur: Dr. Dorsey made a motion to concur; it was seconded by Mrs. East, and passed 12-0, only the chairman abstaining. Mr. Azola noted that we should leverage our consent into a commitment to spend a quarter of the money saved on preservation. Mrs. Kremen noted that there wouldn't be any satisfactory solution for this building: moving it to an isolated lot would not be preservation. Everyone was reluctant to get involved in further complexities.

10. Ulm House

Mr. Bernstein noted a proposal to move the Samuel Owings House or "Ulm," now used as Fiori's restaurant to expand an industrial park. He cited the "must be preserved" wording in the development regulations. Mrs. Kremen noted that the property was proposed for the Final Landmarks List in 1979 and the owners protested vehemently that they were taking care of the building. It was agreed for the staff or chairman to draft a letter as needed to emphasize the importance of this site.

11. Next Meeting

It was agreed to meet next on April 6.

12. Hereford Barn

Mr. Colhoun reported going to the barn at Hereford High School. Various local people were still willing to contribute to its restoration.

13. Adjournment

On a motion by Dr. Dorsey, seconded by Mrs. East, and unanimously accepted, the meeting was adjourned at 10:20 p.m.

LANDMARKS PRESERVATION COMMISSION

Minutes of April 6, 1995

REGULAR MEETING: County Courts Building  
Office of Planning  
April 6, 1995

PRESENT: MEMBERS: Mrs. Ruth B. Mascari, Chairman  
Mr. Paul F. McKean  
Ms. Elise A. Butler  
Mr. Martin P. Azola  
Mrs. Kathy Levin  
Mrs. Barbara Weeks  
Mrs. Judith Kremen  
Mr. Timothy M. Rodgers  
Mr. Jeffrey A. Lees  
Dr. Rhoda Dorsey  
Ms. Suzanne Boyer  
Mrs. Dorothy Foos

GUESTS: Tim Dugan, OPZ  
Jon Allen Thompson  
Mark Schlenoff  
Geri Schlenoff  
Nelson Fackler  
Vicki Almond  
Charles Utermohle  
Taft Utermohle  
Steve Duvall  
William Pugh III

The meeting was convened at 7:33 p.m.

1. Reister House

Mrs. Mascari noted receiving calls that the Reister House that was supposedly protected by an agreement between the citizens and its owner was demolished this week. The chair noted that it is a case that if you want something preserved in Baltimore County, you have to have it listed on the Baltimore County landmarks list; the building's National Register status and gentlemen's agreement failed to protect it. This could be viewed as a good lesson to get sites listed.

2. Minutes

On a motion by Mr. Rodgers, seconded by Mrs. Weeks and unanimously endorsed, the minutes of March 9 were approved.

17. Hayfields

Mr. Dugan reported that the Hayfields process expected to take place April 5 had been reset for June 1, 6, 14 and 20 at the Board of Appeals for the additional ten houses. The special exception process before the Zoning Commissioner was set for May 10 and 11.

18. Ingleside Avenue

Mr. Dugan displayed a plan for additional parking at the former florist shop opposite the Final Landmark List site of Old Salem Church. The ex-shop had received zoning limited to the footprint of the building in 1988. The owner or potential buyer wants to have more parking for an office supply store. The parking would be in a residential zone. OPZ could not do much about the commercial use. The OPZ staff recommends a restriction to permit only an office supply use; they were also requesting a landscape plan. There was some LPC discussion of the danger of more parking leading to future requests for a larger building. It was generally agreed that the LPC advise the hearing officer that we are concerned with any additional parking; we would not encourage additional spaces unless it is required by code.

19. Preservation Legislation Update

Mr. Dugan had a new memo from the Director of the Office of Planning that the legislation writers would attempt to formulate language to grant the LPC control of a minimum area around the freestanding buildings. Mrs. Mascari expressed her thanks to Mr. Pat Keller.

20. Awards

The commission members circulated a secret ballot and selected a number of awards from the accumulated list of successful projects and notable persons. Mrs. Mascari was to prepare the certificates.

21. Adjournment

On a motion by Mr. Rodgers, seconded by Mr. McKean, and unanimously accepted, the meeting was adjourned at 9:55 p.m.

MISCELLANEOUS REPORT TO THE LANDMARKS PRESERVATION COMMISSION

July 11, 1995

1. The chairman testified at the Board of Appeals on June 14 concerning the rezoning of parts of Hayfields. The Sun had two editorials opposing the development of a golf course. However, the Zoning Commissioner approved the development.
2. The Robins Range plan for 306 North Rolling Road has been scaled back from a crowded and squalid development plan to a relatively harmless minor subdivision.
3. We had a complaint on June 19 that the church in Lutherville built a structure of some sort over the weekend, even while their attorney was in correspondence with Mrs. Mascari about the erroneously issued fence permit obtained some months ago. We took the complaint to Rick Wisnom, assistant buildings engineer. A fourth form of construction was reported by Mr. Fackler on June 27.
4. There was an evening walking tour of Trenton village on June 14. The miller's dwelling has been superbly restored and recently volunteered for the LPC list.
5. We measured the distances from the fringe of the Caves Woods development plan to the nearest houses with MHT site numbers in the Green Spring Valley National Register Historic District. The separation is 600 feet at most, about 400 at the least.
6. Valleys Planning Council had a meeting on June 21 concerning the nomination of Trenton village as an historic district. One house has been volunteered already as a free-standing landmark.
7. We wrote to BGE that the Loveton mansion was on the Final Landmarks List. Mrs. Ardabella Fox did not want them to install an external gas meter on the stuccoed wall.
8. The Sun of June 18 had a story about the white elephant status of the Hutzler building in Towson.
9. The Owings Mills Times published a 1937 photo of Painter's Mill labeled as the Samuel Owings House. A reader named C.L. Feeley caught the error. Our listing of the house on the Preliminary Landmarks List was reported in the Sun the morning after. We also received a letter of support from the Reisterstown-Owings Mills Chamber of Commerce.
10. The LPC legislation committee had a productive meeting on June 12 and met again, July 11.
11. The Franklinville historic district was enacted by the County Council on July 3.
12. Mrs. Weeks looked at the "Derrymore" site on Falls Road where OPZ and LPC agreed to adding another house but recommended only one driveway. Mrs. Weeks reported no objection to a new house.

JM/mjm

JUNE28.MIS/PZONE/LANDMARK

**MINUTES**

**LANDMARKS PRESERVATION COMMISSION**

**August 10, 1995**

|                 |                 |                                                                                                                                                                                                              |
|-----------------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRESENT:</b> | <b>MEMBERS:</b> | Mrs. Ruth B. Mascari, Chairman<br>Mrs. Barbara Weeks<br>Dr. Rhoda Dorsey<br>Mr. Paul F. McKean<br>Mrs. Elise Butler<br>Mrs. Judith Kremen<br>Mr. Jeffrey A. Lees<br>Mrs. Kathleen Levin<br>Ms. Suzanne Boyer |
|-----------------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>GUESTS:</b> | Mr. K. Webster Bosley<br>Ms. Kerry Bosley<br>Ms. Frances R. Smith<br>Ms. Linell C. Smith<br>Mr. Kenneth T. Bosley<br>Mr. Arthur Bell<br>Mrs. Gibson Bell<br>Mr. Christopher Imbach<br>Dr. William Anderson<br>Mrs. William Anderson<br>Mr. Eric Rockel<br>Mr. Nelson Fackler<br>Ms. Geri Schlenoff<br>Mr. William Pugh<br>Mr. Julius W. Lichter<br>Mr. Thomas J. Renner<br>Mr. Hap Causey<br>Ms. Mary Bolyard<br>Mr. L. W. Link<br>Mr. Tim Dugan<br>Mr. John Rhode<br>Mr. John Pugh<br>Mr. Jeff Utermohle<br>Mrs. Vicki Almond<br>Mr. Richard Perone<br>Mr. Mike Ruby |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The meeting was convened at 7:30 p.m.

**1. Miscellaneous Announcements**

- a. The Chair announced a Memorial Service for Ron Andrews of the Maryland Historical Trust.
- b. Mr. McGrain and Mrs. Mascari had spoken at the dedication of a new community sign at Glyndon on August 9.

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- c. We have received Mr. Lichter's letter regarding the Samuel Owings House issue.
- d. Mr. Pat Keller had sent Melanie Anson a letter of support for Sudbrook Park's grant application for a community history project.
- e. The Chair had received a letter from the County Executive about demolishing the Sparks school ruins.
- f. Mrs. Mascari noted that the August 10 Sun reported on the Board of Appeals decision to deny a zoning change at Hayfields.
- g. Mrs. Mascari was giving her local history course again at Hereford High School starting September 20.
- h. A letter had been received from David Chase of Preservation Maryland about a plan in Congress to zero out the National Trust. Mr. Chase suggested writing to the two Maryland Senators.
- i. It was agreed to write to the Buildings Engineer in response to citizen complaints about the upkeep of the Todd House.
- j. Mrs. Mascari had submitted an emergency request for a grant of \$500 to reproduce the Clemens slide collection.
- k. The July Minutes were completed late due to secretarial shortages at OPZ.
- l. Mrs. Mascari suggested writing a letter to Mr. Fields noting Mary Morlock's energetic support for the LPC while working at OPZ.

## 2. Procedural Items

The chair noted that the commission operated under Sector 22 of the Baltimore County Code, 1988, and the Secretary of the Interior's Standards

## 3. Fence Permit, St. John's U.M. Church

Mr. Tom Renner, attorney for the Church at Lutherville noted that tonight was a continuation of the July meeting and displayed mounted photos of the fence, shed, and vicinity at Seminary and Francke Avenues, explaining the location of the day care center. It was understood that they would submit a plan at this meeting to provide proper screening of the site. Mr. John Rhode had made a landscape plan which the church Board of Trustees approved and agreed to fund. Mr. Renner believed the plan was appropriate and hoped to affirm the building permit whether it was granted appropriately or not. Mrs. Kremen asked



a, b, c

**MINUTES  
LANDMARKS PRESERVATION COMMISSION  
OCTOBER 12, 1995**

**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari, Chairman  
                                          Ms. Elise A. Butler  
                                          Mrs. Kathleen Levin  
                                          Mr. Jeffrey A. Lees  
                                          Mr. Paul F. McKean  
                                          Mr. Daniel Colhoun  
                                          Mr. Timothy Rodgers  
                                          Mrs. Judith Kremen  
                                          Mr. Martin P. Azola  
                                          Ms. Suzanne Boyer

**Guests:**           Mr. James T. Wollon, Jr.  
                                          Mr. Kenneth Bosley  
                                          Mr. Robert Hoffman  
                                          Mr. L. Kemp Ensor  
                                          Mr. L. Kemp Ensor, III  
                                          Mr. Wally Lippencott, Jr.  
                                          Mrs. Karin Brown  
                                          Mr. Jeff Savoye  
                                          Ms. Sara Beckles  
                                          Mr. David Altfeld  
                                          Ms. Colleen Shelton  
                                          Mr. Kerry Bosley  
                                          Mr. Tim Dugan  
                                          Mr. David Robbins  
                                          Mr. Herbert A. Davis  
                                          Ms. Victoria Woodward  
                                          Ms. Katy O'Meara  
                                          Ms. Margaret Bosley  
                                          Mr. Bob Riepe  
                                          Mr. John Harvey  
                                          Mr. Jim Himell  
                                          Mr. Michael Ruby  
                                          Mr. John Bernstein

The meeting was convened at 7:07 p.m.

**1. Announcements**

- a. Mrs. Mascari announced the commemoration of World War II aircraft production to be held at Glenn L. Martin State Airport on Sunday, October 15.
- b. The Chair noted that several members were sick, others out of town.

Mrs. Mascari urged the Office of Planning to investigate the full facts on the sewer plant.

12. Adjournment

On a motion by Ms. Butler seconded by Mrs. Mascari, and unanimously accepted, the meeting was adjourned at 10:43 p.m.



Baltimore County  
Planning Board

401 Bosley Avenue  
Towson, Maryland 21204  
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Planning's report to LPC, 11/9/95

Status reports

1. "Hayfields" [8-661]: Confirm schedule for meetings, reviews and actions on the Golf Course/Residential Development Plan, including LPC's role; detailed presentation by the developer
2. "Village Care Facility" ("Balmuckety" property) [3-377]: Second community input meeting scheduled (11/27/95, Ft. Garrison Elementary School, 7:00 p.m.); LPC's comments forwarded to Hearing Officer
3. Ensor property: Residential lot approved by Planning Board on 11/2/95 subject to landscaping requirement (involvement" with Bosley U.M. Church [Landmarks List #90])

New projects

1. "Chapeldale Road Site", approx. 11000-block, Liberty Road [2-380]: Opportunity for comments to the Hearing Officer; property is about 300' diagonally opposite from the "New Tavern" (BA #23)
2. Maffezzoli property, 3501 Belmont road [DRC # 11065B; Item 166]: "Non-density transfer" of 31 acres in Worthington Valley National Register District
3. Wooden property, Hanover and Glen Falls Roads [4-486]: Opportunity for comments to the Hearing Officer; adjoins Mount Gilead United Methodist Church (BA #1168)
4. Green property, Monkton Road (E. of Shepperd Road): Opportunity for comments to the Hearing Officer; "Darwin's Choice" (BA #622) and "Bedlam" (BA #621) are in the vicinity and are contributing structures in the My Lady's Manor National Register Historic District.



Baltimore County  
Office of Planning

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**Planning's report to LPC, 12/28/95**

**Status reports**

1. "Hayfields" [8-661]: Progress report on the Special Committee's work; discuss format and timing of LPC's recommendations
2. "Chapeldale Road Site", approx. 11000-block, Liberty Road [2-380]: Property is about 300' diagonally opposite from the "New Tavern" (BA #23 and Final Landmarks List #53); Revised Concept Plan submitted 12/26/95.
3. Maffezzoli property, 3501 Belmont Road [DRC # 11065B; Item 166]: in Worthington Valley National Register District; hearing postponed to 2/5/96, and discussions on-going with owner's attorney
4. Rockland Grist Mill [Case No. 96-31-SPH]: Special hearing to CBA allow expansion denied by Deputy Zoning Commissioner on 11/7/95
5. Coll property, 1544 Rolling Road [95082M]: Denial of Panhandle-lot minor subdivision has been appealed; LPC asked to testify in 1/30/96 CBA hearing

**New Projects**

1. "God's Acre Farm" (Tinsley property, 2800 Butler Road): Division of the property to establish a separate lot for each of the four existing dwellings, including the Tinsley House (BA 1129); needs DRC approval for limited exemptions and Special Hearing for the lot lines, after which the owner proposes to place the entire property in an MET easement precluding any additional building lots
2. Bautz property, 1414 Front Ave., Lutherville [Item #195]: Needs special exception approval for 30-bed Class B assisted living facility; site is within National Register Historic district but not within County District; Hearing was 12/13/95.
3. "Trenton Mills", north side of Trenton Mill Road [5-236]: Division of 207 acres for four single family dwellings; subject to Planning Board action (January 1996) because partly within Rippling Run Farm County Historic District (access road); C.I.M. scheduled for 1/3/96 at Arcadia Volunteer Fire Company.



4. Revco Drug Store, Liberty Rd. at Greens Lane [2-554]:  
Randallstown Elementary School (BA 2558) is on the adjoining  
property; C.I.M. not yet scheduled
5. Shanklin property, 16832 Wesley Chapel Road [95182M]: Division  
of 17.7 acres into three lots; property is within "My Lady's  
Manor" National Register District
6. Grant property, Dolfield Road at future Red Run Boulevard [4-488]:  
Proposed 460 apartment/condo units on 10.5 acres containing ruins  
of former "Hibling House" (BA 678)

PLRPT12.14/PZONE/TXTRLH

## MINUTES

### LANDMARKS PRESERVATION COMMISSION December 28, 1995

PRESENT: MEMBERS: Mrs. Ruth B. Mascari, Chairman  
Ms. Elise A. Butler  
Mrs. Kathleen Levin  
Mr. Jeffrey A. Lees  
Mr. Daniel Colhoun  
Mrs. Barbara Weeks  
Dr. Rhoda Dorsey  
Mr. Francis LeMire  
Mrs. Judith Kremen

GUESTS: Ms. Marita J. Cush  
Ms. Kristen Forsythe  
Mr. David Wasmund  
Mrs. Cheryl Wasmund  
Mr. Paul V. Cush  
Ms. Victoria Woodward  
Mr. John Mangione  
Mr. Stephen Bisher  
Mr. Tim Dugan, Office of Planning

The meeting was convened at 7:00 p.m.

#### 1. Chairman's Remarks

The Chairman thanked the members for assembling on short notice to take up the Agenda snowed out on December 14.

#### 2. Operating Statement

The Chair noted for the record that the Commission operated under Section 26 of the Baltimore County Code, 1988, as amended, and under the Secretary of the Interior's Standards and it's Standard Operating Procedure

#### 3. Office of Planning Items

Mr. Dugan distributed status reports listing projects of interest to the LPC:

- a. God's Acre Farm - Mr. Dugan explained that the former Thomas Tinsley farm was under contract to a purchaser who proposed four lots, each with an historic house on it. A special hearing was needed to approve the lot lines. Mr. Bisher, the purchaser, noted that the main Tinsley residence had been built on old foundations; the other houses for the domestic staff were built in the 1950's. There are six

development lots. The owner has DRC approval and hopes to put the property into an MET Easement and intends to keep the place the way it is today. An aerial photo from a real estate advertisement was exhibited.

Mr. Dugan noted that the OP first thought there might be a need for vegetative screening, but the aerial views show sufficient vegetation. Mrs. Mascari solicited opinion of the LPC. There was a general consensus with the OP staff comments. Mrs. Mascari suggested volunteering the main house as a County Landmark at some future date.

- b. Hayfields - Mr. Dugan thought the committee for formulating comments to the Planning Board was making good progress. He distributed a two-sheet handout with a list of subjects discussed at the committee meetings. He distributed a "generalized location sheet" of the site. He suggested that the LPC could comment on anything the committee had missed in forming comments to the Planning Board. Mrs. Mascari urged the members to think about the adequacy of the comments. Mr. Dugan noted the "involvement" with the landmark sites is the factor that sends the issue to the Planning board on January 11, 1996. The second sheet is an idea for a format showing sites-vs.-effects with columns provided for comments by both developer and commission. Mr. Dugan listed the committee members:

|              |            |
|--------------|------------|
| Mrs. Mascari | Mr. Lees   |
| Mr. Colhoun  | Mr. LeMire |
| Ms. Butler   |            |
| Mrs. Weeks   |            |

It was agreed to meet next on January 2, 1995, at 4:15 p.m.

Mr. John Mangione noted that the format was "reasonable and fair." Ms. Butler noted that the committee has to make real progress, e.g., about its comments on the addition between the brick barn and the nearby building. The next meeting will be to fill out the chart. Mr. Dugan agreed to fill out the first column and John Mangione to fill out the developer's comments with the help of Frank Gant. There was miscellaneous discussion of the Planning Board's schedule; it was believed that there could be a decision on January 18 or early February.

Ms. Butler suggested a site visit by the Planning Board because it is difficult to visualize the site on paper. Mr. Mangione agreed to give a tour. Mr. Dugan would forecast the Hayfields Plan at next week's meeting of the Planning Board and try to interest its members in a tour.

c  
S/A S'VA

**MINUTES**  
**Landmarks Preservation Commission**  
**January 17, 1996**

**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari  
                                          Mr. Paul F. McKean  
                                          Ms. Elise A. Butler  
                                          Mr. Jeffrey A. Lees  
                                          Mr. Daniel Colhoun  
                                          Mrs. Judith Kremen  
                                          Ms. Suzanne Boyer  
                                          Mr. Francis LeMire

**GUESTS:**           Mr. Tim Dugan, OP  
                                          Mr. Frank Gant  
                                          Mr. John Mangione  
                                          Mr. Henry Lewis  
                                          Mr. John Bernstein  
                                          Mr. Jeff Savoye  
                                          Mr. Richard Rynd  
                                          Mr. Jules W. Lichter  
                                          Mr. Bob Devlin  
                                          Mr. Lawrence Link  
                                          Mrs. Karin Brown  
                                          Mr. Richard Matz  
                                          Mr. J. Hollick

The meeting was convened at 7:10 p.m.

1. **Harryman House**

Acting as a permit committee, the first members to arrive examined plans for 340 Main Street, Reisterstown.

Mr. Henry Lewis of Owings Mills explained an addition he wished to add at the rear of an existing restaurant tacked onto a log building in the National Register Historic District. The addition was similar in scale and material to the first addition. The plan was made by Bill Keeney. There was general agreement to accept the plan, provided lunette windows were deleted. It was also agreed to break up the rear windows with mullions and muntins. Mr. Dugan was to take the opinion to the DRC.

2. **Standard Operating Procedure**

Mrs. Mascari noted for the record that the Commission operated under Section 26 of the County Code and the Secretary of the Interior's Standards and its standard operating procedure.



Baltimore and a perfect example of the style. Mr. Link noted that Mr. Pearre was a Lyon family member only by marriage. He suggested that this was a house that a city lawyer got designed downtown. Mr. Colhoun asked Mr. Link why he thought the house lacked quality. Mr. Link thought that the sum total of the parts was not as excellent as it should be. He thought some parts dominate the facade rather than blend in. Mrs. Kremen suggested that Mr. Link's clients probably insist on alterations that ruin the purity of the original design. Mr. Link insisted that one thing a Georgian Revival house needs is a Palladian window. He reiterated his opinion that the structure "was a mish-mash." Mrs. Mascari asked Mr. Link if it were a bad example; he conceded that it was not.

Mrs. Mascari summed up the remarks suggesting that Mr. Link "seems to hold that it is not a good example of the work of a notable architect." Mr. Lees discussed the grounds for listing a structure, for one that the house is featured in The Green Spring Valley history. He too wondered if it were a great example. Ms. Butler noted that the rear of the house has elements that could easily be dispensed with. As a layperson, she would like to see a stunning example. Mr. Link agreed to submit a list of "good" [i.e., correctly rendered] Georgian or Federal houses. Mr. McKean suggested that a house could be a builder's careful rendition of an incorrect design. Mr. Lees thought there were good designs in Guilford and in Baltimore County.

Mr. Richard Ryne explained his intent to buy and keep the house. He did not want to be impeded by landmark status. Mrs. Mascari asked if he meant to demolish the building. He declined to answer. Ms. Butler invited Mr. Ryne to watch the Commission interact with the developers of Hayfields. He did not. It was agreed to take the vote on February 8.

## 12. Hayfields Committee Report

At this point, there was a quorum present, Mr. LeMire having arrived. Mrs. Mascari distributed copies of the Hayfields committee report with the "Encapsulated comments." The technical committee presented a table, the result of its many months' work. Frank Gant, architect for the golf course developer displayed renderings of the historic buildings in the Hayfield Complex. The Commission discussed each building at length and the question of whether the full Commission should accept the committee's chart and comments to transmit to the Planning Board. The discussion was extensive, each building studied in turn. In summary, the full Commission comments were as follows:

- a. Hayfields Mansion - Mr. Gant reported deleting one bay from the banquet facility wing and gaining the same amount of space in the rear. Hence, square footage impact is not

decreased. The hyphen or breezeway was tied into a side door of the Mansion rather than the parlor window. Mr. Colhoun was strongly opposed to the hyphen as "intrusive." He felt its flat roof inappropriate and its actual touching of the original house an adverse impact. Mr. Lees felt that an addition that did not seek to replicate the old features would meet the Secretary of the Interior's standards. Ms. Boyer generally liked the renderings. Mrs. Kremen asked about the massing to be seen from Shawan Road, Mr. LeMire thought that even without leaves on the trees, the house was barely visible. He believed that Mr. Gant and Mr. Mangione had striven to build the new space in an acceptable manner. Ms. Mascari solicited a vote to accept the plan in concept, expecting to add refinements in the future. Ms. Butler moved to accept Mr. Gant's presentation [including a cardboard model] in concept only and his drawings, and that the Committee report be accepted Mr. LeMire seconded the Motion. The vote was:

| <u>Yes</u> | <u>No</u> | <u>Abstain</u> |
|------------|-----------|----------------|
| LeMire     | Colhoun   | Kremen         |
| McKean     | Mascari   |                |
| Butler     |           |                |
| Lees       |           |                |
| Boyer      |           |                |

Ms. Butler raised the question of whether an advisory comment needed a majority of seven [as in the case of a building permit] or a simple majority. It was noted that Mrs. Weeks [while absent] had endorsed the report as a committee member. Mrs. Mascari agreed to report the mixed vote to the Planning Board the next day.

- b. Brick House Barn - The members discussed the proposed doors for golf carts in the side of the barn and accepted the Gant plan.
- c. Slave Mess Hall (Quarters) - The quarters or slaves' mess hall to be converted into a pro-shop was discussed mainly in relation to how wide a porch should be reconstructed on the south side. Mr. Lees thought the original porch had extended only 10 feet. Mr. Lee demonstrated the ghost image of a porch that was drawn by Robert Lewis in 1936 during the Historic American Buildings Survey (HABS). Mr. Colhoun felt that a long porch was merely designed to gain square footage. Mr. Gant insisted that he only wanted to restore a pre-existing porch. Mrs. Kremen urged redesigning the porch and pointed out the importance of preserving an authentic house associated with African-American history. The consensus was to "re-examine the porch issue." Mr. Lees reiterated his points about the HABS (Historic American Building Survey)

drawings and the need to keep the porch roof away from the second-story windows. Mr. Gant agreed; it was finally agreed that the porch was acceptable but some details remain to be refined. Mrs. Mascari and Mr. Colhoun disagreed strongly with porch addition to slaves' mess hall.

- d. Driving Range - There was extensive discussion of the driving range. The LPC opposed lighting. Mr. Mangione insisted that tasteful lightings where the lamp bulbs would not be visible are in use on newer, "low-lighted" golf courses. Mr. Colhoun stated that lighting was not appropriate. The vote on the Committee's position to oppose a lighted driving range was as follows:

| <u>Yes</u> | <u>No</u> | <u>Abstain</u> |
|------------|-----------|----------------|
| Kremen     | Boyer     | McKean         |
| LeMire     |           |                |
| Lees       |           |                |
| Butler     |           |                |
| Mascari    |           |                |
| Colhoun    |           |                |

- e. Driving Range Building - Mr. Gant's new plan showed a board and batten building based on outbuildings show in the HABS drawings. The Commission agreed to approve that plan and those of the other buildings on the concept discussed.
- f. Coachman's House, Manaper's House - Mr. Gant proposed restoring those houses and removing a recent porch from the manager's house. The Commission agreed.
- g. New Housing in RC-2 - The Commission extensively discussed the placement and screening of new houses allowed in the RC-2 area. Mr. Mangione noted the houses were clustered well away from the Mansion. The members held that the LPC should be able to approve the designs proposed for those houses. Mr. Mangione was reluctant to surrender design control or to incorporate it into the covenants covering the new housing. Mr. Dugan suggested that the LPC could request control over the design from the Planning Board. There was Commission agreement on that statement (with the RC2 and RC4 design control).
- h. New Housing in RC-4 - The Commission urged vegetative buffering to screen the new houses from the mansion. Mr. Colhoun noted that there was still an on-going appeal by Mr. Mangione for the zoning change to RC-4 in the RC-2 area in question. Therefore, the open space area indicated in the concept plan, would receive intensive development under RC-4 zoning.

- i. Signage - Mrs. Mascari noted that the committee and developer agreed not to have self-lighted signs. The full Commission concurred.
- j. Road Systems - both developer and Committee agreed in preserving the "Avenue of Locust trees" as a walking path on its original bed. There was some miscellaneous discussion of trees, parking, and hedgerows. The full Commission concurred with the committee report on this item.
- k. Interpretative Center - Mr. Gant described an interpretative center on the grounds with historic plaques. There was general consensus on this idea-including the use of the original corn crib and chicken house and the stone foundation of the garage.
- l. Upping Stone - An Upping Stone near the Cook's House was also to be preserved and maintained.
- m. Maintenance Shop - Mr. Gant designed a new Maintenance Shop to stand on the site of an extinct building. Mrs. Kremen urged having a contract archaeologist test the site. It was agreed that the LPC would review the plan when ready.

Mr. Colhoun noted that as a Commission, the LPC was allowing the property to go out of use as a farm. Ms. Butler noted that in its past comments, the Commission had taken a stand against allowing the farm to be converted to a golf course. "But we are able at least to control the design of the surviving buildings." Mr. Colhoun noted that soy beans and grain grown in Maryland were selling at an all-time high. Farming was still a money-making business. Mr. Colhoun noted that "it was the duty of the Landmark Commission to preserve the historical heritage of agriculture in Baltimore county and the history of a very important industry that still exists at Hayfields farm. We do not have any other example as well documented or renowned as Hayfields." Mrs. Mascari will testify to the Planning Board with the Commission's recommendation using the Committee Table.

### 13. Election of Chairman

On a motion by Ms. Boyer and seconded by Mrs. Kremen, Mrs. Mascari was unanimously re-elected chairman.

### 14. Adjournment

On a motion by Mr. LeMire, seconded by Mrs. Kremen, and unanimously carried, the meeting was adjourned at 10:25 p.m.

C

REPORT OF THE SPECIAL SUBCOMMITTEE  
OF THE  
BALTIMORE COUNTY LANDMARKS  
PRESERVATION COMMISSION

"HAYFIELDS"

CA 1810

JANUARY 17, 1996

## BACKGROUND SUMMARY

The historic site known as "Hayfields", located at the gateway to the spectacular valleys of Northern Baltimore County, is currently the subject of a change of use. The Baltimore County Landmarks Commission is mandated to review any and all alterations to this Baltimore County and National Register Landmark. The Commission acting as authorized in the County Code, Section 26, has been on record in its own meetings, at the Planning Board and in front of the Zoning Commissioner as supporting the retention of the importance of the site as a premier agricultural site in Baltimore County while also reiterating its crucial political national significance.

The comments contained in the following report are those of a subcommittee of the Commission and operating under the Standard Operating Procedures of the Commission. This subcommittee has been meeting for several months both in house and at the site to determine how the actions of the developer will impact the site and to make decisions on its review of those actions. As stated in the Code and in the Zoning Commissioner's statement in his golf course Special Exception decision, the Commission will review all actions on the site. After presentation to the full Commission and the gathering of agreement of the Commissioners, the Chair will present the comments and review process to the Planning Board. Under Section 26 of the County Code and the Zoning Commissioner's ruling, the Landmarks Commission's review is binding.

It must be noted here that the developer, Mr. John Mangione and his architect, Mr. Frank Gant, have been very cooperative with the subcommittee. The requested information, drawings and models have been supplied in a professional manner.

## TABLE OF FEATURES

Because the numbers of features of "Hayfields" which are being impacted by new development are many, critical and involved, it was felt that the creation of a table would ease presentation to the Commission.

- Not all verbiage or discussion of the past several months could be included.

- The table is meant to be a snapshot of each feature, the impact it will bear and the comments of the LPC subcommittee and the developer.

- A series of minutes have been maintained and are available.

- Appropriate drawings and models accompany this presentation and further articulate the table.

| FEATURE                      | IMPACT                                           | LPC COMMENT                                                                                                                   | DEVELOPER                                |
|------------------------------|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| MAIN HOUSE                   | CLUBHOUSE/BANQUET ADDITION                       | SET BACK; REDUCE BAY; CLOSE TO COTTAGE?; 'rear fenestration/articulation; question hyphen 6 in favor, 2 against, 1 abstention | REDESIGNS                                |
| BARN                         | CART STORAGE; SOUTH OR WEST ACCESS? <sup>2</sup> | NO INTRUSION INTO BLDGS BY BREEZEWAY; MAINTAIN WAGON SHED; REPAIR WALL;                                                       | PREFERS WEST ACCESS FOR CARTS            |
| 300' DRIVING RANGE           | FRONT FACADE; LIGHTS                             | NO LIGHTS                                                                                                                     | DOES NOT CONCUR                          |
| QUARTERS (SLAVES' MESS)      | PRO SHOP/FOOD CONCESSION                         | REDUCE PORCH; MINIMIZE IMPACT; <sup>3</sup> RBM DOES NOT WANT PORCH                                                           | WILL REEXAMINE DESIGN                    |
| DRIVING RANGE BLDG           | FRONT FACADE                                     | MOVE; REDUCE                                                                                                                  | REDESIGNING                              |
| TENNIS COURTS/POOL COMPLEX   | WEST OF CORE; NEW                                | LPC TO REVIEW DESIGN, SIGNAGE, LIGHTS, POOL HOUSE; LANDSCAPING                                                                | DESIGNING                                |
| COTTAGE                      | ORIGINAL DWELLING                                | RESTORE; OPEN FPL; OFFICE USE; DELETE NON-ORIGINAL PORCH                                                                      | CONCURS                                  |
| COACHMAN'S HOUSE             | EARLY BLDG                                       | RESTORE                                                                                                                       | CONCURS                                  |
| PRACTICE GREEN IN STONE WALL | WALL TO REMAIN UNCHANGED                         | LOW LIGHTING                                                                                                                  | CONCURS                                  |
| RC2 HOMES                    | VISUAL IMPACT                                    | DELETE 1; MOVE NORTH OR WEST; ALTER ACCESS ROAD                                                                               | DEVELOPER TO REEXAMINE/LPC TO RECONSIDER |
| RC4 HOMES                    | VISIBLE FROM MANSION;                            | MOVE 3; INTERIOR ACCESS ROAD; BUFFER VIEW OF MANSION                                                                          | CONCURS                                  |

<sup>1</sup>RBM appreciates design; feels an adverse impact on site.

<sup>2</sup>LEES prefers south access at breezeway.

<sup>3</sup>RBM rejects in toto.



|                                           |                                                                                                           |                                         |                                   |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------|
| SIGNAGE                                   | GOLF COURSE AND HOUSING                                                                                   | LPC REVIEW; LOW IMPACT; NO BACKLIGHTING | CONCURS                           |
| LIGHTING                                  | AS ABOVE; NONE ON DRIVING RANGE                                                                           | LPC REVIEW                              | DOES NOT CONCUR ON DRIVING RANGE  |
| ROAD SYSTEMS                              | MAINTAIN ORIGINAL "AVENUE OF LOCUSTS" AS PEDESTRIAN; MAKE AS INVISIBLE AS POSSIBLE; SAVE TREES; HEDGEROWS | DIFFERENTIATE NEW AND OLD; LPC REVIEW   | TO BE DESIGNED                    |
| SPECIAL FEATURES - INTERPRETIVE AG CENTER | CHICKEN HOUSE, CORN CRIB, SIGNAGE; UPPING STONE                                                           | LPC, TRUST TO ASSIST                    | CONCURS; IN STABILIZED FOUNDATION |
| MAINTENANCE SHED                          | ON FAR BARN SITE                                                                                          | LPC TO REVIEW FOR DESIGN COMPATIBILITY  | DESIGNING; RETAIN FOOTPRINT       |
|                                           |                                                                                                           |                                         |                                   |
|                                           |                                                                                                           |                                         |                                   |
|                                           |                                                                                                           |                                         |                                   |

e

**MEMBERS**  
**Landmarks Preservation Commission**  
**February 8, 1996**

**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari, Chairman  
                                                  Dr. Rhoda Dorsey  
                                                  Mr. Paul F. McKean  
                                                  Mr. Daniel Colhoun  
                                                  Mr. Frances LeMire  
                                                  Mrs. Barbara Weeks  
                                                  Ms. Suzanne Boyer  
                                                  Ms. Elise A. Butler  
                                                  Mr. Jeffrey A. Lees

**GUESTS:**           Mr. James T. Wollon, Jr.  
                                                  Mr. Lawrence J. Link  
                                                  Mr. M. Edward Shull  
                                                  Mr. Julius W. Lichter  
                                                  Mr. Albert Kleeman  
                                                  Mrs. June Kleeman  
                                                  Mr. Peter Pearre  
                                                  Mr. Aubrey Pearre  
                                                  Mr. Michael Ruby  
                                                  Mr. Raymond Burns  
                                                  Mr. Charles Levine  
                                                  Ms. Bonnie Bukima  
                                                  Mr. Mark Bennett  
                                                  Ms. Tanya Goldberg  
                                                  Ms. Vickie Almond  
                                                  Ms. Harriett Levy  
                                                  Mr. Mark Kanefsky  
                                                  Mr. Mike Greenbaum  
                                                  Mr. John Mangione  
                                                  Mr. Jerome D. Goldberg  
                                                  Mr. Norman Kronberg  
                                                  Mrs. Bette Kronberg  
                                                  Ms. Gerri Brown  
                                                  Mr. David Weiner  
                                                  Mrs. Zelda Weiner  
                                                  Ms. Elizabeth Langrehr  
                                                  Mrs. Ruth N. Tawes  
                                                  Ms. Kate Ellison  
                                                  Mr. Tim Dugan, Office of Planning

The meeting was convened at 7:00 p.m.

1. **Announcements**

The Chairman invited the guests to sign up on the sheet. She announced that the Commission operated under Section 26 of the County Code and the Secretary of the Interior's Standards.

8. Hayfields Committee Report

The Chairman summed up the Planning Board meeting of January 18, where she had presented the LPC comments on alterations to the Hayfields structures. The Planning Board had scheduled a site visit on January 27, shown around by John Mangione. Now the Planning Board has the report and Mr. Gant's renderings of the significant buildings. Scott Barhight hoped to file a development plan at the end of February. Most likely, the plan would start at the Planning Board in March and finish on April 4. There was miscellaneous discussion of possible dates.

Mr. Mangione hoped for one final meeting with the LPC comment committee to finish the chart. It was agreed to meet February 22, a Thursday, at 4:30 p.m. in the Office of Planning conference room. It was agreed to give Mr. Mangione the revised January minutes.

9. Old Business

Ms. Butler had received telephone calls that envisioned moving the Samuel Owings House to Caves Road to property owned by Henry LeBrun. Mr. Lichter stated that "the matter is where we left it." He knew nothing about the ending of a bankruptcy issue [of Mr. Richard Perrone]. Mr. Lichter had no new information. They do have a potential buyer. Ms. Butler noted that the LPC "wants to know if things start to unfold."

Ms. Butler asked Ms. Vicki Almond if her Owings Mills Association still supported the preservation of the house. She noted that the LPC staff had checked with the permit supervisor to see if any such permit had been issued, but none had [as of February 6].

Ms. Almond said that the sale of the leasehold interest to Henry and Jeff had taken place today. She said her neighborhood was still opposed to demolition and moving of the house.

10. Office of Planning Items

Mr. Dugan presented four concept plans:

- a. Hayfields - This had already been discussed under item 8.
- b. Balmuckety Plan - Mr. Dugan noted that the plan would now have to go via the Planning Board since it had been voted onto the Preliminary Landmarks List and now "involves" a landmark. Mrs. Mascari commented on the color of brick shown in the rendering. Mr. McKean thought the colors were not accurate. Mr. McKean thought we needed a sample of the brick. Ms. Butler thought the drawings were not designed for

Daniel W. Colhoun  
16301 Trenton Church Road  
Upperco, MD 21155

February 6, 1996

To: Ruth Mascari, Chairman  
John McGrain, Recording Secretary  
Land Marks Preservation Commission

The draft minutes of January 17, 1996, in my opinion contain an error in vote tabulation.

12. Hayfields Committee Report

d. Driving Range:

The vote was 1 for approval and all other Commissioners against. My vote was against and is not recorded.

h. My comment should say " on-going appeal by Mangione for the zoning change to RC4 in the RC2 area in question. Therefore, the open space area indicated in the concept plan, would receive intensive development under RC4 zoning.

m. Mr. Colhoun noted: I said it was the duty of the Landmark Commission to preserve the historical heritage of agriculture in Baltimore County and the history of a very important industry that still exists at Hayfields farm. We do not have any other example as well documented or renowned as Hayfields.

I feel these corrections should be made immediately and be redistributed before our next meeting.

|                   |            |         |              |
|-------------------|------------|---------|--------------|
| Post-It® Fax Note | 7671       | Date    | # of pages ▶ |
| To                | BECKY MART | From    | DAN COLHOUN  |
| Co./Dept.         | PLANNING   | Co.     |              |
| Phone #           | LANDMARK   | Phone # | 230 8252     |
| Fax #             | 230 8252   | Fax #   |              |



Baltimore County  
Planning Board

401 Bosley Avenue  
Towson, Maryland 21204  
(410) 887-3495  
Fax: (410) 887-5862

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Planning's report to LPC, 3/14/96

Status reports

1. "Hayfields" [8-661]: Confirmation of the Special Committee's work; procedures at the Planning Board meetings (3/21 and 4/18)
2. "Village Care" ("Balmuckety" property) [3-377]: Staff report to the Planning Board on 3/7/96 recommended documentation of the gardens to HABS standards; Board's decision is scheduled for 4/18/96
3. Coll property (1544 Rolling Road; BA 2392): Appeal of the denial of the proposed panhandle subdivision was withdrawn by the owner; negotiation with the community is probably underway
4. Maffezzoli/Ward properties ("Sagamore Farms," Belmont Road): Reconfiguration of the lot lines was approved by the Deputy Zoning Commissioner; siting of the future dwelling on the Maffezzoli lot will be subject to approval through Special Hearing
5. Baptist Home property (10729 Park Heights Ave.) [3-393]: Re-submittal of plan for four-lot subdivision; no change to historic "Rainbow Hill" (BA 381)
6. "Wesley Chapel Woods," Blue Mount Road (in My Lady's Manor N.R. District) [10-314]: Re-submitted with layout substantially revised from previous Concept Plan

New projects

1. Graves property, North Point Road [15-673]: Site of Bread & Cheese Creek Battle Monument (BA 2187, 0.38 ac.) to be deeded to Baltimore County; C.I.M. is scheduled for 4/9/96
2. Wilson property, [96027M]: Two-lot subdivision of remainder of "Pen-Delle Manor" development; no change to historic dwelling (BA 2556, Shauck-Wilson House)
3. "Relay Children's Center," 1620 S. Rolling Road [03116H]: Minor additions to rear of former elementary school (BA 2387)
4. "Glyndon Greens, 'Village of Glyndon'" [4-491]: Eight additional single-family dwellings on Central Avenue and Hunting Horn Circle, within Glyndon N.R. District; Profaci House (BA 764, Final Landmarks List No. 128) is nearby but intervening townhouse development precludes finding of "involvement" for referral to Planning Board



2

**MINUTES**  
**LANDMARKS PRESERVATION COMMISSION**  
**March 14, 1996**

**PRESENT:**           **MEMBERS:**           Mrs. Ruth B. Mascari, Chairman  
                                          Dr. Rhoda M. Dorsey  
                                          Mr. Timothy M. Rodgers  
                                          Mrs. Kathleen Levin  
                                          Mrs. Barbara Weeks  
                                          Mr. Jeffrey A. Lees  
                                          Ms. Elise A. Butler  
                                          Mr. Francis LeMire  
                                          Mr. Paul F. McKean  
                                          Mr. Daniel Colhoun

**GUESTS:**           Mrs. Ellen Gruber  
                                          Mr. Woody Gruber  
                                          Mr. Mike Ruby  
                                          Mr. Tim Dugan, OP  
                                          Mr. John Mangione  
                                          Mr. Jeff Savoye  
                                          Mr. Roy Lappalainen  
                                          Mrs. Sharon Lappalainen  
                                          Mrs. Marlene Rollins  
                                          Mr. Chris Scovill  
                                          Mr. Donald Kann, MAHDC

The meeting was convened at 7:00 p.m.

1. **Operating Statement**

Mrs. Mascari noted for the record that the Commission operated under Section 26 of the Baltimore County Code, 1988, as amended, and under the Secretary of the Interior's Standards and its own Standard Operating Procedure.

2. **Announcements**

- a. The Chair distributed the newsletter of the Maryland Association of Historic District Commissions.
- b. Mrs. Mascari noted that Colonel Sumpter of the Maryland National Guard was guest speaker at her local history course at Hereford and would cover the Civil War and the history of Hayfields on March 20.
- c. There had been a 6:00 p.m. technical meeting with representatives of Balmuckety project and community persons.

3. **Hayfields Committee**

Mrs. Mascari gave the floor to Tim Dugan to finalize the list of

Lighting was briefly discussed. Mr. Mangione described a plan discreet "down lighting" with illumination on the pad area. There would be no light bulbs showing. Mrs. Mascari noted that the Committee did not want a lighted driving range. Mrs. Weeks moved to recommend against lighting on the driving range. The motion carried by nine votes:

| <u>For</u>   | <u>Against</u> | <u>Abstaining</u> |
|--------------|----------------|-------------------|
| Mrs. Mascari | None           | Mrs. Levin        |
| Ms. Butler   |                |                   |
| Mrs. Weeks   |                |                   |
| Dr. Dorsey   |                |                   |
| Mr. Colhoun  |                |                   |
| Mr. LeMire   |                |                   |
| Mr. Lees     |                |                   |
| Mr. Rodgers  |                |                   |

It was agreed that the recommendation propose either the Planning Board or the LPC approve the final design. That proposal was unanimously satisfactory to the LPC members.

#### 4. Hearing of Record

Mr. McGrain noted that there were photographs available of Pleasant Grove United Methodist Church, but the members had requested a postponement until April 11. Slides were available of the Jubilee house at the site of Jericho Mill and Jericho Cotton Factory. Following the showing of the slides, Marlene Rollins of Upper Falls introduced Mr. & Mrs. Gruber, who were buying the house from the Giffords. Mrs. Rollins urged an affirmative vote. Mrs. Mascari solicited a motion. Dr. Dorsey moved to list the house, seconded by Mr. Lees.

Mr. Lees suggested listing under Criterion No. 1, relating to the history of milling, rather than listing it because of its architecture. Ms. Butler nominated it under Criterion No. 4 for "singular natural beauty" and Criterion No. 5, because "the area is rich in artifacts." The motion was passed unanimously 10-0, no abstentions.

Mrs. Gruber noted that the property had a champion tree. She hoped the LPC could give her a letter to the Department of Natural Resources for an easement into the adjoining Gunpowder State Park if the septic system fails. Mr. Gruber thought that the black walnut tree was 325 years old. Mrs. Mascari suggested amending the motion to include the "champion Bicentennial black walnut tree." Ms. Butler seconded the motion, which was unanimously accepted, no abstentions.

Mrs. Rollins introduced Chris Scovill, who was filming the meeting and planned to film the restoration. Mr. Gruber noted that the

brick wing was constructed of used brick from the Maryland General Hospital. He would like to build an addition in German siding and and to replace the windows in the recent wing with windows of the proper scale, then stucco the brick wing. Ms. Butler suggested a technical committee.

5. District Oversight Committee

Mrs. Mascari asked if anyone had selected a district to oversee. She passed around a sheet for members to list their preferences.

6. Treuth House

Mr. Lees reported for the committee formed in February, consisting of himself, Mr. McKean, and Mrs. Kremen. He found the plans in general to be a fine effort at the rehab of the Treuth House. He had written a letter to Mr. McGrain [to transmit to Recreation and Parks] suggesting a different type of solution to the roof. He noted that the plan called for adding new plywood sheathing and new metal covering, while leaving the old shingles in place. Mr. Lees was concerned with the resulting change in profile of the roof and urged an alternative material, or failing that, to use Acromax as an alternative option. The Commission generally agreed [the letter was transmitted to Public Works the next morning].

7. Brewer House Permit

The members studied a plan for a deck at the Brewer house in Lutherville and found the plan inadequate, not showing the house footprint. Since the contractor was Mrs. Mascari's next-door neighbor, the Chairman agreed to inquire about the setting from the builder.

8. Lappalainen House, Sudbrook Park

Roy and Sharon Lappalainen presented a plan for a "mud room," kitchen and deck to be attached to their residence at 700 Cliveden Road, Sudbrook Park. The local advisory committee had furnished a letter of support signed by Mr. Bayard Z. Hochberg. Mrs. Lappalainen explained how the house had grown since 1941. The Commissioners examined the plans and photographs and unanimously agreed to issue a "certificate of appropriateness."

9. Breakfast

Mrs. Mascari noted that the mailing list had been updated and the letter would soon go out. She circulated a sheet to solicit votes for some of the award nominations already in hand.

10. Office of Planning Items.

Mr. Dugan introduced ten items, some of which had already been touched upon:



- a. Hayfields - The LPC comments were now complete. The dates of May 9, 10, 14, and 15 had been scheduled for the Hearing Officer's hearings in Room 118 of the Old Courthouse on the development plan. The LPC comments will be presented by the Planning Office. April 18 was the date before the Planning Board.

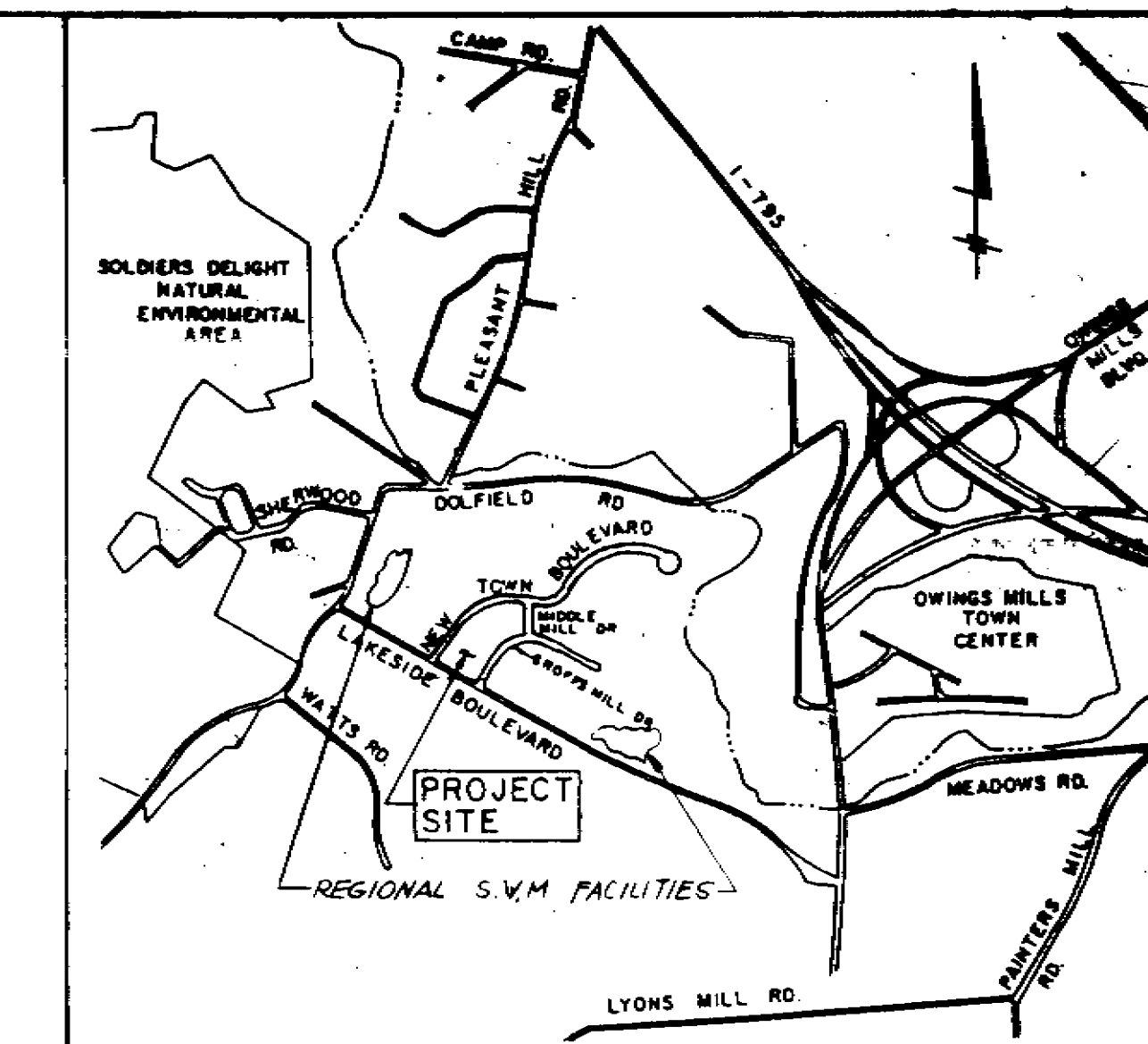
Ms. Butler and Mr. Colhoun agreed to testify in the absence of the Chairman. Mr. Dugan noted that the LPC could submit written matter, the substance of which was discussed tonight.

- b. Village Care - Ms. Mascari noted that Julius W. Lichter wanted to meet with an LPC committee but W. Bolton Kelly was substituted; the proponents had a proposal and the Chair suggested forming a committee, including Mrs. Weeks, Mr. Lees, Mr. Rodgers, Mr. Colhoun and Charles Levine from Cobblestone Community Association, within two weeks. In the meantime, Mrs. Mascari asked if Mr. Richard Rynd would volunteer the Balmuckety Mansion to the list when he becomes owner of record.

Mr. Dugan distributed the staff report given to the Planning Board on March 7, suggesting that the Office of Planning could not prohibit the nursing home, and instead urged documenting the gardens to HABS standards.

- c. Coll Property - At Relay, the county had denied a panhandle lot and minor subdivision. The owners subsequently withdrew the plan and are working with the community to sell the house to an owner-occupant.
- d. Maffezzoli Property - Mr. Dugan noted that Ms. Butler had testified at the hearing on this exchange of parcels and relocation of lot lines in Worthington Valley. The LPC had asked for a prohibition of siting a house on the ridge line. The Deputy Zoning Commissioner had thought that premature. The Deputy Zoning Commissioner recommended a special hearing before any house is built on that lot in the future.
- e. Baptist Home - After some modifications, a new plan was introduced for the Baptist Home ("Rainbow Hill") on Park Heights Avenue. The Office of Planning held that a fairly few new houses would not adversely affect the main building.
- f. Graves Property - The plan showed the open space area around the Bread and Cheese Battle Monument to be deeded to the County. The hearing was set for April 9. Mrs. Mascari suggested that the density was excessive and "too compact." There was some concern about whether the open space constituted the entire burial site. It





VICINITY MAP  
SCALE: 1"=2000'

| LEGEND            | EXISTING   | PROPOSED |
|-------------------|------------|----------|
| CONTOUR           | 602        | 602      |
| SEWER LINE        | EX. 8" S   |          |
| WATER LINE        | EX. 12" W  |          |
| STORM DRAIN       | EX. 15" SD |          |
| CURB AND GUTTER   |            |          |
| RIGHT OF WAY LINE |            |          |

BENCH MARK

- HUB NO. X-3332 ELEV. 541.083  
DESCRIPTION: GALVANIZED SPIKE IN MACADAM  
WEST SIDE OF DOLFIELD ROAD 125' NORTH OF ENTRANCE TO 'SOOTHING SITE'
- HUB NO. 14832 ELEV. 541.082  
DESCRIPTION: V2" PIPE AT EDGE OF MEADOW ROAD
- HUB NO. X-8481 ELEV. 588.286  
DESCRIPTION: GALVANIZED SPIKE IN MACADAM SOUTH SIDE  
LYONS MILL ROAD-DRIVE TO HAPPY ACRES SCHOOL.
- HUB NO. X-8482 ELEV. 585.691  
DESCRIPTION: GALVANIZED SPIKE IN NORTH SIDE LYONS  
MILL ROAD OPPOSITE W.T. BALLARD.

DISTURBED AREA = 533,610 S.F. OR 12.25 AC.

|                                                                                                                             |     |                      |  |
|-----------------------------------------------------------------------------------------------------------------------------|-----|----------------------|--|
| 1/25/91                                                                                                                     |     | REVISED GRADING PLAN |  |
| DATE:                                                                                                                       | NO. | REVISION             |  |
| DEVELOPER                                                                                                                   |     |                      |  |
| NEW TOWN DEVELOPMENT CORPORATION<br>11421 CROWN HILL DR. SUITE E<br>OWINGS MILLS, MD. 21117<br>PHONE (301) 363-4883         |     |                      |  |
| PROJECT:                                                                                                                    |     |                      |  |
| FOR<br>PARCEL 4AA<br>OF<br>OWINGS MILLS NEW TOWN                                                                            |     |                      |  |
| ENGINEERS: WHITNEY, BAILEY, COX & MAGNANI<br>CONSULTING ENGINEERS<br>1850 YORK ROAD<br>TIMONUM, MD. 21093<br>(301) 252-6080 |     |                      |  |
| DESIGNED: A.T.R.                                                                                                            |     | DRAWN: G.G.          |  |
| CHECKED: J.J.                                                                                                               |     | DATE: 9/25/92        |  |
| SCALE: SCALE 1"=50'                                                                                                         |     | DRAWING NO: C-1      |  |
| DATE                                                                                                                        |     |                      |  |

The proposed grading shown on this plan meets the requirements set forth by the Baltimore County Department of Environmental Protection and Resource Management and complies with Bill No. 33-98. However, due to building types and layout, some field adjustments may be required. All changes must comply with the above mentioned requirements.

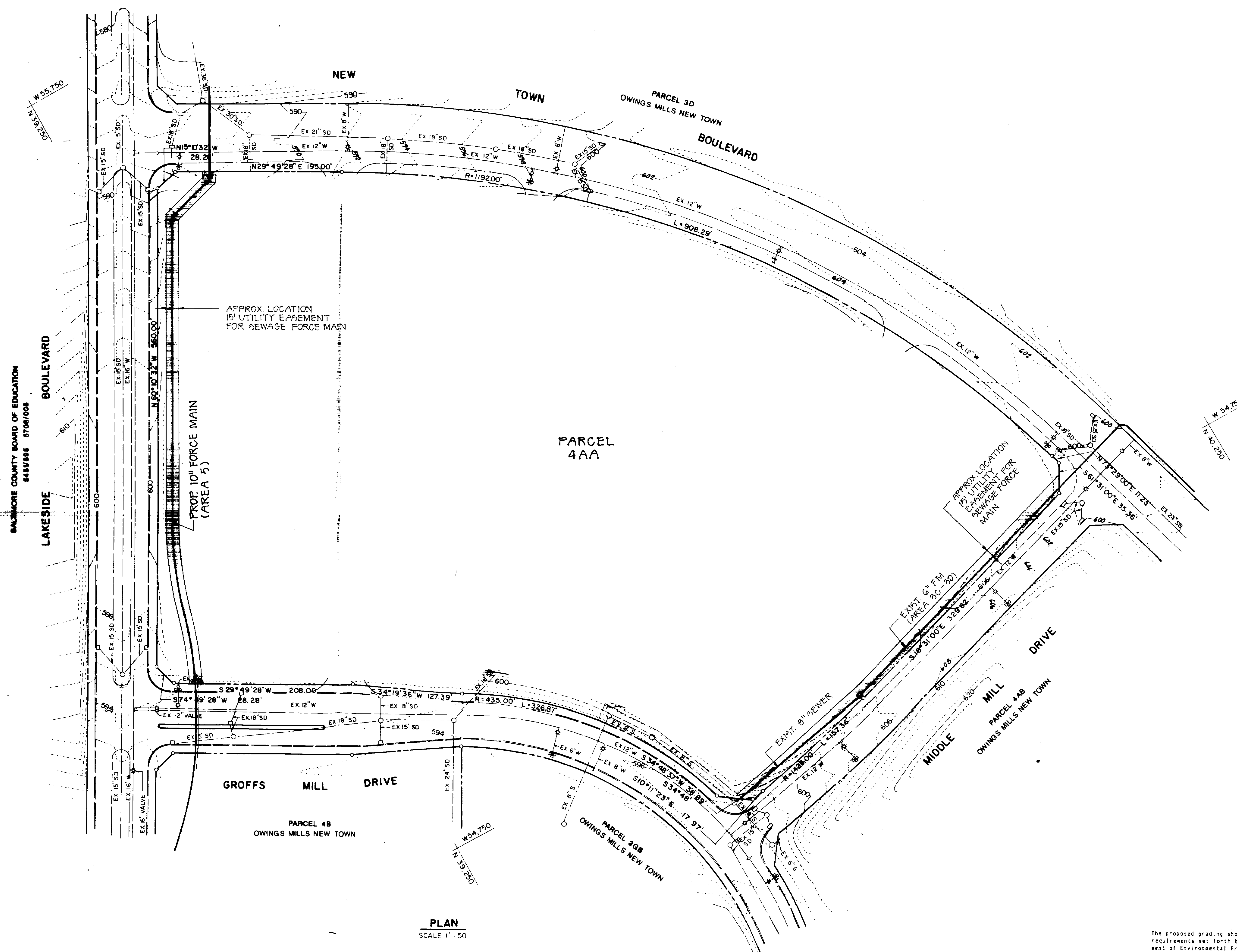
Owner's/Developer's Certification:

I/We certify that all grading on this site will be done in accordance with the current grading requirements as set forth by the Baltimore County Department of Environmental Protection and Resource Management and with the requirements specified in Bill No. 33-98.

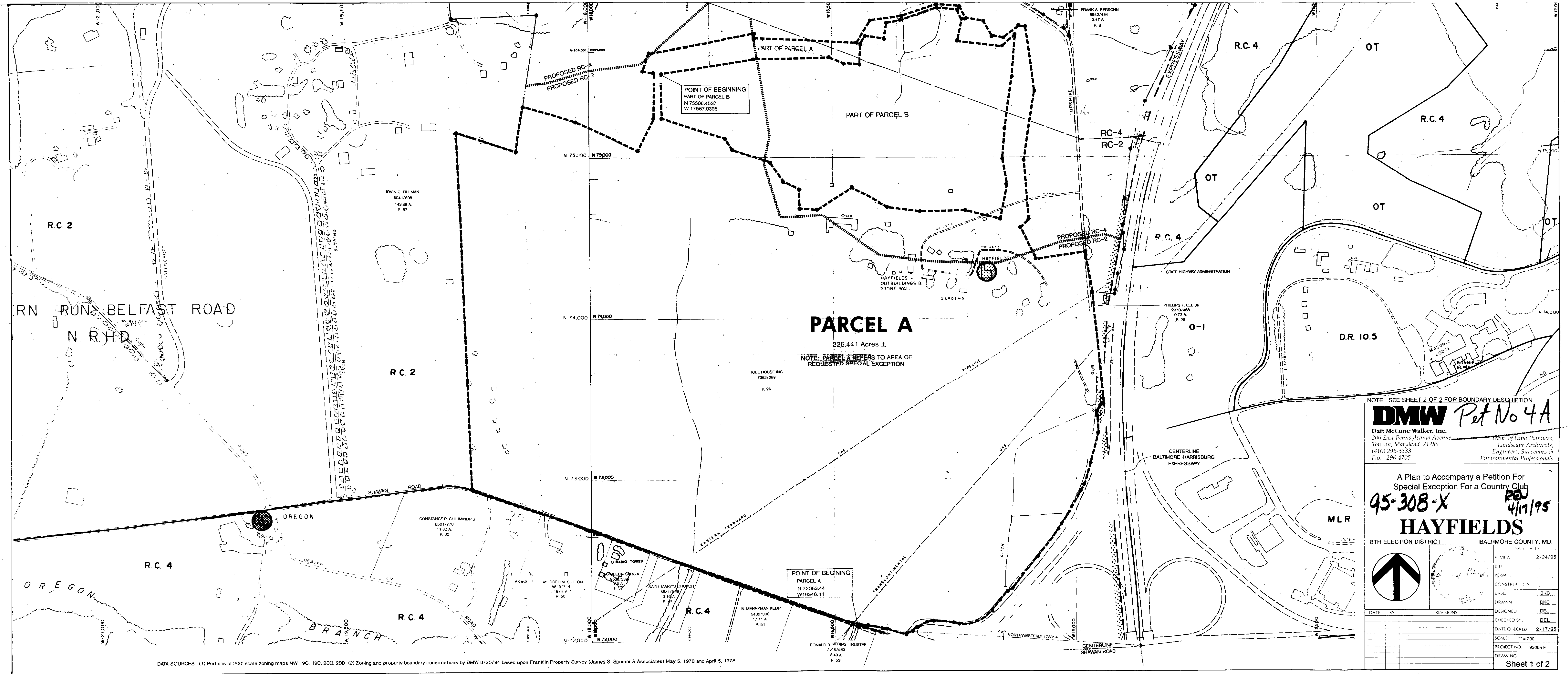
Signature of Owner/Developer: *[Signature]* Title: *[Title]* Date: *[Date]*

D. RICHARDS  
Print Name

PLAN  
SCALE 1"=50'







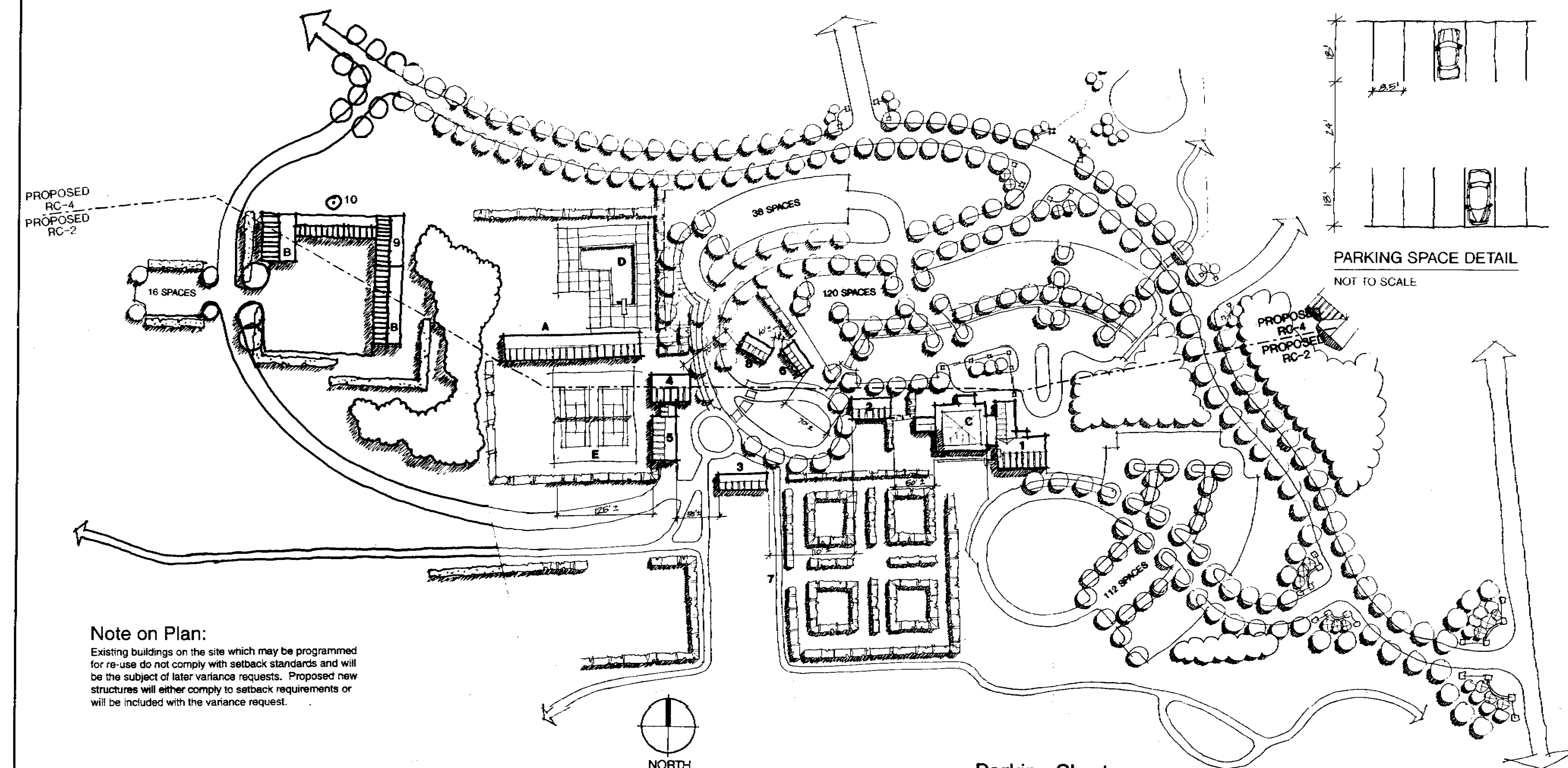


[illegible]









WOOD POST BEAM & PLANK BRIDGE OVER WETLANDS

**Historic Structures to Remain as Components of Country Club**

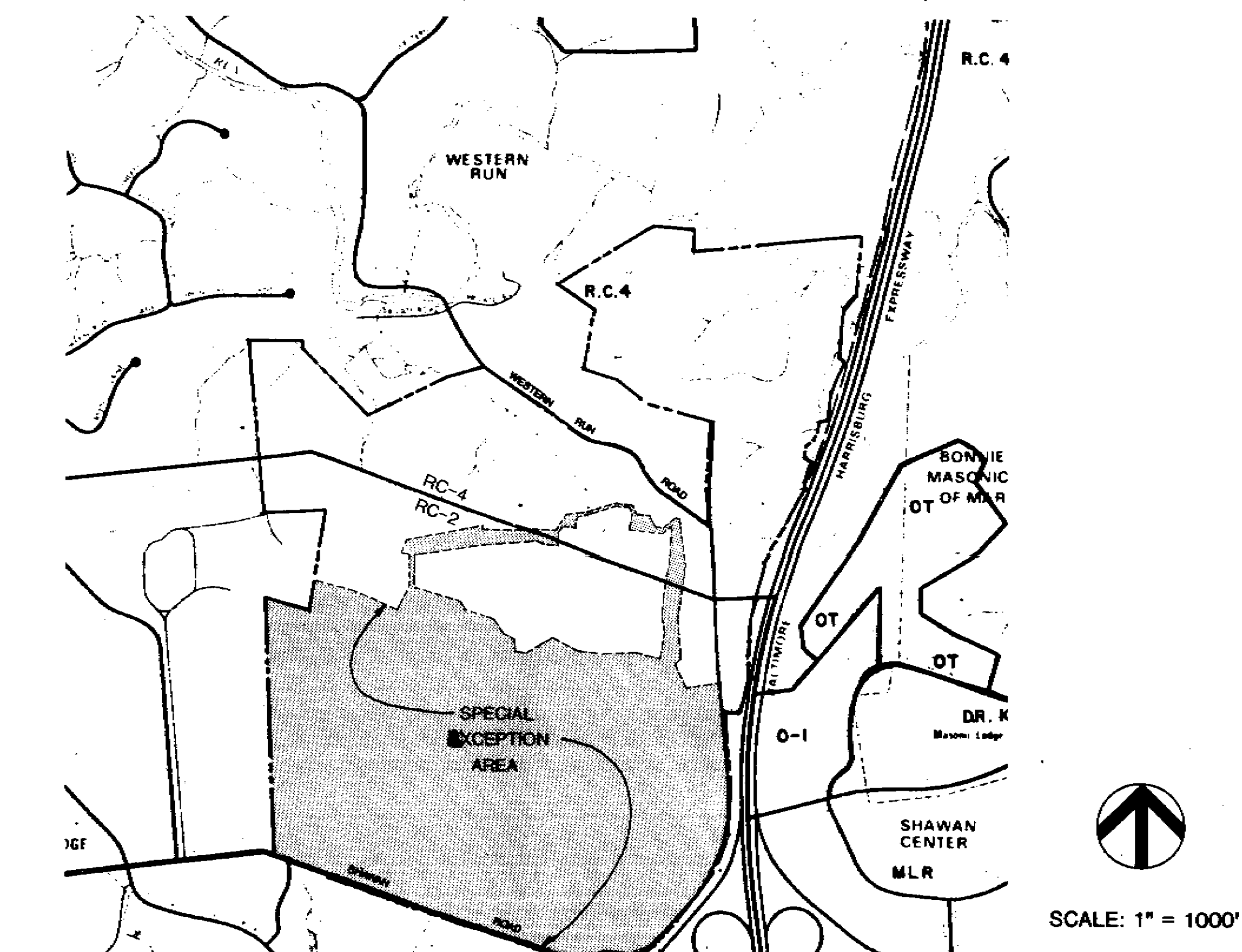
| Existing Uses and Heights            | Proposed Use                         |
|--------------------------------------|--------------------------------------|
| 1. Main House 39.33' ±               | Clubhouse                            |
| 2. Cook's House 31.00' ±             | Caretaker of Golf Professional       |
| 3. Stone Tenant House 25.00' ±       | Pro Shop                             |
| 4. Horse Barn 33.00' ±               | Cart Storage                         |
| 5. Carriage House 25.00' ±           | Cart Storage - will be attached to a |
| 6. Manager's House 27.33' ±          | Superintendent/Manager's House       |
| 7. Stone Garden Wall N/A             | Practice Green & Restored Garden     |
| 8. Garage 15.50' ±                   | not historical                       |
| 9. Stone Barn (Milk Parlor) 35.00' ± |                                      |
| 10. Silo 35.00' ±                    |                                      |

**Parking Chart**

| Use                    | Size       | Parking Collected | Parking Required | Parking Provided |
|------------------------|------------|-------------------|------------------|------------------|
| Golf Country Club      | 16 holes   | 144 per 16 holes  | 144              | 176              |
| Golf - 18 Holes        |            |                   |                  |                  |
| Pool Accessory Use     |            |                   |                  |                  |
| Tennis Accessory Use   |            |                   |                  |                  |
| Practice Range/Green   |            |                   |                  |                  |
| Start Parking          |            |                   |                  |                  |
| Dining (non class D)   | 3,000 sf ± | 16 per 1,000 sf   | 48               | 48               |
| Banquets (non class D) | 4,000 sf ± | 16 per 1,000 sf   | 64               | 64               |
| Total                  |            |                   | 256              | 280              |

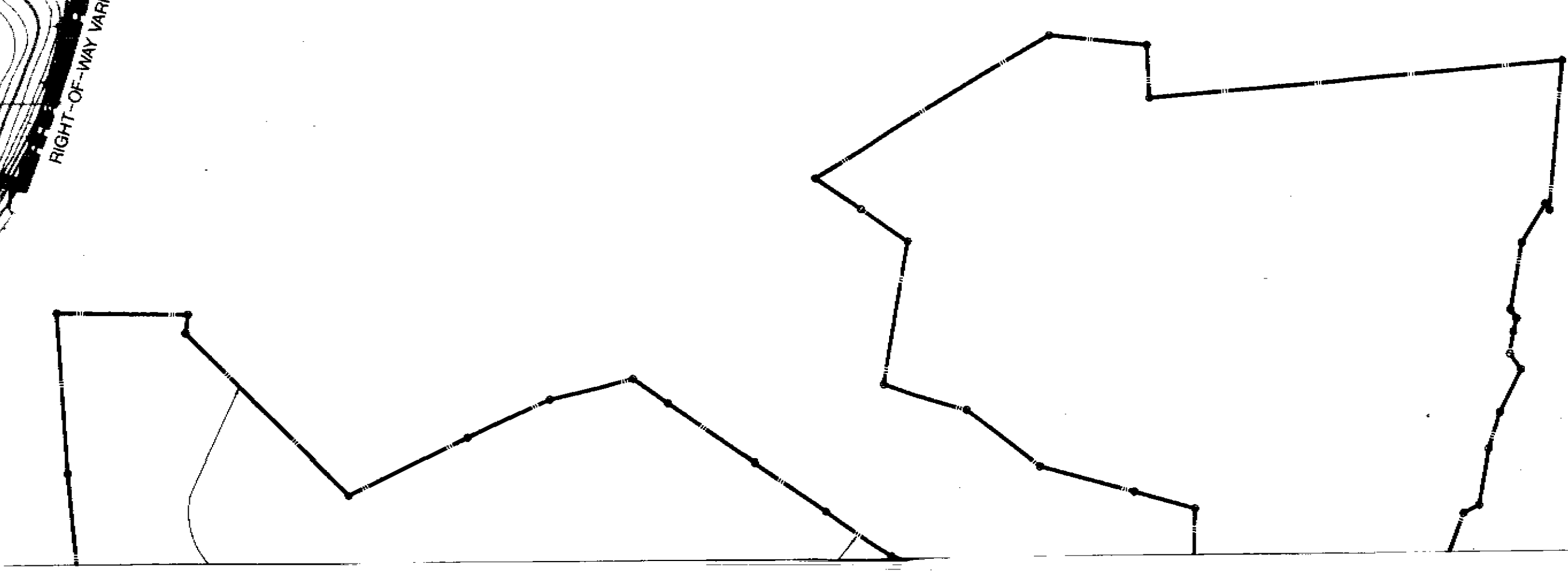
1. **Property Data:**
- Election District: Councilmanic District 3, Census Tract 4082
  - Owner: Toll House, Inc.  
1005 York Road  
Lanham, MD 21093
  - Deed Reference: 7362/289
  - Address: 301 Western Run Road  
Cockeysville, MD 21030
  - Hayfields is not located in the Chesapeake Bay Critical Area.
2. **Requested Special Exception:** Country Club
3. **Zoning:**
- | Zone  | Existing    | Hayfields Zoning | Proposed    |
|-------|-------------|------------------|-------------|
| RC-2  | 299.1 Acres | 227.0 Acres      | 227.0 Acres |
| RC-4  | 173.4 Acres | 207.4 Acres      | 207.4 Acres |
| Total | 472.5 Acres | 434.4 Acres      | 434.4 Acres |
- Golf in RC-2 3.3 Acres 16.7 Acres  
Golf in RC-4 223.1 Acres 209.7 Acres

11. **Signs:**
- In accordance with provisions of Section 413.1, Baltimore County Zoning Regulations, signs shall be limited to:
- Name and address of resident, not to exceed one square foot in areas (Section 413.1a).
  - Directional and informational signs not exceeding 15 or 25 square feet each in total area and involving no advertising space (Sections 413.1b and 413.1c).
  - Temporary real estate signs (Sections 413.1d).
  - Building contractors and professional persons' temporary signs on buildings under construction. No such signs shall be limited to a total area of 150 square feet on each lot (Section 413.1g).
  - Street name signs and traffic control signs as may be required by Baltimore County.
  - Architectural restrictions may establish higher standards.
12. **Environmental Impacts:**
- Development of the site is not expected to result in any substantial increase in sound or other vibrations, dust, odor, glare, light, and heat emissions beyond those normally occurring within country clubs. Applicant has performed an analysis of the environmental impacts of the proposed facility; the results of that analysis will be provided by the county in various written reports and will be presented at the hearing on the special exception.

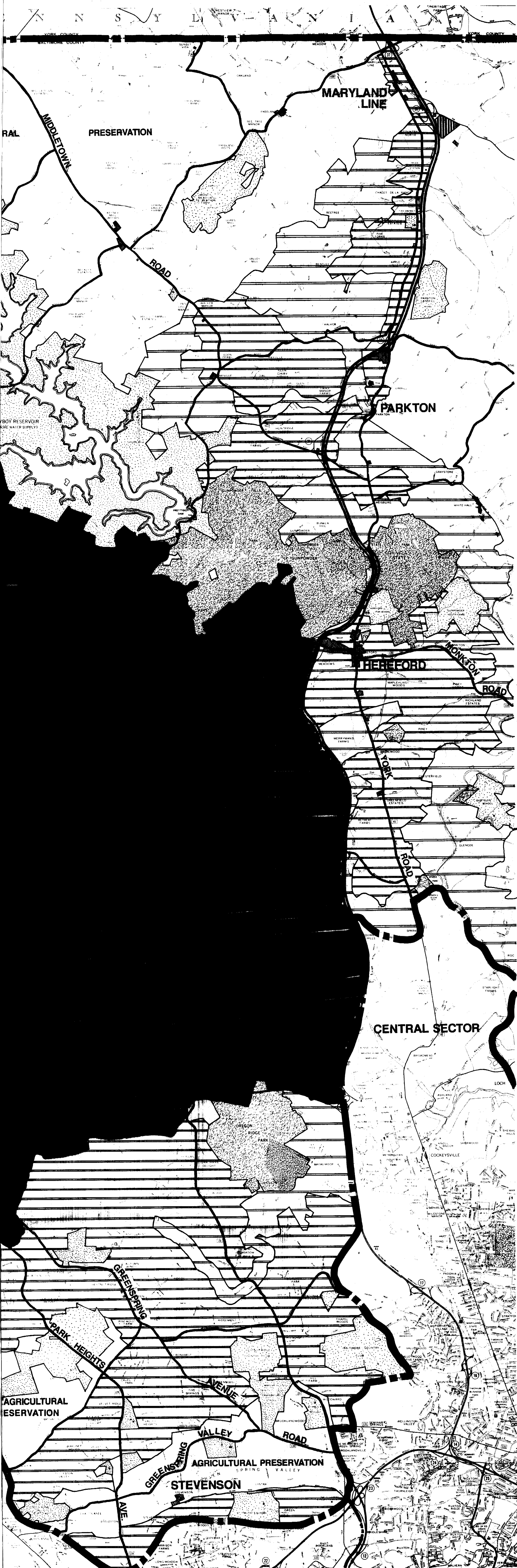


HAYFIELDS - PORTION OF 1000' SCALE ZONING MAP C-2

PLAT OF SPECIAL EXCEPTION AREA - 400 SCALE

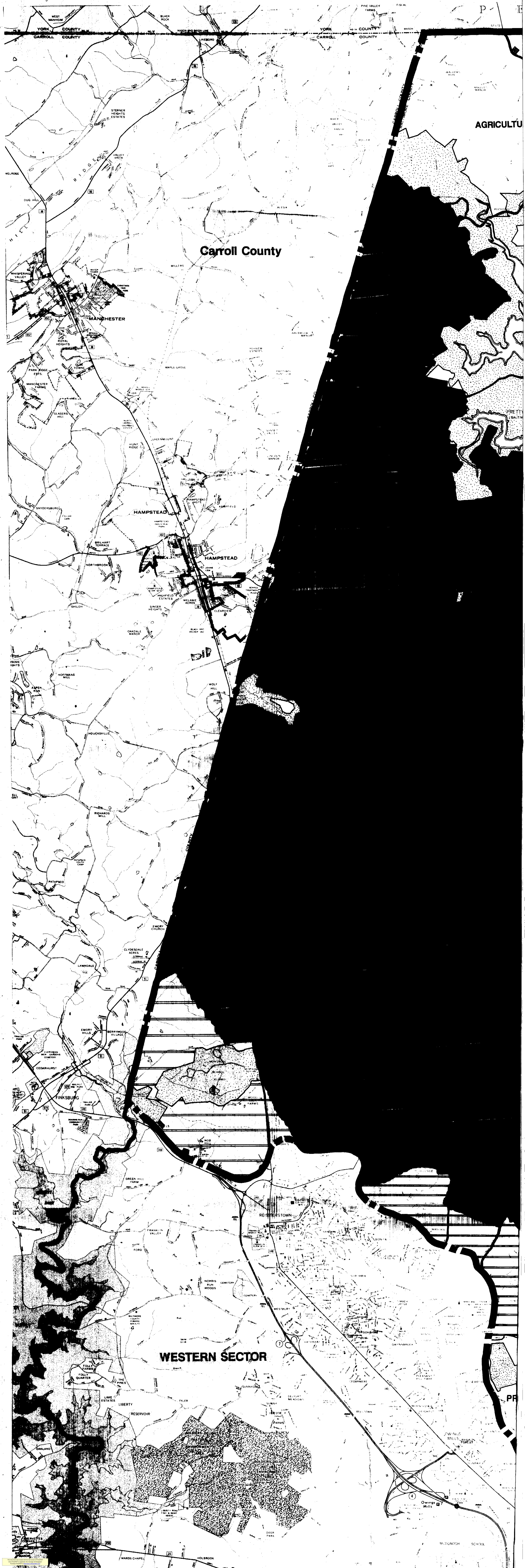




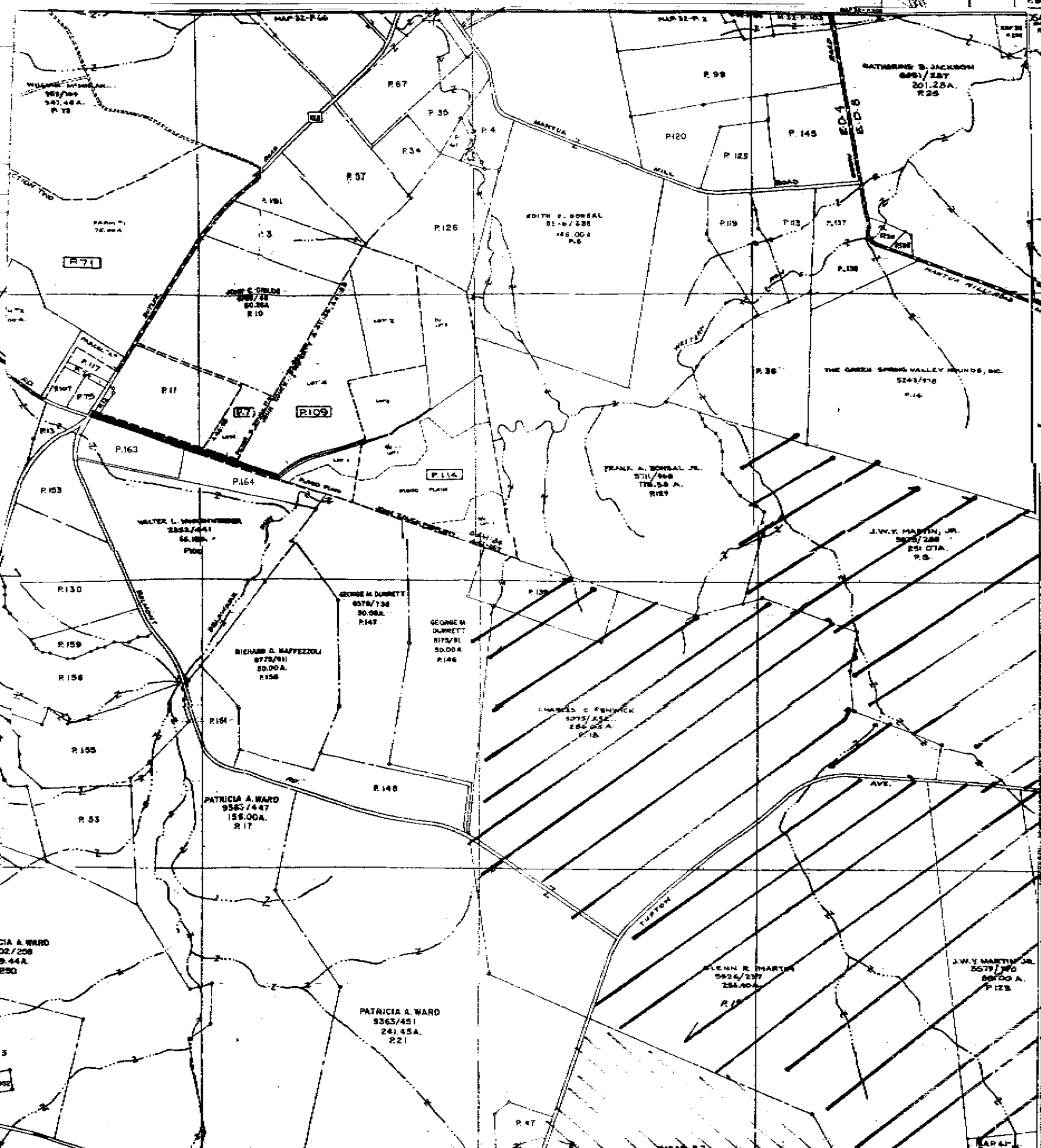




95-9984 Hayfields













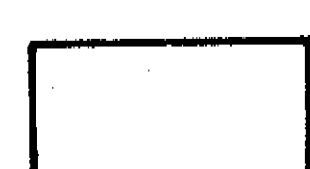
# FARMLAND AND OPEN SPACE PRESERVED THROUGH EASEMENT PURCHASE OR DONATION BALTIMORE COUNTY, MARYLAND



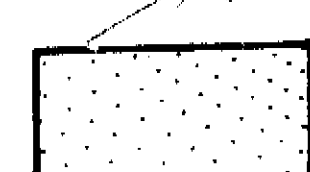
Maryland Agricultural Land  
Preservation District



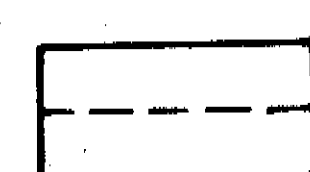
Maryland Agricultural Land  
Preservation Easement



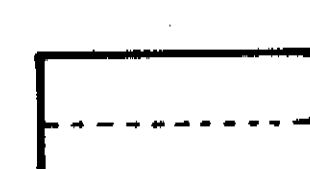
Baltimore County Agricultural Land  
Preservation Easement



Maryland Environmental Trust  
Easement



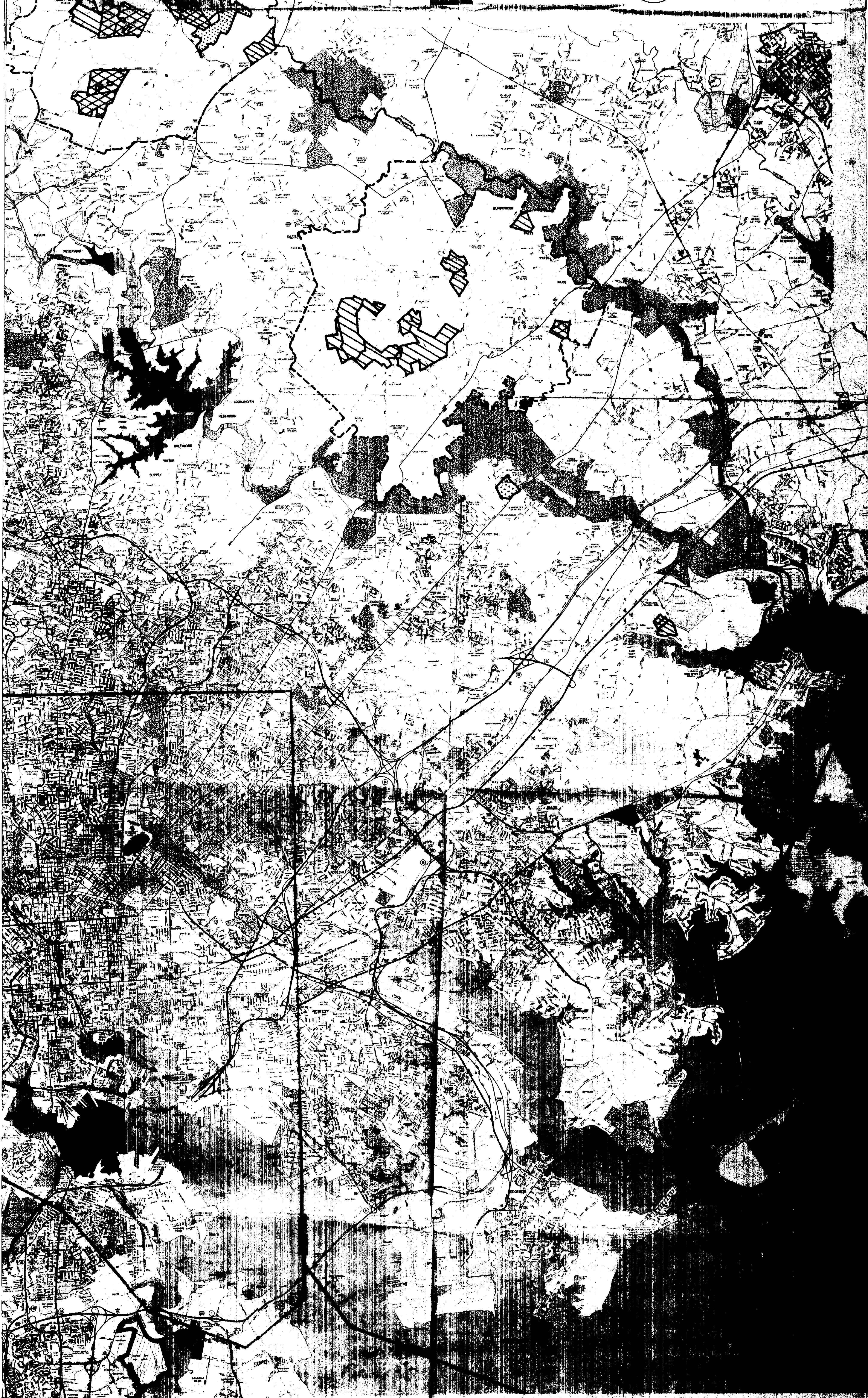
Baltimore County Master Plan  
Agricultural Protection Area



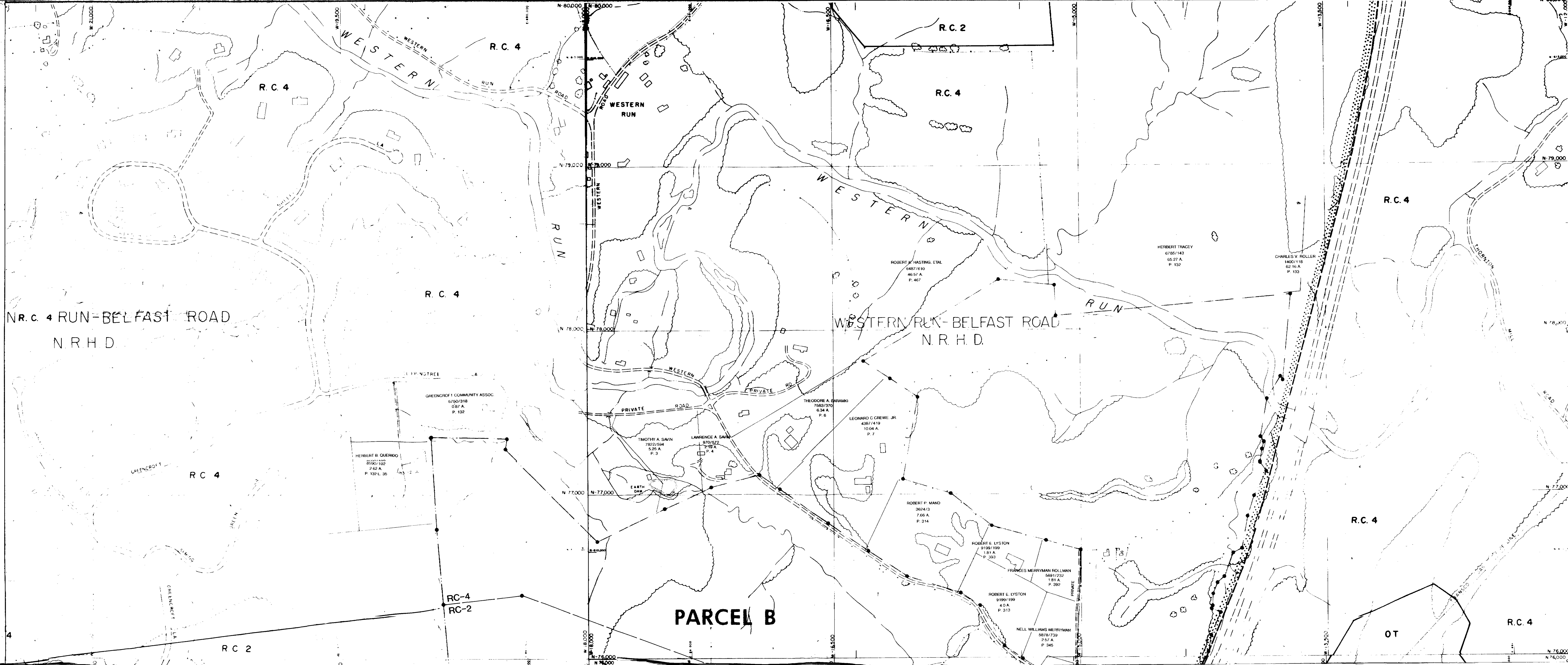
National Historic District Area

Scale: 1" = 4000'

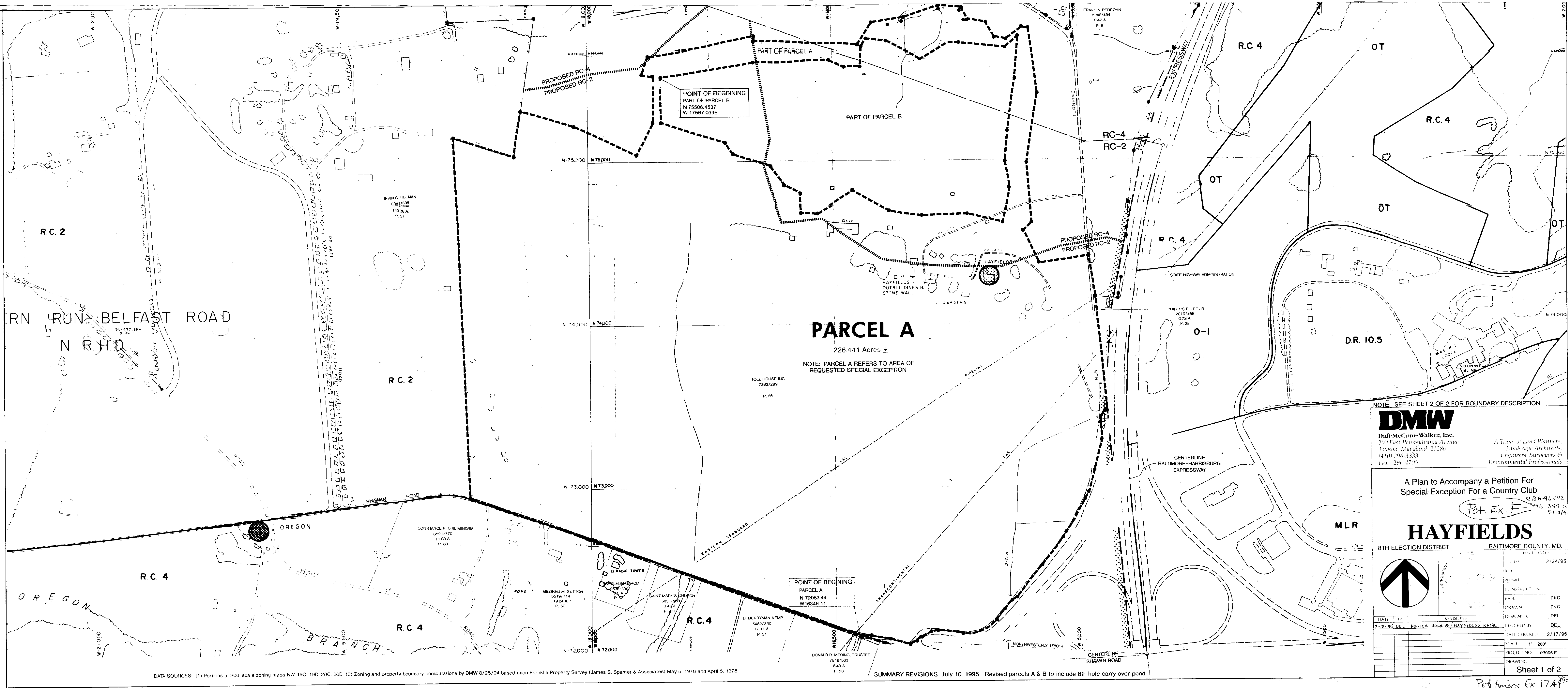
0 4000 8000











DATA SOURCES: (1) Portions of 200' scale zoning maps NW 19C, 19D, 20C, 20D (2) Zoning and property boundary computations by DMW 8/25/94 based upon Franklin Property Survey (James S. Spamer & Associates) May 5, 1978 and April 5, 1978.

SUMMARY REVISIONS July 10, 1995 Revised parcels A & B to include 8th hole carry over pond.

**DMW**

Daft-McCune-Walker, Inc.  
200 East Pennsylvania Avenue  
Towson, Maryland 21286  
(410) 296-3333  
Fax 296-4705

A Team of Land Planners,  
Landscape Architects,  
Engineers, Surveyors &  
Environmental Professionals

A Plan to Accompany a Petition For  
Special Exception for a Country Club

Pet. Ex. F-196-347-S-744  
8/13/95

**HAYFIELDS**

8TH ELECTION DISTRICT

BALTIMORE COUNTY, MD.

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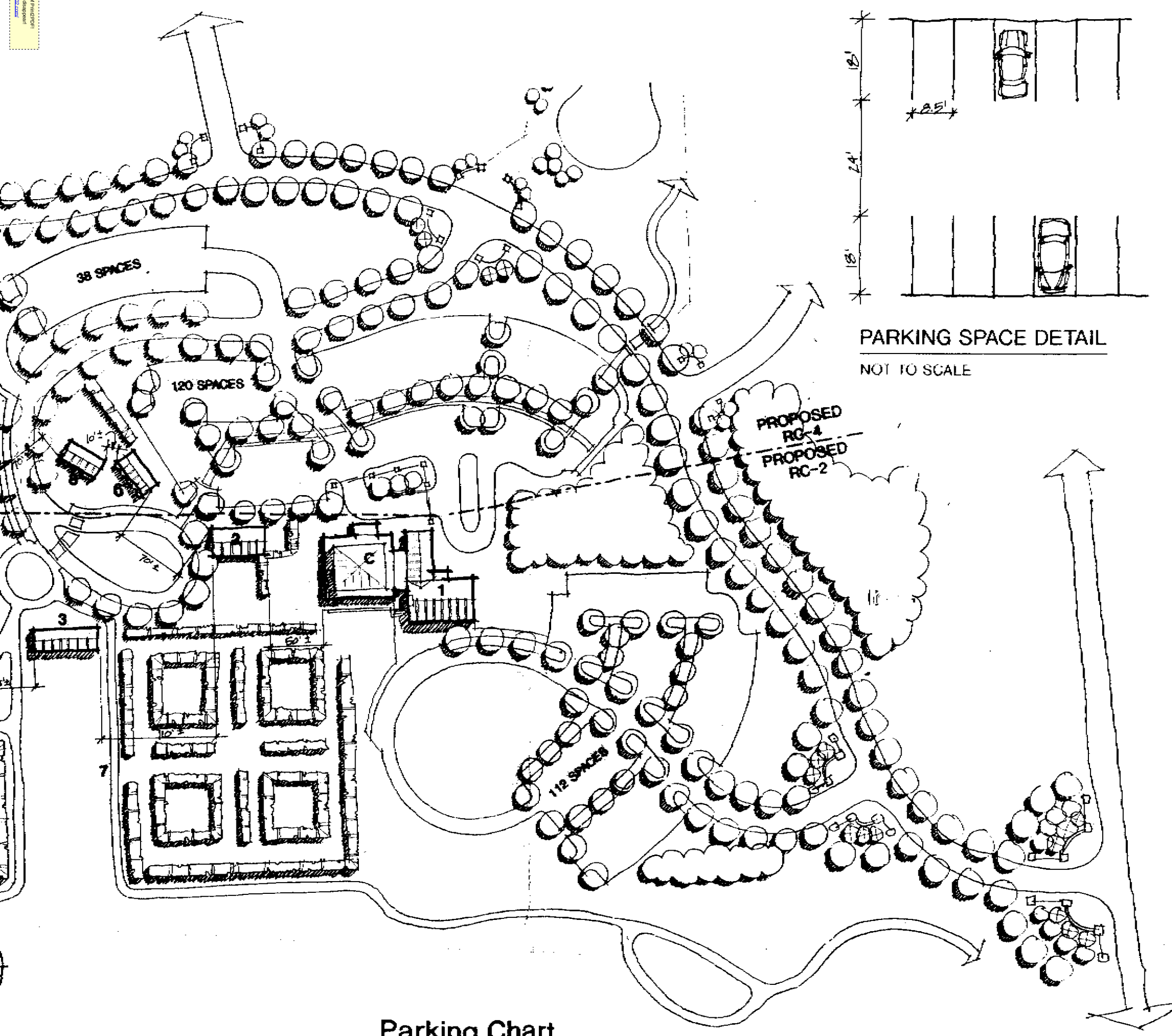


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| 7.28' | 107.14' | S 02°36'46" |
| 4.26' | 139.82' | S 18°18'52" |
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| 0.17' | 228.00' | S 88°18'21" |

Ref: 100-161719

Return July 19



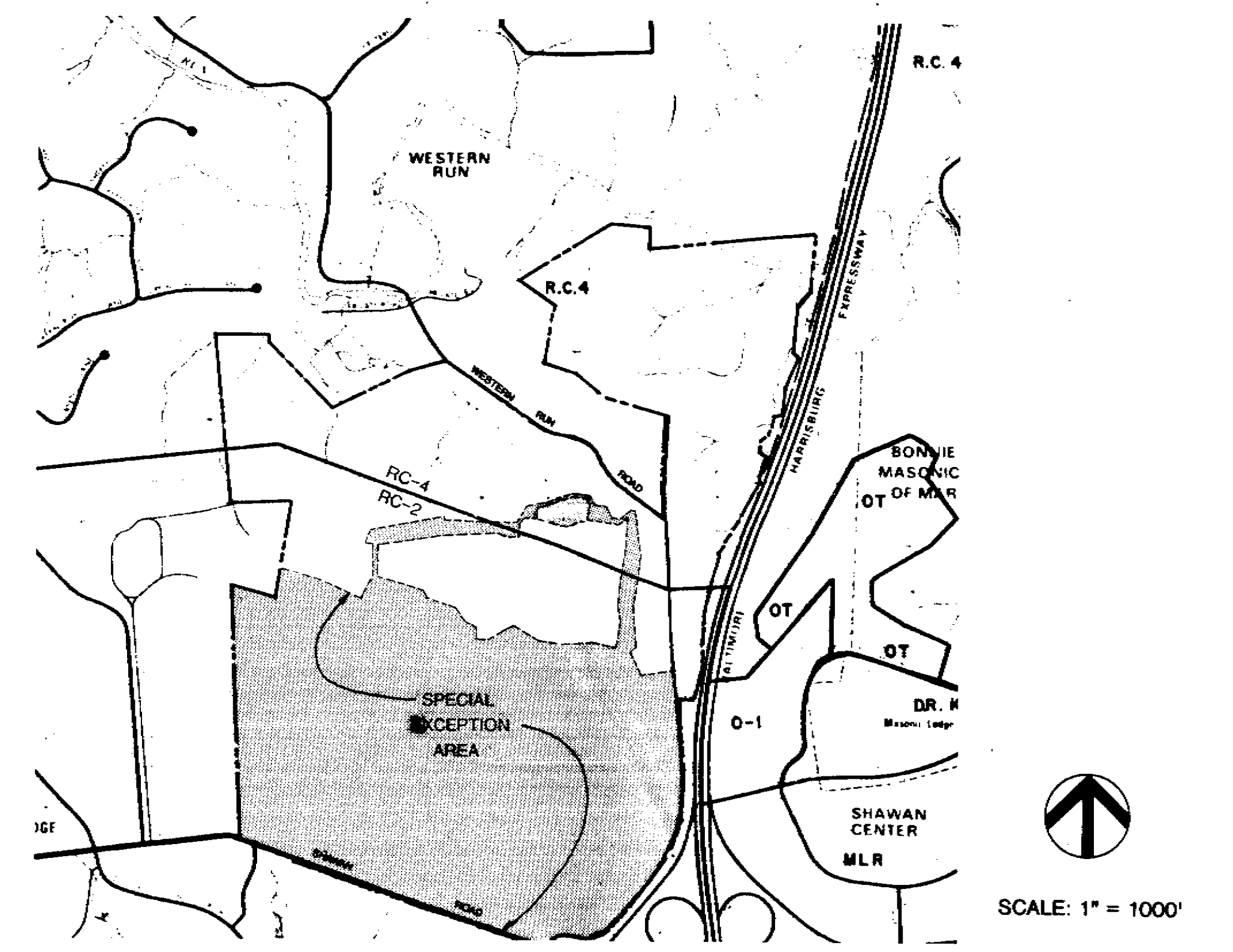
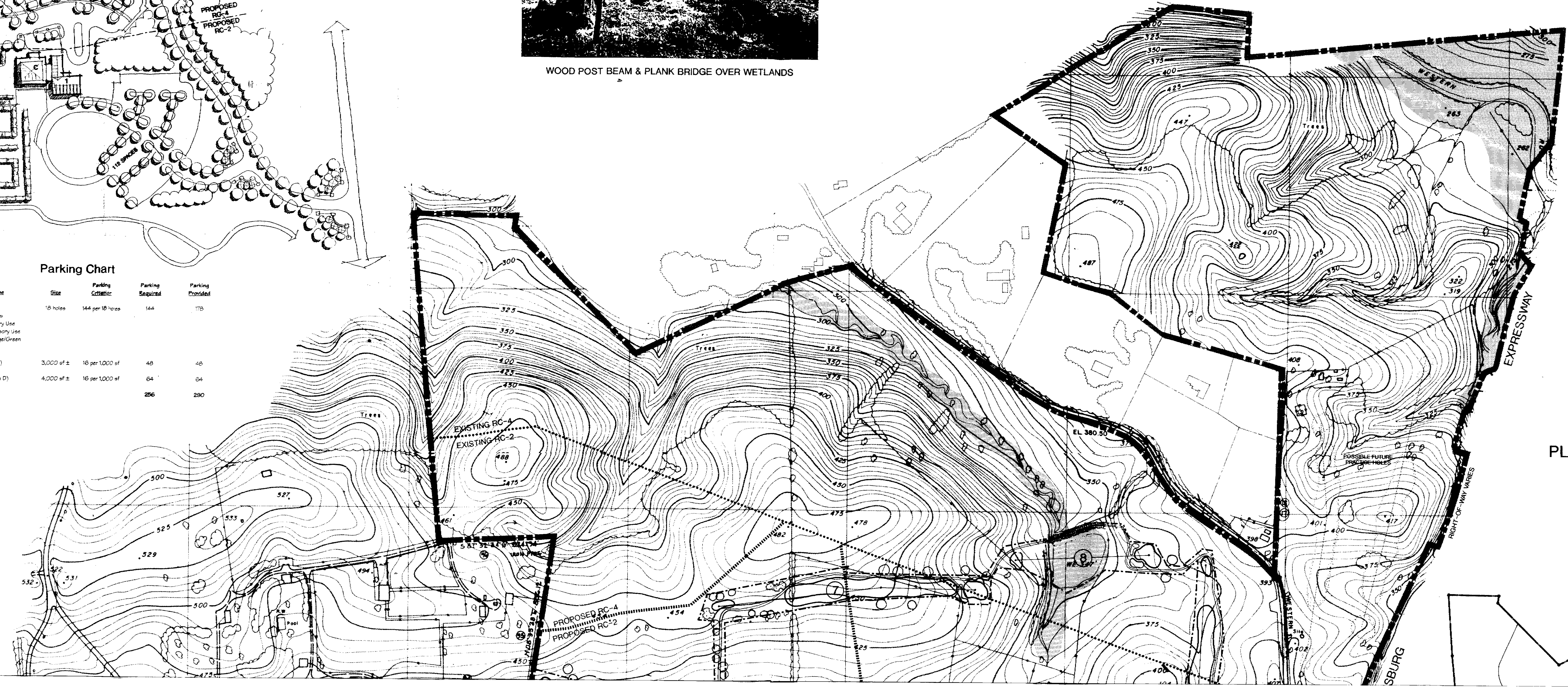


WOOD POST BEAM & PLANK BRIDGE OVER WETLANDS

**Parking Chart**

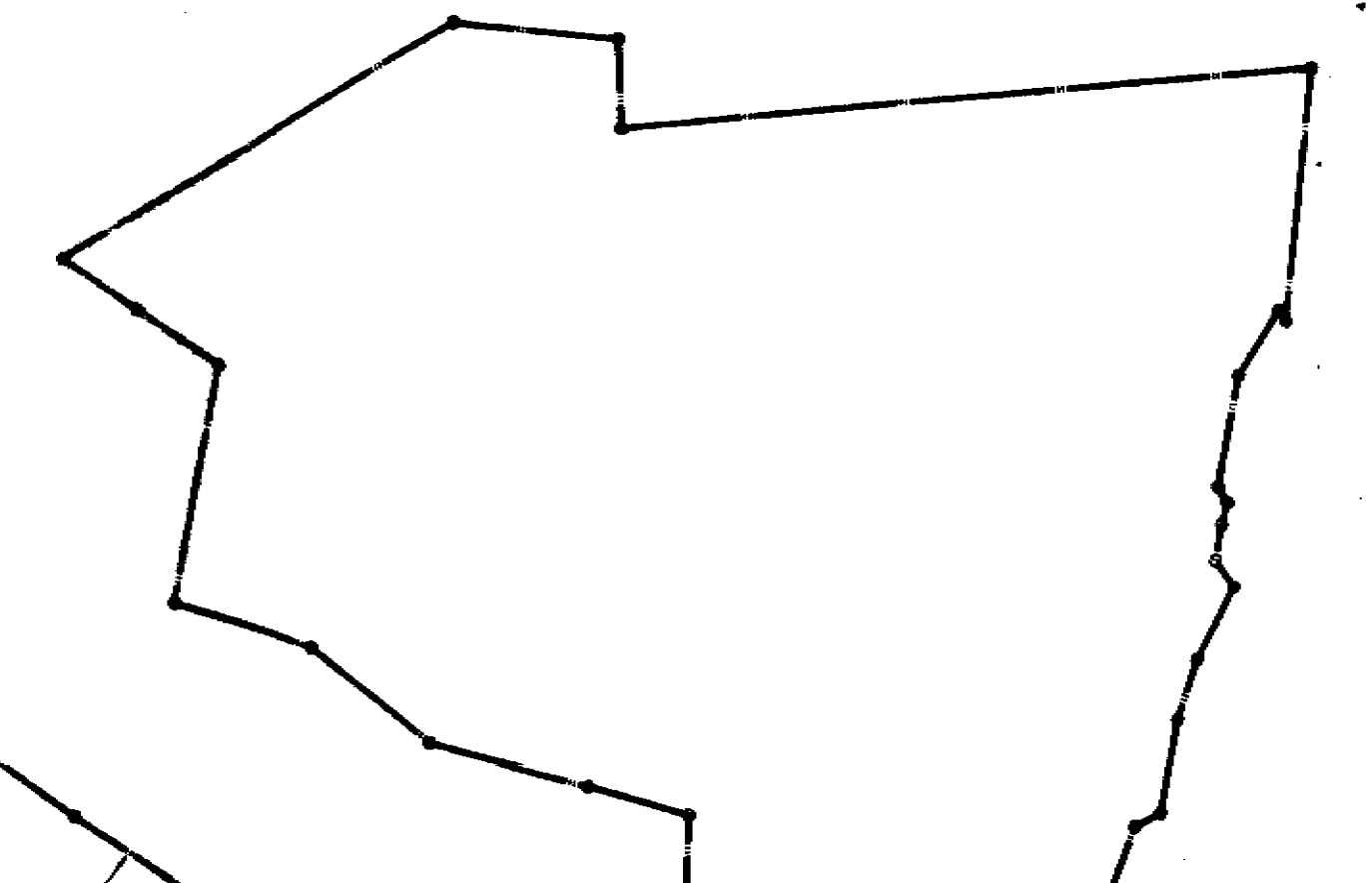
| Use                                                                                                                         | Size       | Parking<br>Calculation | Parking<br>Required | Parking<br>Provided |
|-----------------------------------------------------------------------------------------------------------------------------|------------|------------------------|---------------------|---------------------|
| Golf Country Club<br>Golf - 18 Holes<br>Club Accessory Use<br>Tennis Accessory Use<br>Practice Range/Green<br>Staff Parking | 18 holes   | 144 per 18 holes       | 144                 | 170                 |
| Dining (non class D)                                                                                                        | 3,000 sf ± | 16 per 1,000 sf        | 48                  | 48                  |
| Banquet (non class D)                                                                                                       | 4,000 sf ± | 16 per 1,000 sf        | 64                  | 64                  |
| <b>Total</b>                                                                                                                |            |                        | <b>256</b>          | <b>280</b>          |

County Zoning  
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ary signs on  
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HAYFIELDS - PORTION OF 1000' SCALE ZONING MAP C-2

PLAT OF SPECIAL EXCEPTION AREA = 400 SCALE





BALTIMORE COUNTY, MARYLAND

SUBJECT: DEVELOPMENT PLAN COMMENTS  
FROM: PDM - ZONING REVIEW

DPC DATE: 4/3/96  
9:00 a.m., Room 123

---

PROJECT NAME: Hayfields Manor

PLAN DATE: 3/5/96

LOCATION: NWC Shawan Road  
and Interstate 83

DISTRICT: 8c3

PROPOSAL: 40 Single Family Lots & (1) 18-Hole Golf Course

ZONING CASES: #CR-95-138 & #95-308-X & Item #348

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As Previously Stated for the Concept Plan:

The plan has been reviewed by the staff at this level of detail and not enough basic information has been supplied to determine general compliance with the Baltimore County Zoning Regulations (BCZR). *CERTAIN CONFLICTS WHICH ARE CAPITALIZED IN THESE COMMENTS WILL NOT ALLOW ZONING APPROVAL OF THIS OR FUTURE PLANS UNLESS THEY ARE CLEARLY RESOLVED TO SATISFY BCZR AND ZOPM REQUIREMENTS.* The following comments are specific for the development plan and they attempt to identify all details and inherent technical zoning requirements necessary in order to determine final compliance with these regulations; however, sufficient information has not been provided for a more detailed review (see these comments). The intent of the developer must be clear on the plan, including any previous and proposed zoning hearing requests. The following comments will be up-dated and, if necessary, supplemented when the following information has been supplied to this office and included on the plan.

1. The developers representatives were advised prior to, and at, the zoning hearing filing that (due to multiple and complicated issues) the hearing filing should be reviewed by the planner involved in the concept plan review. This advice was not taken and the developers attorney was advised that the zoning hearing filing review was for technical minimum filing requirements only and not for BCZR compliance. The plans/revisions were accepted with the understanding that all zoning issues/filing requirements would be addressed. As with all petitions/plans filed with this office, it is the final responsibility of the petitioner to make proper application, address any zoning conflicts and, if necessary, to file revised petitions.

1995-0308-5



DEVELOPMENT PLAN COMMENTS  
PROJECT NAME: HAYFIELDS MANOR  
DPC DATE: 4/3/96  
PAGE 2

2. The proposed golf course use was granted in special exception case #95-308-X (currently under appeal) and is subject to the final zoning hearing outcome. Single family residential uses are permitted as of right, subject to BCZR and zoning policy compliance. *THE PROPOSED (5) RESIDENTIAL DWELLINGS/LOTS IN THE R.C.-2 ZONE WERE NOT ON THE LAST APPROVED ZONING CASE SITE PLAN ON FILE WITH CASE #95-308-X. PER THIS DEVELOPMENT PLAN, THESE LOTS ARE NOT LOCATED WITHIN THE GOLF COURSE SPECIAL EXCEPTION AREA; HOWEVER, THEY ATTEMPT TO USE DENSITY FROM THE GOLF COURSE. RESOLVE THE PLAN DISCREPANCY AND CLARIFY HOW THE RESIDENCES USE DENSITY FROM THE OTHER USE AREA IN THE LIMITS OF THE GOLF COURSE SPECIAL EXCEPTION (WHICH CONSTITUTES A DOUBLE USE OF THE PROPERTY CONFLICTING WITH THE BCZR AND ZOPM) AND RESOLVE SECTION 102.2, BCZR, AND THE ZONING OFFICE POLICY MANUAL NONCOMPLIANCE, I.E., THE 273 +/- ACRE GOLF COURSE SPECIAL EXCEPTION AREA AS DESCRIBED IN THE ZONING DESCRIPTION MAY NOT BE USED TO SUPPORT RESIDENTIAL DWELLINGS. CORRECT CALCULATIONS ACCORDINGLY BY REMOVING THESE 5 LOTS FROM ALL PLANS, NOTES, AND CALCULATIONS.* Clearly show and label the limits of the special exception area and confirm that the area of this hearing is within the limits of case #95-308-X. This is a necessity on this development plan. State what use is proposed for the area surrounded by the special exception at the 8th hole.
3. For all reviews, the zoning staff must receive a copy (from the developers representatives) of the most recent plans (in case #95-308-X) under consideration by the Board of Appeals (or other court) for comparison purposes. *BE AWARE THAT ALL PLANS MUST AGREE AND FINAL PLAN APPROVALS ARE SUBJECT TO THE OUTCOME OF THE ZONING PUBLIC HEARINGS. BE AWARE THAT ANY ACTIONS REQUESTING APPROVALS FOR ZONING ARE UNDERTAKEN AT THE OWNERS OWN RISK UNTIL ALL HEARINGS ARE RESOLVED.*
4. Certain structures are not designated for use/setback in key plan sheet; therefore, no review is possible and zoning non-compliance is probable. All buildings not accessory to a residence are principle structures, subject to all principle and between building setbacks as required by Section 102.2 (BCZR).



Dimension all building setbacks to property lines, street centerline, and between building setbacks. Clarify and show zoning compliance or include in required zoning actions. Show all front building orientations.

5. In the R.C.-4 zone, show (dimensioned setback) maximized building envelopes per Section 1A03.4.B.2. (BCZR) and individual lot coverage maximums per Section 1A03.4.B.3. (BCZR). Dimension lot lines.
  - A. State if Western Run is or is not an arterial roadway. If it is, comply with the additional setback requirements of Section 1A03.4.B.2.C. (BCZR).
  - B. Provide confirmation of performance standards compliance in Section 1A03.5. (BCZR).
6. Note on the plan under the density calculation: "This property as shown on the plan has been held intact since 1979 for the R.C.-2 area, 1975 for the R.C.-4 area. The developers engineer has confirmed that no part of the gross area of this property, as shown on the plan, has ever been utilized, recorded, or represented as density or area to support any off-site dwellings". If any adjacently owned property has been subdivided after this date, show this area as part of the overall tract boundary and adjust density calculations accordingly. If this cannot be stated, provide detailed density utilization information since these dates on an overall density plan to show compliance with Zoning Policy 1A01.3.B.1, page 1A-10 (ZOPM).
7. Note that all parking, maneuvering, and aisle areas will be permanently striped. Label proposed curbs and/or parking wheel stops on the plan.

8. Provide an engineered scaled elevation on the plan of all existing and proposed free-standing signs, clearly indicating the type, height, dimensions, square footage, single or double-face, and illumination. All signs must be keyed to their existing or proposed location on the plan print and enough detail must be shown to determine compliance with Section 413.1 (BCZR) and all zoning sign policies or a zoning variance is required.

**Additional Comments for the Development Plan:**

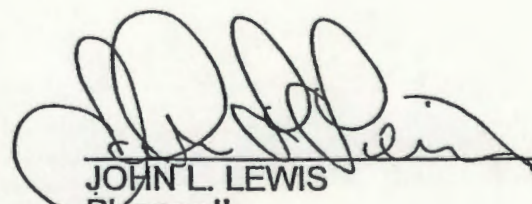
9. Five dwellings in the R.C.-2 zone are noted in the density calculations, while only 4 lots are shown. Clarify this situation. (Also see comment #2.)
10. The extension of the special exception golf course (hole #8) use into the R.C.-4 zone creates a line of use division, cutting off 2 islands of R.C.-4 area. Designate the use of both islands and be aware this must be approved by the Department of Environmental Protection and Resource Management (DEPRM) and the Office of Planning and Community Conservation (OPCC).
11. Confirm DEPRM and OPCC approval of the conservancy area dimension of less than the 100-foot diameter between lot #2 and the tract boundary.  
  
Confirm in the plan notes that the common ownership of the conservancy area standards (per Section 1A03.5.C., BCZR) will be met.
12. It is the responsibility of the developers engineer to keep the zoning and development plans in agreement. One apparent problem is that the zoning description area of 271.52 acres is less than that shown in the development plan notes: 273.1 in R.C.-2 and 3.5 in R.C.-4.



DEVELOPMENT PLAN COMMENTS  
PROJECT NAME: HAYFIELDS MANOR  
DPC DATE: 4/3/96  
PAGE 5

*THE STAFF WILL BE UNABLE TO RECOMMEND ANY APPROVAL, EITHER FOR ZONING HEARING OR DEVELOPMENT PLANS, UNTIL ALL OUTSTANDING ZONING ISSUES ARE RESOLVED. THE ZONING HEARING FILED UNDER ITEM #348 ONLY AMENDS THE PRIOR PLAN AND REQUESTS VARIANCES – IT DOES NOT RESOLVE SEVERAL OF THE MAJOR ZONING COMPLIANCE ISSUES.*

Final zoning approval is contingent first, upon all plan comments being addressed on the development plan; secondly, upon the final resolution of all comments; and finally, the inclusion of the Final Development Plan (FDP) checklist information being included on the building permit site plans.



JOHN L. LEWIS  
Planner II

JLL:scj

c: zoning case #95-308-X  
zoning case #CR-95-138  
item #348

DEVELOPMENT PLAN CONFERENCE and HEARING OFFICER'S HEARING  
NOTIFICATION

NAME of DEVELOPMENT: Hayfields

Location: Shawan Road/Western Run Road

Dear Sir or Madam:

In anticipation of a public hearing on the above-referenced project, I am enclosing a copy of the development plan we have filed with Baltimore County. The Hearing Officer's Hearing (and combined Zoning Hearing, if required), scheduled by the Department of Permits and Development Management of Baltimore County, is as follows:

|                   |                                                                             |
|-------------------|-----------------------------------------------------------------------------|
| Hearing Date:     | May 8, 9, 10, 14, and 15                                                    |
| Time:             | 9:00 a.m. (all day)                                                         |
| Hearing Location: | Room 118 of the Old Courthouse<br>400 Washington Avenue<br>Towson, MD 21204 |

As you are probably aware, the attached plan will receive a thorough review by appropriate agencies for compliance with applicable state and county regulations. Agency comments will be presented to the developer's representative at the Development Plan Conference to be held on Wednesday, April 3, 1996, at 9:00 a.m. in Room 123 of the County Office Building (COB), 111 West Chesapeake Avenue, Towson, MD 21204. The purpose of this conference is to ensure a coordinated review among agencies for the development plan proposal. You are invited to observe this exchange between county staff and the developer; however, the public hearing will provide the proper format for citizen comment.

Please accept this letter as written notification that agency comments, responses, and recommendations as required by the County Code will be available in the official file in Room 123 of the COB, until five (5) days preceding the public hearing. At that time, the file will be forwarded to the Hearing Officer/Zoning Commissioner in preparation of the hearing.

Please note that the enclosed drawings have been reduced for convenience and are not to scale.

Should you have any questions or concerns regarding this matter, you are encouraged to attend the public hearing. For further information, you may also contact the Department of Permits and Development Management at (410) 887-3335.

Respectfully yours,

John D. Mangione

JDM/pmh

Enclosures

cc G. Scott Barhight, Esq.



Hayfields - Adjacent Property Owners

10/23/95

Irvin C. Tillman  
800 Huntsman Road  
Baltimore, MD 21286-1455

Herbert B. and Edith G. Querido  
3 Clippingtree Lane  
Cockeysville, MD 21030-1103

Greencroft Community Association, Inc.  
13909 Greencroft Lane  
Cockeysville, MD 21030

Timothy A. Savin  
809 Western Run Road  
Cockeysville, MD 21030-1313

Lawrence A. and Florence Savin  
Western Run Road  
Route 1 Box 809  
Cockeysville, MD 21030-9801

Theodore A. and Ingrid Baramki  
806 Western Run Road  
Cockeysville, MD 21030-1314

Crewe L. Carter 3rd and  
The First National Bank of Md. (Personal Rep)  
First National Bank TR RL Est.  
110 S. Paca St.  
Baltimore, MD 21201

Shirley A. and Robert P. Mand  
704 Western Run Road  
Cockeysville, MD 21030

Sally W. and Robert F. Lyston  
700 Western Run Road  
Cockeysville, MD 21030

Frances Merryman Rollman  
The Gatehouse RD4  
Blackburn Road  
Sewickley, PA 15143

Nell Williams Merryman  
19635 Eagle Mill Road  
Parkton, MD 21120-9043

Frank A. Persohn  
600 Western Run Road  
Cockeysville, MD 21030-1311

Robert K. and Lynne D. Hastings, et al  
818 Western Run Road  
Cockeysville, MD 21030-1314

Lillian L. and Phillips F. Lee, Jr.  
314 Western Run Road  
Cockeysville, MD 21030-1310

Caddie Homes 13, Inc.  
P.O. Box 5991  
Baltimore, MD 21208-0991

Donald R. Mering, Trustee  
10 Light Street  
Baltimore, MD 21202

Merryman B. Kemp  
821 Shawan Road  
Cockeysville, MD 21030-1307

St. Mary's Othodox Catholic Church  
P.O. Box 594  
Hunt Valley, MD 21031

Mildred M. Sutton  
919 Shawan Road  
Cockeysville, MD 21030-1308

Napolean and Belen Garcia  
911 Shawan Road  
Cockeysville, MD 21030

Nancy V. and Constantine P. Chilimindris  
1003 Shawan Road  
Cockeysville, MD 21030-1317

Elaine C. and Herbert W. Tracey  
14628 Thornton Mill Road  
Sparks, MD 21152

Charles V. and Olive Roller  
1440 Bonnie View Road  
Sparks, MD 21152-9635

Kenneth T. and Phyllis B. Bosley  
P.O. Box 585  
Sparks, MD 21152-0585

Rouse and Associates Highlands Limited Partnership  
c/o Casey-Carey Winston, Inc.  
300 E. Lombard St. Suite 1440  
Baltimore, MD 21202

Rouse and Associates Highlands Limited Partnership  
305 International Circle  
Cockeysville, MD 21030

Advent Realty Limited Partnership  
c/o TA Associates Realty  
45 Milk Street  
Boston, MA 02109-5105

Advent Realty Limited Partnership  
c/o TA Associates Realty  
303 International Circle  
Cockeysville, MD 21030

NCR Corporation  
1700 S. Patterson Blvd.  
Dayton, OH 45479

NCR Corporation  
301 International Circle  
Cockeysville, MD 21030

Medical Mutual Liability Insurance Society of Md.  
225 International Circle  
Cockeysville-Hunt Valley, MD 21030

Courtyard by Marriott Limited Partnership  
Dept. 938 01  
1 Marriott Drive  
Washington, DC 20058

Courtyard by Marriott Limited Partnership  
221 International Circle  
Cockeysville, MD 21030

Coeur Dalene Development, Inc.  
Honeywell Plaza  
Minneapolis, MN 55408

Coeur Dalene Development, Inc.  
217 International Circle  
Cockeysville, MD 21030

Hunt Valley Associates Limited Partnership  
Middex Hospitality, Inc.  
600 Madison Avenue  
New York, NY 10022-1615

Hunt Valley Associates Limited Partnership  
Middex Hospitality, Inc.  
213 International Circle  
Cockeysville, MD 21030

201 International Associates Limited Partnership  
c/o The Rouse Company  
P.O. Box 833  
Columbia, MD 21044-0833

201 International Associates Limited Partnership  
201 International Circle  
Cockeysville, MD 21030



Arsenia A. and Edgardo P. Villamater  
5 Clipping Tree Lane  
Cockeysville, MD 21030

Daniel L. and Janice D. Santangelo  
7 Clipping Tree Lane  
Cockeysville, MD 21030

Lynne and Dionisio L. Garcia, Jr.  
9 Clipping Tree Lane  
Cockeysville, MD 21030

Falls Road Community Assn., Inc.  
A. Douglas McComas, Executive Director  
P.O. Box 555  
Brooklandville, MD 21030

Mason Dixon Assn.  
Ken Gettle, President  
910 Miller Road  
Parkton, MD 21120

North County Coalition, Inc.  
Richard McQuaid, President  
1501 Harris Mill Road  
Parkton, MD 21120

Valleys Planning Council  
John Bernstein, Exec Director  
P.O. Box 5402  
Towson, MD 21286



TRANSMITTAL



Daft McCune Walker, Inc.

200 East Pennsylvania Avenue  
Towson, Maryland 21286  
410-296-3333  
Fax 296-4705



VIII-661

A Team of Land Planners,  
Landscape Architects,  
Engineers, Surveyors &  
Environmental Professionals

To: PDM

Date: 3/26/96

Job No.: 93005N

Attention: Dave Flowers

Reference: Jayfields

We are sending you  
☐ Shop drawings  
☐ Specifications

☐ attached  
☐ Samples

☐ under separate cover:  
☐ Plans

☒ via Hand Del.

| Copies   | Date | Number | Description                    |
|----------|------|--------|--------------------------------|
| <u>1</u> |      |        | <u>Letter sent to adjacent</u> |
| <u>1</u> |      |        | <u>property owner</u>          |
|          |      |        | <u>List of those notified</u>  |

These are transmitted as checked below:

☐ For approval  
☐ For your use  
☐ As requested  
☐ For review and comment

☐ Approved as submitted  
☐ Approved as noted  
☐ Returned for corrections

☐ Resubmit  
☐ Submit  
☐ Return

\_\_\_\_ copies for approval  
\_\_\_\_ copies for distribution  
\_\_\_\_ corrected prints

Remarks \_\_\_\_\_

cc: \_\_\_\_\_

Signed

[Signature]

96-1330 NY

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 112 Courthouse  
400 Washington Avenue  
Towson, MD 21204

March 21, 1996

(410) 887-4386

Mr. Phillip Worrall  
Chairman, Planning Board for Baltimore County  
c/o Timothy Dugan  
Office of Planning  
County Courts Bldg.  
Towson, Maryland 21204

RE: Hayfields Development Plan  
Case No. 308-X

Dear Mr. Dugan:

Regarding our recent telephone conversation, please accept this letter as my referral of the above captioned matter to the Planning Board, pursuant to Section 26-207 of the Baltimore County Code. Kindly note that the Hearing Officer's hearing, for review of the development plan submitted in this case, has been scheduled to begin on May 8, 1996. This letter is to supplement my initial letter to Mr. Worrall dated October 26, 1995.

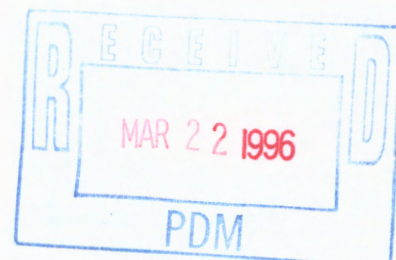
Very truly yours,

Lawrence E. Schmidt  
Zoning Commissioner

LES:mmm

c: G. Scott Barhight, Esquire  
c: Arnold Jablon, Esquire  
c: A.F. (Pat) Keller, III  
c: Donald T. Rascoe  
c: David Flowers  
c: File

2 2 3





Baltimore County Government  
Department of Permits and  
Development Management



111 West Chesapeake Ave.  
Towson, Md. 21204

(410) 887-3321

March 15, 1996

Mr. George Nilson  
Piper & Marbury  
Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201

RE: Hayfields

Dear Mr. Nilson:

This correspondence is in reply to your letter of March 8, 1996 to Arnold Jablon, Director, Department of Permits & Development Management, and our subsequent telephone conversation of March 13, 1996.

Your letter indicates that you believe the Development Plan that was submitted by Hayfields, Inc. with regard to the Hayfields Farm Property at Shawan and Western Run Roads should not be accepted for filing. You further believe the acceptance for filing, processing and further consideration of the Development Plan should be deferred until another community input meeting has been held and the Board of Appeals has acted on the Special Exception appeal.

I have talked at length with Mr. Jablon, concerning this issue. His opinion is that after two community input meetings and the comments the developer received from the county, a third community input meeting is not warranted and would be of no value to the process. After reviewing the file, I believe the Development Plan submitted for consideration by the hearing officer is consistent with the Concept Plan that was submitted to the county and presented to the community. The changes that you outlined in your letter were made as a result of county agency and community input.

Mr. George Nilson  
Hayfields  
March 15, 1996  
Page 2

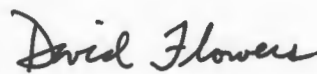
I have talked with Mr. Scott Barhight, attorney for Hayfields, Inc. about having an informal meeting in the County Office Building during normal working hours with you and members of the community to review the development plan and explain what changes were made and why. We would discuss the nine issues and concerns that you raised in your letter. It would be possible to have representatives from various county agencies present, if necessary.

Obviously, that meeting is not for the purpose of debating the relative merits of the changes, but to explain to you and community representatives why the changes were made to the concept plan that were presented at the community input meeting.

The recommendation that you made deferring the Hearing Officers Hearing consideration until the Board of Appeals has acted is a decision that the developer makes at his own risk. Mr. Jablon will not postpone or change the hearing dates that have been set. The dates are May 8, 9, 10, and May 14 and 15 of this year. These are dates I understand were coordinated with you by Mr. Barhight. However, the Hearing Officer, Mr. Larry Schmidt, could hear arguments to defer the these dates during the hearing , should he elect to do so.

Should you wish to contact me for additional information or set the meeting proposed above, please contact me at 887-3321 to do so.

Sincerely,



David Flowers  
Project Manager

DF:aw

c: File 

WHITEFORD, TAYLOR & PRESTON  
L.L.P.

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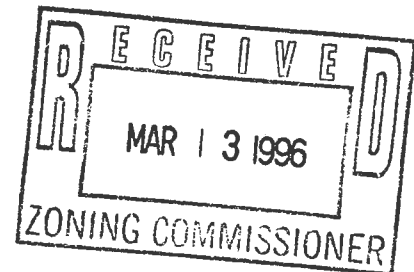
G. SCOTT BARHIGHT  
DIRECT NUMBER  
410 832-2050

1317 KING STREET  
ALEXANDRIA, VIRGINIA 22314-2928  
TELEPHONE 703 836-5742  
FAX 703 836-0265

March 13, 1996

**DELIVERY BY HAND**

The Honorable Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
Office of Planning and Zoning  
Old Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204

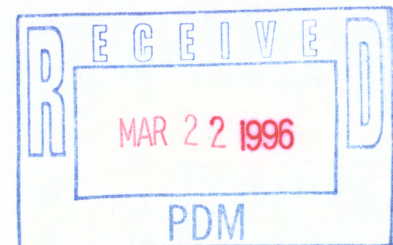


**Re: Hayfields Manor - Development Plan  
Planning Board Referral**

Dear Mr. Schmidt:

Please refer to my April 11, 1995 correspondence wherein I suggested a referral of the Hayfields Development Plan to the Planning Board and your October 26, 1995 correspondence to Mr. Worrall, chairman of the Planning Board, referring the Development Plan. Now that the filing of the Development Plan with Permits and Development Management has been completed on March 13, 1996, please amend your referral to the Planning Board to request that they review the Development Plan in conformance with Section 26-207 of the Baltimore County Code in time to meet the Hearing Officer's Hearings proposed for May 8, 9, 10, 14 and 15, 1996.

After consultation with Mr. Dugan of the Planning Office, the Planning Board agenda will include this referral before the Planning Board on March 21, 1996. In the event that the Planning Board is unable to complete its deliberations on March 21, 1996, the Planning Board will be able to finish its review of the Development Plan on April 18, 1996.



The Honorable Lawrence E. Schmidt  
March 13, 1996  
Page 2

Therefore, please amend your earlier referral to the Planning Board, suggesting that the Planning Board complete its referral by its April 18, 1996 meeting. Please provide your referral to the Planning Board, as soon as possible, but in no event later than March 20, 1996.

Should you have any questions or comments, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,



G. Scott Barhight

GSB:sl

cc: Arnold Jablon, Director  
Mr. John D. Mangione

72710



Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 112 Courthouse  
400 Washington Avenue  
Towson, MD 21204

October 26, 1995

(410) 887-4386

Mr. Phillip Worrall  
Chairman, Planning Board for Baltimore County  
c/o Grieves, Worrall, Wright and O'Hatnick  
5 E. Read Street  
Baltimore, Maryland 21202

RE: Hayfields Development Plan  
Case No. 95-308-X

Dear Mr. Worrall:

Pursuant to Section 26-207 of the Baltimore County Code, kindly accept this letter as the undersigned's request to refer the development plan for the above captioned case to the Planning Board for consideration. This referral is requested, pursuant to Section 26-207 of the Code, which requires referral in the event the plan involves "A building, structure or site included on the Landmark Preservation Commission preliminary or final list, or is located within a County Historic District." The subject plan includes a qualifying structure under that language.

For your reference, enclosed is a copy of attorney, G. Scott Barhight's letter to me, dated October 11, 1995, requesting this referral. Kindly review same and schedule this matter as indicated.

Please do not hesitate to contact me should you have any questions. Thank you for your attention to this request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".  
Lawrence E. Schmidt  
Zoning Commissioner

LES:mmn

cc: G. Scott Barhight, Esquire  
cc: Arnold Jablon, Esquire  
cc: A.F. (Pat) Keller, III  
cc: Mr. Donald T. Rascoe  
cc: Mr. David Flowers,  
cc: Mr. Timothy K. Dugan  
cc: Mr. John D. Mangione

*office copy*



**COPY**

**WHITEFORD, TAYLOR & PRESTON  
L.L.P.**

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TELEPHONE 703 836-5742  
FAX 703 836-0265

October 11, 1995

**DELIVERY BY HAND**

The Honorable Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
Office of Planning and Zoning  
Old Courthouse, Room 112  
400 Washington Avenue  
Towson, Maryland 21204

**Re: Hayfields - Development Plan  
Planning Board Referral**

Dear Mr. Schmidt:

Please be advised that this office represents Hayfields, Inc. regarding its Development Plan application. The Concept Plan for the country club and residential community was recently filed. The Concept Plan conference has been scheduled for October 16, 1995 and we expect the community input meetings to be held on November 20 and December 5, 1995. We intend to file the Development Plan as soon after December 5, 1995 as possible.

As you may recall from the Special Exception case, the Hayfields property "involves a building, structure . . . included on the Landmarks Preservation Commission . . . final list." Therefore, pursuant to Section 26-207(a)(3), the Hearing Officer must refer the Plan to the Planning Board.

Section 26-208(b)(2) requires the Planning Board to file its written decision with Hearing Officer no later than 45 days after the date of the referral to the Planning Board. Given our expectation of a Hearing Officer's hearing in January or February of 1996, the necessity of review by the Landmarks Preservation Commission prior to review by the Planning Board, and the respective calendars of the bodies involved (i.e., the Planning Board does not meet during the month of December), we respectfully request that you

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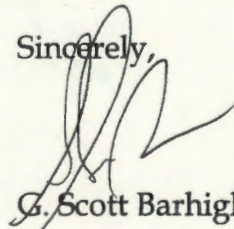


The Honorable Lawrence E. Schmidt  
October 11, 1995  
Page 2

refer this matter to the Planning Board effective December 8, 1995. It is our expectation, based upon conversations with Mr. Tim Dugan of the Office of Planning and Zoning, that the Planning Board agenda for January 18, 1996 will include this matter for consideration and decision. It is our further expectation that the matter will be on the agenda for the Landmarks Preservation Commission on November 9, 1995. If necessary, the Landmarks Preservation Commission may also have the opportunity to review this matter further at its meeting on January 11, 1996.

Should you have any questions or comments regarding this matter, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,



G. Scott Barhight

GSB:sl

cc: Arnold Jablon, Esquire  
Mr. Arnold F. Keller, III  
Mr. Donald T. Rascoe  
Mr. David C. Flowers  
Mr. Timothy K. Dugan  
Mr. John D. Mangione