BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: October 8, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Edgar Lucas – 98-294-SPHX**
PDM Case No.: 98-294-SPHX
Circuit Court Case No.: 03-C-00-002648

Judge Hennegan of the Circuit Court issued an Order on 3/16/01 AFFIRMING BOA. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 8/1/2002 affirming the judgement. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

PETITION OF EDGAR LUCAS AND DALE LUCAS	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF	*	FOR
BALTIMORE COUNTY	*	BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS	*	Case No.: 03-C-00-002648
FOR A SPECIAL HEARING, and SPECIAL EXCEPTION ON PROPERTY	*	
LOCATED AT 901 GREENSPRING VALLEY ROAD	*	

* *

NOTICE OF APPEAL

Appellants, Edgar Lucas through his personal representative, Dale Lucas and Dale Lucas, individually, by and through their attorneys, G. Scott Barhight, Jennifer R. Busse and Whiteford, Taylor & Preston, L.L.P., pursuant to Maryland Rules 8-202, *et seq.*, hereby note an appeal from the Memorandum Opinion of the Circuit Court for Baltimore County, entered March 16, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2001, a copy of the foregoing Notice of Appeal was mailed first class, postage prepaid to:

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222987

3/16/01

PETITION OF EDGAR LUCAS and DALE LUCAS	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRINGS VALLEY ROAD	*	Civil Action No. 03-C-00-002648

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

ORDER

This matter came before the Court for judicial review of a decision of the County Board of Appeals of Baltimore County. Based upon the Court's review of the record and transcript in this case, a consideration of the arguments of counsel, and for the reasons set forth in the Memorandum Opinion filed concurrently herewith, it is thereupon this 16 day of March, 2001, by the Circuit Court for Baltimore County Maryland,

ORDERED, that the case shall be and the same is hereby **AFFIRMED**.

John O. Hennegan
Judge

cc: Mr. Scott G. Barhight, Esq.
Mr. G. Macy Nelson, Esq.
Mr. Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County

-294-SPHX /Edgar Lucas
CCT AFFIRMS CBA
3/16/01 -John O. Hennegan

3/16/01

PETITION OF EDGAR LUCAS and DALE LUCAS	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRINGS VALLEY ROAD	*	Civil Action No. 03-C-00-002648

COUNTY EXAMINERS
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* * * * * * * * * * * *

MEMORANDUM OPINION

This matter came before the Circuit Court for Baltimore County regarding the Petition of Edgar Lucas through his personal representative, Dale Lucas, and Dale Lucas, individually, (Petitioners) for a judicial review of the decision made by the County Board of Appeals of Baltimore County (herein "the Board").

A procedural history of the case is as follows. Petitioner filed a petition for special exception for the Helmore Farm Airport pursuant to Section 1A01.2.c.1 of the Baltimore County Zoning Regulations (herein "BCZR"). That petition was approved by the Baltimore County Deputy Zoning Commissioner in August of 1998. Protestants appealed this case to the Board. The Board heard testimony in this matter from April 27, 1999 to July 1, 1999. The Board issued its Opinion, denying the Petition for Special Exception, on February 25, 2000. Petitioners filed a

petition for judicial review on March 15, 2000. This case was brought before the Honorable John O. Hennegan on September 28, 2000 as record appeal, at which time arguments were presented by the parties' respective counsel. For the reasons set forth herein, the court finds the following.

Issues Presented for Review

The issues Presented for the Court's review are as follows:

1. Whether, the Board erred as a matter of law in ruling that the proposed use is not an "airport"?
2. Whether, the Board erred as a matter of law by utilizing an incorrect interpretation of the special exception standard?

Standard of Review

When an appeal is heard on the record in the Circuit Court, the Circuit Court is required to review the case on both the law and the evidence. Rule 7-209; *Commissioner, Baltimore City Police Dep't v. Cason I*, 34 Md. App. 487, 368 A.2d 1067. The Standard of review for an action of an administrative agency is whether a reasoning mind could have reached the same conclusion as the administrative agency. Rule 7-209; *Nnoli v. Nnoli*, 101 Md. App. 243, 646 A.2d 1021 (1994). The Circuit Court must uphold an order of an administrative agency if it is not based upon erroneous determination of law and if the agency's conclusion reasonably may be based upon the facts proven. Rule 7-209; *Montgomery County v. Buckman*, 333 Md. 516, 636 A.2d 448

(1994).

The Court has no power to reject a fact determination made by an administrative agency if there was evidence of the fact in the record before the agency, regardless of how conflicting or questionable the credibility of the source of the evidence. Rule 7-209; *Commissioner, Baltimore City Police Dep't. V. Cason,* 34 Md. App. 487, 368 A.2d 1067 (1977). The administrative agency's interpretations of law enjoy no presumption of correctness on review; a reviewing court is not constrained in reversing an administrative decision that is based entirely upon erroneous conclusion of law. Rule 7-209; *Montgomery County v. Buckman,* 333 Md. 516, 636 A.2d 448 (1994). Upon determination that the administrative agency applied the correct standards prescribed by a statute at issue, the agency's conclusion is tested by the substantial evidence test. Rule 7-209; *Montgomery County v. Buckman,* 333 Md. 516, 636 A.2d 448 (1994).

In the case *sub judice,* the Board, in rendering its decision wrote a 58 page opinion addressing each of the questions and ordered the request for special exception for an airport be denied.

Discussion

The Petitioner in the case *sub Judice* is Mr. Dale Lucas, as Personal Representative of the Estate of the original petitioner, Edgar Lucas, (the "decedent") who died in January, 1999.

(Opinion of the County Board of Appeals at 1, herein "Op."). The decedent owned Helmore Farm, which is located on Greenspring Valley Road, in the Greenspring Valley in Southern Baltimore County. Greenspring Valley is zoned R.C.2. (Op. 48, 20-23)

The Special Exception denied below was for the operation of a landing area at Helmore Farm for both helicopters and fixed-wing air craft, or "airplanes." Dale Lucas (herein "Petitioner") is the decedent's son. The Board found that Dale Lucas is the owner of Helmore Farm and trains thoroughbred horses; and assists "in the 'laying up' of injured thoroughbred horses during their rehabilitation process." Op. 2, 45. In 1997, Petitioner built a helicopter landing pad for Martin Grass on the southwest edge of Helmore Farm, in a fenced area approximately 23 feet from the property of Susan Immelt, a Protestant here. (Op.5, 25). Mr. Grass had earlier attempted without success to establish a helipad at his own Greenspring Valley property. (Op.5). Mr. Grass paid 65% of the construction costs and also "assisted financially after the original zoning hearing." (Op.5). Mr. Grass then commuted from Helmore by helicopter to Rite Aid helipad in Harrisburg, Pennsylvania. (Op.18-19).

After Petitioner built the landing pad, he sought a Special Exception to operate a landing field for helicopter and an airplane, for up to ten flights daily. The pad has a windsock, lights, a guidance beam, and all weather observation system.

(Op.19). It is a fenced-in, partially paved area with a concrete walk. Its dimensions are approximately 165 feet by 172 feet. (Op. 3-4). The fence is approximately 23 feet from Ms. Immelt's property line. It lacks facilities for fueling, repairs, passengers, parking, or storage, such as hangars. (Op.41-42).

The first issue before this Court is, whether, the Board erred as a matter of law in ruling that the proposed use is not an "airport"? The Petitioner proposes that the Board's decision: (1) violates the " plain-meaning Rule", and (2) erroneously relied on the Planning Office's recommendation to eliminate airports and helistops in R.C. 2 zones in attempting to ascertain the intent decision to retain only airports.

A chart was prepared by the Board that indicated which aircraft landing uses (airport, airstrip, heliport types I and II, helistops) are permitted in the various zones. (Op.34). No aircraft landing is permitted as of right in any R.C. zone. *Id.* Helistops are permitted by special exception in the R.C. 3 zone but not in the R.C.2 zone. Helmore Farm is zoned R.C.2, therefore it is not eligible for a Special Exception for a helistop. Other zoning classifications permit Special Exceptions for "airstrips" and "heliports," but none of the R.C. designations allow such a use. *Id.* The only aircraft landing use permitted in an R.C. zone, and only by Special Exception, is an "airport". The question arises as to the relationship of these

uses, and their application to uses proposed here.

Petitioner argues that the Board's holding that the proposed use did not qualify as an airport is illogical and ignores the common sense conclusion. Petitioner also states that the Board erred as a matter of law by ruling that helicopter operations are not included within the definition of an "airport". The Board identified one of the "questions which need to be addressed" as "are helipads and helistops permitted uses within the meaning and definition of an 'airport'". (Op.30-31). The Board analyzed this question and held that: "The Board does not concur that helicopter operations come within the definition of an 'airport', where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C.2 subject site." (Op. 39).

Petitioner further argues that the Board 's decision violates the "plain-meaning rule". Petitioner states that the Board erroneously held that helicopter operations are not included within the BCZR definition of "airport". The BCZR defines airport as "any area of land or water designated and set aside for landing or taking off of aircraft", and defines a helicopter as " any rotary wing aircraft...", BCZR §101, (Op. 31). The word "aircraft" itself is not defined by the regulation. The Board recognized that a term "not specifically defined under section 101... then requires defining in the *Miriam Webster*

Collegiate Dictionary, 10th Edition(1994) and *Webster's II New University Dictionary* (1984, 1968)." (Op. 35). These authorities include helicopters in their definition of "aircraft". However, the Board held that "while the BCZR describes an airport as "any area of land or water designated and set aside for landing or taking off of aircraft', and a helicopter fits the definition of 'any rotary aircraft' nevertheless this Board concludes that the legislative history and intent of the uses permitted by special exception in the R.C.2 Zone clearly precludes such uses by helicopter."

The case history of the current R.C. zones is as follows: In 1975, the Council enacted the current R.C. zones, and it permitted airports and helistops by Special Exception. In 1978, a petition for a Special Exception for a helipad in the Greenspring Valley was filed and the Board of Appeals eventually granted it. (Case No. 78-193-X) (Op.33). In response to the controversy over that petition, the Planning Board recommended that the Council repeal both the airport and helistop Special Exception uses from R.C.2 land. The Council repealed the helistop Special Exception, but not the airport exception, and both uses remained permissible on R.C.3 land. The Council's decision to prohibit all helistops and continue to permit airports made clear that it did not consider the term "airport" to include "helistops." The board found that the Council had differentiated among aircrafts landing

uses.

The Board held that had the County Council not sought to specifically separate and define helicopter uses in the various zones, they might have believed differently, and in so doing, adopt the Appellant's belief that the interpretation of an "airport" includes a "heliport or helistop." (Op.37). However, the Board concluded that this was not the case. *Id.* The Board also believed that it was required to consider the nature of what constituted an "airstrip," because the County Council has seen it fit to permit such a facility in the M.L.R. and M.L. zones. (Op. 34) The term however is not specifically defined under Section 101 which then requires defining in the *Miriam Webster Collegiate Dictionary*, 10th Edition (1994) and *Webster's II New Revised University Dictionary* (1984, 1988). (Op.35). The definitions provided from the above sources were as follows: 1) A runway without normal airbased or airport facilities; 2) A cleared landing area serving a landing strip. In reaching its conclusion the Board examined the facts and circumstances of the case; the legislative history of the zones, applicability of uses (permitted by right or special exception) and statutory construction.

This Court has reviewed the case on both the law and the evidence, and finds that a reasoning mind could have reached the same conclusion as the Board. The Board did not make an erroneous

determination of the law in ruling that an airport does not include a heliport or helistop and the proposed use is not an "airport", therefore it is not a permitted use in an R.C.2 zone, and the Board's conclusion was reasonably based upon the facts proven.

The testimony of Mr. Paul Solomon and Norman Gerber indicated that the characteristics that are typically found in an airport use are as follows: 1) strip or strips to land an aircraft; 2) gas tanks; 3) support facilities; 4) hangers, gas tanks, diesel tanks; 5) the facilities to land and service a plane; 6) the facilities to serve the passengers; 7) parking lot (or lots); and 8) infrastructure by way of road access. (Op.41). The Appellant acknowledged that the present site does not permit the fueling of aircrafts, there is no air craft storage, there is no aircraft repair, no sale of aircrafts, limited takeoffs between 7:00 a.m. and 10 p.m., five fixed wing and five helicopter events per day, helipad construction and safety all indicating that the subject site is an airstrip and not an airport. (Appellant's Brief, P. 7). It is evident from the testimony of petitioner and the facts that the subject site was intended to be a private airstrip with none of the auxiliary functions associated with an airport. In light of all the legislative history and specific definitions found and the description of the subject site it is apparent to this Court that

the proposed use is that of an "airsrip" not an "airport". There are obvious distinctions between an "airport" and an airstrip. Therefore, the Board was correct in holding that the continued uses of the site as an airstrip is in direct violation of Baltimore County Zoning Regulation, Section 102.1.

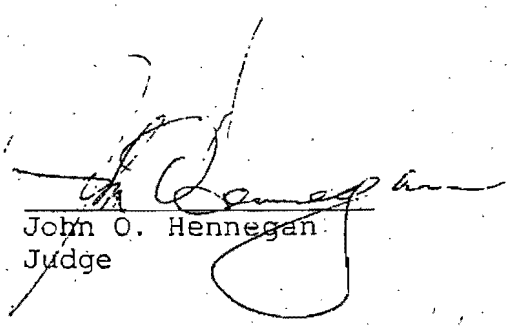
The second issue which is before this court is whether the Board erred as a matter of law by utilizing an incorrect interpretation of the special exception standard. Although this Court does not feel it needs to address this second issue, based on its findings on the first issue, its findings would be as follows.

The Board analyzed whether or not the Appellant had met his burden considering the "impact" factors required under BCZR 502.1, in accordance with the *Schultz v. Pritts* case, 291 Md. 1, 432 A.2d 1319 (1981). The Board heard testimony from a number of acknowledged experts in the field of aviation, airport planning, local planning, and general horse operation. (Op.44). Much of the testimony was conflicting and contradictory. *Id.* The Board then based their decision the facts and testimonies presented to them. The Circuit Court must uphold an order of an administrative agency if it is not based upon erroneous determination of law and if the agency's conclusion reasonably may be based upon the facts proven. Rule 7-209; *Montgomery County v. Buckman*, 333 Md. 516, 636 A.2d 448 (1994).

The Court has no power to reject a fact determination made by an administrative agency if there was evidence of the fact in the record before the agency, regardless of how conflicting or questionable the credibility of the source of the evidence. Rule 7-209; *Commissioner, Baltimore City Police Dep't. V. Cason*, 34 Md. App. 487, 368 A.2d 1067 (1977).

There is substantial evidence in the record for the Board to come to the conclusion that it has after weighing the credibility of the witnesses and drawing all reasonable inferences from the evidence.

For the reasons set forth herein, the decision of the Board shall be affirmed.



John O. Hennegan
Judge

cc: Mr. Scott G. Barhight, Esq.
Mr. G. Macy Nelson, Esq.
Mr. Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County

6/16/00

IN THE

CIRCUIT COURT FOR BALTIMORE COUNTY

Civil Action No.: 03-C-00-002648

In the Case Of:
In the Matter of Edgar Lucas
For a Special Hearing and Special Exception
on Property located at 901 Greenspring Valley Rd.,
N/S Hillside Rd., 2000' W of Falls Rd.
3rd Election District
3rd Councilmanic District
Case No.: ~~99~~-294-SPHX
98

MEMORANDUM OF LAW OF PETITIONERS EDGAR LUCAS and DALE LUCAS

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: ~~99~~ 98-294-SPHX	*	Civil Action No. 03-C-00-002648

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PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: 99-294-SPHX	*	Civil Action No. 03-C-00-002648

* * * * * * * * * * *

PETITIONER'S MEMORANDUM OF LAW

Petitioners, Edgar Lucas through his personal representative, Dale Lucas, and Dale Lucas, individually ("Lucas"), by and through their attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submit this Memorandum of Law and states as follows:

I. STATEMENT OF THE CASE

Petitioner filed a petition for special exception for the Helmore Farm Airport pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (herein "BCZR"). Approval was granted for that petition by the Baltimore County Deputy Zoning Commissioner in August of 1998. *See* Deputy Zoning Commissioner Timothy M. Kotroco's Opinion in this case dated August 5, 1998 (attached as **Exhibit 1** to Petitioner's Memorandum of Law presented in lieu of closing argument before the Board of Appeals)[1].

[1] Hereinafter, all references to Exhibits attached to Petitioner's Memorandum presented to the Board shall simply be noted as "(Ex __)".

Protestants appealed this case to the Baltimore County Board of Appeals (herein "the Board"). The Board heard testimony in this matter on five (5) days, beginning on April 27, 1999, and ending on July 1, 1999. The Board publicly deliberated its decision in this matter on September 16, 1999. On February 25, 2000, the Board issued its Opinion, denying the Petition for Special Exception.

Petitioners filed a timely appeal of the Board's decision, on behalf of Dale Lucas as Personal Representative of the Estate of Edgar Lucas, to this Honorable Court on March 15, 2000, and then filed a Supplemental Petition for Judicial Review on March 24, 2000 on behalf of Dale Lucas, individually. Both the Protestants and the People's Counsel for Baltimore County filed Responses to the Petitions for Review.

II. STATEMENT OF FACTS

A. HELMORE FARM – ITS LOCATION, GEOGRAPHY, USE AND THE SURROUNDING AREA.

The Board found that Dale Lucas is the owner of Helmore Farm, a 87 acre farm which breeds, raises, and trains thoroughbred horses; and assists "in the 'laying up' of injured thoroughbred horses during their rehabilitation process." Bd. Op. 2, 45. The Board noted that Helmore Farm is in the Greenspring Valley area of Baltimore County, in the R.C. 2 zone, "immediately adjacent to the urban rural development associated with Baltimore City and Baltimore County. It is on the fringe of that area; and it's aligned very close, residing adjacent to more heavily developed property, the Baltimore Beltway, I-83, etc." Bd. Op. 52.

Providing little else in the way of findings regarding the subject property in its Opinion, the Board stated that, "Mr. Lucas described the general character of Helmore Farm and the area which encompassed the property,...". Id.[2]

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[2] Since few other additional details describing the subject property are provided in the Board's Opinion, Petitioners provide the following relevant information. Helmore Farm is a rectangular shaped property comprised of approximately 87 acres in Baltimore County. The property is bordered by Greenspring Valley Road on its north side, while Falls Road is located just east of the property. Just south of the property is Hillside Valley Road. Additionally, the Baltimore Beltway and I-83 are both located just beyond Hillside Valley Road. Helmore Farm is improved with two primary residences, several tenant dwellings, stables and outbuildings. The topography of the site is such that the property is at its highest elevation along Greenspring Valley Road and then drops down into a

From the testimonies of Timothy Madden and James Matis, the Board found that the parcel is zoned R.C. 2, as is all of the surrounding area except that to the south side of Hillside Road which is zoned R.C. 5. The Board further found that east of the property, up to Falls Road, is land currently under consideration by Baltimore County for recreational purposes. South of the property is a floodplain, and west and north are principal residences and agricultural uses. Bd. Op. 8-10. Referencing Mr. Matis' testimony, the Board noted that the Immelt property is adjacent to the west portion of Helmore Farm, and in the area nearest to the proposed helicopter pad, the Immelt property is approximately 25 feet from the edge of the fence on the subject property. Bd. Op. 8.[3]

B. THE AIRPORT AT HELMORE FARM.

The Board quoted Dale Lucas' description of the location of "the horse operation as 'generally the whole back of the farm up in the middle of the farm around the barns, up into the front of the farm.'" Bd. Op, 50. Further, the Board noted Mr. Lucas' testimony that there has been aircraft operating out of Helmore Farm since at least 1956, and that the airport has been used for business purposes through flying to horse races out of state. Bd. Op. 2. The Board further noted Mr. Lucas' testimony that he purchased a Maul M-7235 aircraft, that he takes flying lessons out of the Baltimore Airpark, and is "hopeful of becoming a helicopter pilot in the near future." Bd. Op. 2-3.

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stream valley at the rear of the property. The Jones Falls stream runs across the back of the parcel, which is a heavily wooded area. Treelines are located on both the east and west sides of the property. See testimony of James Matis, pp. 176-178, 4/27/99 hearing, (Ex 2); and the testimony of Timothy Madden, pp. 10-13, 5/4/99 hearing (Ex 3).

[3] The distances of the primary residences from the special exception area of Helmore Farm were measured and submitted to the Board. *Id.* at 15-16. Additionally, the distances of these surrounding residences from the helicopter pad at Helmore Farm were measured. Specifically, Douglas Carroll, who owns 65 acres on parcels to the south, southwest, and west of Helmore Farm, owns a principal residence that is 2080', over a third of a mile, from the Helmore airport. *Id.* Three other large parcels of property lie between Mr. Carroll's residence and Helmore Farm. Other than his primary residence, all of Mr. Carroll's property is used for agricultural purposes, and is all included in the Maryland Agricultural Preservation Program with the exception of a portion along Hillside Road that is part of the Maryland Environmental Trust. See testimony of Douglas Carroll, pp. 85, 105, 5/18/99 hearing (Ex 5). The Immelts have a primary residence on the property they jointly own that is 1480', the distance of approximately five football fields, from the Helmore airport. *Id.* at 83; See testimony of Susan Immelt, pp. 146-148, 6/23/99 hearing (Ex 6).

As to the specifications of the proposed use, the Board found that the runway at Helmore Farm is approximately 1,200 feet long and that "a helipad [is] at one end of the facility." Bd. Op. 6. The Board further found that the "FAA recommended width usage for light wing aircraft is 120. The actual field width was estimated at 200 feet." Id. Regarding facilities at the proposed use, the Board found a "paved area, building wind cone, automatic weather station". Id.[4]

Furthermore, the Board referenced Mr. Lucas' testimony that there is a concrete paved helipad, "located about 85 feet from the property line from the closest neighbor because about 35 feet additionally lay across the span of the road to the tree line to the fence and then the edge of the pad is about 50 feet back from edge of the fence...". Bd. Op. 4.[5]

C. THE AIRPORT'S SELF-IMPOSED RESTRICTIONS.

The Board found that Petitioners had voluntarily placed self-imposed restrictions on the Helmore Farm Airport. Bd. Op. 3. "Indeed, the Appellant's 'self imposed restrictions' acknowledged that the present site does not permit the fueling of aircraft, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter 'events' per day, ...". Bd. Op. 42.[6] In addition to the self-imposed

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[4] Petitioners' expert Charles Lamb also testified that in addition to the runway, paved helipad, lighted wind cone/sock, and automated weather station that relays information to pilots, the proposed airport also had airport facility lighting. T 4/27/99 at 102-103. Furthermore, Mr. Lamb testified that the airport is registered with the state as an airport (T 7/1/99 at 86-87), has been approved by both the Federal Aviation Administration (FAA) and the Maryland Aviation Administration (MAA), and exceeds all relevant FAA and MAA requirements (T 4/27/99 at 106-107).

[5] The helipad is 20 x 20 in size and is located within an 150' x 150' paddock T 4/27/99 at 100-101.

[6] The Seven of the eight restrictions Petitioner voluntarily agreed to are listed on the plat that was submitted to the Board as Petitioner's Exhibit #1. They are as follows:

1. There be no fueling of aircraft at the airport;
2. There will be no aircraft storage at the airport for more than 14 consecutive days;
3. There will be no aircraft repair at the airport, except emergency repairs;
4. There will be no sale of aircraft at the airport;
5. The hours of taking off and landing of aircraft will be between 7:00 a.m. and 10:00 p.m.;
6. The airport use shall be limited to no more than five (5) fixed wing aircraft events per day and five (5) helicopter events per day. An event consists of landing, idling, take-off and fly by; and
7. The airport shall meet the Zoning Commissioner's Policy Manual ("ZCPM" Section 420.1, page 4-85) in regard to helipad construction and safety standards approved May 13, 1992.

restrictions which the Board found noted on the Special Exception Plan, the Board found that Dale Lucas agreed that "the airport shall not exceed 65 Ldn." Bd. Op. 4-5.

III. ISSUES PRESENTED

1) Whether the Board erred as a matter of law by utilizing an incorrect interpretation of the Special Exception Standard.

2) Whether the Board erred as a matter of law in ruling that the proposed use at Helmore Farm is an "airstrip" and not an "airport".

IV. STANDARD OF REVIEW

This Court's standard of review of the Board of Appeals' decision was articulated by the Court of Appeals in *State Ins. Comm'r v. National Bureau of Casualty Underwriters*, 248 Md. 292, 309 (1967) where the Court stated, "The standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached." *see also Nnoli v. Nnoli*, 101 Md. App. 243, 261 (1994). Said another way, "the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven." *Peoples Counsel v. Mangione*, 316 Md. 491, 496-97 (1989).

A reviewing court, however, is under no constraint in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Id.* at 497. Once the court determines that the administrative agency applied the proper legal standards, judicial review of the agency's conclusions is then tested by the substantial evidence test. *Montgomery County v. Buckman*, 333 Md. 516, 519-20 (1994).

Accordingly, in the instant matter, this court's role 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." *Cromwell v. Ward*, 102 Md. App. 691, 709 (1995).

V. DISCUSSION

I. THE BOARD ERRED AS A MATTER OF LAW BY UTILIZING AN INCORRECT INTERPRETATION OF THE SPECIAL EXCEPTION STANDARD.

A. THE BOARD'S ANALYSIS AND DENIAL OF THE PETITION FOR SPECIAL EXCEPTION.

The Board denied Petitioners' application for approval of a airport as a special exception, and explained its decision as follows : "the Board has determined that the impact of the ***proposed facility*** at the subject site would be greater there than at any other location in the R.C. 2 zone." Bd. Op. 45 (emphasis added). The Board identified the standard it used in its analysis. "The question is one of whether or not the adverse effects are greater at the proposed site than they would be elsewhere in the County where they may be established, i.e., the other areas within the R.C. 2 zones." Bd. Op. 44. After setting forth its holding on this issue, the Board reiterated its view of the special exception standard. "The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone)." Bd. Op. 56. The Board applied an incorrect special exception standard in its analysis of this matter, and therefore erred as a matter of law.

B. THE CORRECT SPECIAL EXCEPTION STANDARD.

Special exception uses are "expressly permissible." Mossburg v. Montgomery County, 107 Md.App. 1 (1995). "[T]he legislature has determined special exception uses to be permissible absent any fact or circumstance negating the presumption." Schultz v. Pritz, 291 Md. 1, 11 (1981). The fact that special exception uses may have adverse effects at their proposed locations is not an issue involved in the approval of a special exception use. Special exception uses are recognized to have *inherent* adverse effects. See Mossburg, 107 Md.App. at 8. The conditions imposed on special exception uses and the proper standard used to evaluate their approval was explained in Mossburg. The special exception at issue in Mossburg was

for a solid waste transfer station. The Court, recognizing the inherent adverse effects of a solid waste transfer station, stated:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. As Judge Davidson opined in *Schultz*:
>
> 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, 432 A.2d 1319 (emphasis added). 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 other few I-2 Industrial Zones.

Id. at 8 - 9.

Special exception uses inherently involve factors that many would consider to be detrimental. However, special exception uses are nonetheless "valid". *Schultz*, 291 Md. at 11. The legislature has determined that special exception uses, such as an airport in an R.C. 2 Zone, are "desirable and necessary ... provided certain standards are met." *Mossburg*, 107 Md.App. at 8.

The Baltimore County legislature has determined that airports are to be allowed by special exception in R.C. 2 zones, including in the Greenspring Valley. *See* BCZR § 1A01.2.C.1. The legislature has provided conditions which all special exception uses must meet before being properly approved. *See* BCZR § 502.1.

Special Exceptions and their approval are governed by § 502 of the Baltimore County Zoning Regulations, and the review of those conditions set forth in that Section are further subject to the special

exception standard set forth through case law, first in the *Schultz v. Pritts* case, and then in numerous cases by the Maryland Courts. *See e.g., Mossburg*, 107 Md.App. at 22 (holding that "such general conditions 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").

As explained in the recent case of *Hayfields v. Valleys Planning Council*, 122 Md.App. 616 (1998):

> 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, 666 A.2d 1253. 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].

Id., at 641.

The *Hayfields* Court demonstrated how the BCZR § 502.1 conditions are analyzed in conjunction with the special exception standard. Id. at 641. Thus, in this instant case, the Board was supposed to analyze the BCZR § 502.1 conditions as follows in determining whether the Helmore airport will:

A. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with an airport would be generally elsewhere in the zone];
B. Tend to create [more] congestion in roads, streets or alleys therein [than the congestion normally inherent with an airport generally elsewhere in the zone];
C. Create [more] potential hazard from fire, panic or other dangers [than the potential hazard normally inherent with an airport generally elsewhere in the zone];
D. Tend to overcrowd land and cause undue concentration of population [more than would be expected with an airport generally elsewhere in the zone];
E. Interfere [more] with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements [than the interference normally inherent with an airport generally elsewhere in the zone];

F. Interfere [more] with adequate light and air [than the interference normally inherent with an airport generally elsewhere in the zone];

G. Be [more] inconsistent with the purposes of the property's zoning classification [or] in any way [more] inconsistent with the spirit and intent of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone];

H. Be [more] inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone].

See, BCZR Section 502.1; *Mossburg*, 107 Md.App. at 21-22; *Hayfields*, 122 Md.App. at 641.

Petitioner thoroughly demonstrated to the Board, through the use of expert testimony, that the airport at Helmore Farm met all of the above listed conditions, and that the airport does not involve adverse impacts "greater than or above and beyond the effects normally inherent with [an airport] anywhere within the relevant zones ...". *Mossburg*, 107 Md.App. at 22.

Lastly, it is clear that in performing the above explained analysis, the standard requires a comparison of the proposed use's adverse impacts with "the inherent ones ordinarily associated with such uses." *Schultz*, 291 Md. at 14; *Mossburg*, 107 Md.App. at 21. Therefore, the focus in this regard is on the adverse impacts that would be expected from, in this case, any airport that would be allowed by special exception in the R.C. 2 zone. *Id.*

In *Sharp v. Howard County Board of Appeals*, 98 Md.App. 57 (1993), the Court of Special Appeals affirmed the grant of a special exception use for an airport in a R (Rural) zone in Howard County. In explaining the relevant special exception standard, the *Sharp* Court provided the following excerpt from the *Schultz* case which included a quote from *Anderson v. Sawyer*, a case which dealt with a special exception use for a funeral home in a residential zone.

> Because 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 a way other than would result from the location *of any funeral home in a residential zone*, the evidence presented by the protestants was, in effect, no evidence at all.

Sharp, 98 Md.App. 57, 79, *quoting* *Schultz*, 291 Md. at 13-14, *quoting* *Anderson*, 23 Md.App. at 624-25 (emphasis added).

As was done in *Sharp*, the Board in this instant case should have looked at the inherent adverse impacts that would result from a typical airport. The Court of Special Appeals in *Sharp* noted that the Board had correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Id.* at 87.

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind or degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such adverse effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id. at 86.

C. THE BOARD ERRED AS A MATTER OF LAW IN FAILING TO COMPARE THE EFFECTS OF THE PROPOSED USE TO THAT OF A TYPICAL AIRPORT.

The Board held that adverse impacts from the airport, as proposed with restrictions, on the surrounding area would be less if the airport was located elsewhere in the R.C. 2 zone. "The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone)." Bd. Op. 56.

The Board confused the requisite standard to be applied. What is relevant to the examination of special exception uses is whether the adverse impacts from the proposed use are greater than "the effects normally inherent with **such a use** would be generally elsewhere in the zone." *Hayfields*, 122 Md.App. at 640 (emphasis added).

Therefore, in performing this analysis, the Board should not have compared the **Helmore airport** impacts at Helmore Farm with those that may exist if the **Helmore airport** existed elsewhere. Instead, the Board should have looked at what the effects would be of **a typical airport** *anywhere in the zone* and compared those effects to Helmore airport's effects at Helmore Farm. The Court in *Mossburg* clarified this issue as "the requirement that such adverse effects be greater, i.e., above and beyond, the adverse impact generally in other areas where such special exceptions are permitted." *Mossburg*, 107 Md.App. at 13. The Board utilized an incorrect special exception standard and erred as a matter of law in its analysis of this matter. Therefore, the Board's decision cannot stand and must be reversed.

D. THE BOARD ERRED AS A MATTER OF LAW BY VIEWING THE ENTIRE GREENSPRING VALLEY AND R.C. 2 ZONE AS THE RELEVANT "NEIGHBORHOOD".

The Board "recognize[d] that noise is an adverse effect inherent in the operation of an 'airport' or 'airstrip'". Bd. Op. 46. However, the Board failed to correctly apply the special exception standard as it did not review the "detriment to adjoining and surrounding properties" (*Hayfields*, 122 Md.App. at 656), but rather reviewed the alleged detriment to the entire Greenspring Valley and the entire adjacent R.C. 2 zone. For example, in its discussion of the impact of the proposed use on horse operations in the R.C. 2 zone, the Board relied upon Mr. Solomon's testimony that "the intended use by the Appellant 'has the very real potential to conflict and be detrimental to, depending on various factors, *the horse industry in the area*'." Bd. Op. 48-49, 54. Additionally, the Board stated,

> The Board concludes that the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other areas of the R.C. 2 zones. Relying considerably on the expertise of Messrs. Dillon, Solomon and Gerber, there are individual areas in the Northern part of the county that would be less impacted than at the present site. ... Acknowledging that airport and helicopter uses have inherent negative impacts, ***the detrimental effects upon the smaller Greenspring Valley district*** would clearly have a greater negative impact than if located elsewhere in the vast acreage constituting the R.C. 2 zone of Baltimore County.

Bd. Op. 55-56. Clearly, the Board failed to analyze the impacts on the relevant area, *the neighborhood*. It was an error of law for the Board to view the entire Greenspring Valley as the relevant neighborhood. The Board found that the Greenspring Valley contains "approximately 4800 acres." Bd. Op. 53.

As explained by the Court of Special Appeals in *Hayfields*, "[t]he duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected ...*". 122 Md.App. at 647. *See also*, *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18 (1988)("Where 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*, ...".)(emphasis added).

The 4800 acre area that is the Greenspring Valley does not qualify as the relevant neighborhood for purposes of analyzing the proposed use's inherent adverse impacts. As recently reiterated by the Court of Special Appeals in *Burgess v. 103-29 Limited Partnership*, "[N]evertheless, the neighborhood in any area must be an area which reasonably constitutes the ***immediate environs*** of the subject property." 123 Md.App. 293, 300 (1998), *quoting*, *Clayman v. Prince George's Co.*, 266 Md. 409, 418 (1972).

In *Burgess*, the Petitioner sought a rezoning based on a change in the neighborhood. The Court of Special Appeals held that the City Commissioners' decision to reject a proposed neighborhood should have been upheld. The Court explained that the Commissioners,

> rejected the neighborhood proposed before it as **too expansive, consisting of approximately seven square miles**. The size of this proposed neighborhood is approximately twenty (20) times the size of the subject property and includes much more than the immediate environs of the subject property. ... **Instead, the Commissioners adopted a neighborhood that includes the subject property and all adjoining and adjacent properties and subdivisions**. ... The neighborhood is limited to the immediate environs of the subject property and is not as expansive as the other proposed neighborhoods.

123 Md.App. at 300-01 (internal quotations omitted)(emphasis added).

The entire Greenspring Valley and surrounding R.C. 2 zone cannot legally constitute the proper neighborhood for the purposes of the special exception analysis. The Board erred as a matter of law by failing to identify the proper neighborhood for the purposes of analyzing the adverse effects inherent in the proposed use and as a result, its decision must be reversed.

E. THE BOARD BASED ITS ERRONEOUS DENIAL OF THE SPECIAL EXCEPTION ON THREE GROUNDS.

Beginning on page 45 of its Opinion, the Board discussed three issues that it analyzed in deciding to deny the proposed special exception use : (1) Location of the site; (2) The impact of an airport facility on horse operations in the R.C. 2 zone; and (3) The impact on the Greenspring Valley District.

1. The Board Erroneously Analyzed The Impact Of Noise On "The Location".

a. The Board Evaluated The Noise Created By The Proposed Use In Light Of A Faulty Analysis Of The Special Exception Standard.

In denying the special exception, the Board discussed three issues. The first issue was identified as "Location of the site". Bd. Op. 45. The Board addressed the impact of the proposed use in general on the surrounding area in the discussion of the first of these three issues. Failing to properly compare the adverse effects of the proposed use with those typically associated with an airport located elsewhere in the zone, the Board simply held that "the testimony of Dr. Knio compared to that of Mr. Lamb was superior in demonstrating that the impact level of noise at this site was greater than elsewhere in the zone." Bd. Op. 47. The Board improperly analyzed the inherent adverse effect of noise created by the proposed use.

As explained above, in the *Sharp v. Howard County Board of Appeals* case, the Court of Special Appeals affirmed the grant of a special exception use for an airport in a R (Rural) zone in Howard County. The Court noted that the Board had correctly treated "noise generally as an adverse

effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." 98 Md.App. 57, 87 (1993).

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind or degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such adverse effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id. at 86 (emphasis added).

Noise created by the proposed airport is one adverse effect that is "common" to all airports. The *Sharp* case explains that "the zoning body may, in the application of its expertise, recognize effects of a proposed use that it considers common to that use regardless of where it may be located in the applicable zone(s)." *Id.* While the Board in this matter stated that it "recognizes that noise is an adverse effect inherent in the operation of an 'airport'", the Board failed to actually analyze the noise created by the Helmore airport as an *inherent* adverse effect.

Additionally, the Board evaluated the impact of noise as an inherent adverse effect in light of a faulty analysis of the special exception standard. The Board relied on the testimony of Protestants' expert, Dr. Knio. "The totality of the testimony of Dr. Knio compared to that of Mr. Lamb was superior in demonstrating that the impact level of noise at this site was greater than elsewhere in the zone." Bd. Op. 47. Clearly, for the reasons explained above, this statement demonstrates that the Board incorrectly applied the special exception standard in this case. It was improper for the Board to compare the "level of noise at [Helmore airport]" in this manner. Instead, the Board should have compared the impact of the Helmore airport on the surrounding properties to the impact of a typical airport anywhere else in the R.C. 2 zone.

b. The Area Of Aviation Is Preempted By Federal Regulations And Thus The Board Erred As A Matter Of Law In Considering Dr. Knio's Testimony In Denying The Petition For Special Exception.

In evaluating the impact of noise and in denying the special exception, the Board relied on the testimony of the Protestant's expert, Dr. Knio. Bd. Op. 47. Specifically, the Board decided to rely on Dr. Knio's opinion that the FAA, EPA and HUD standard of analysis method was not appropriate. "The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility." Bd. Op. 46. Instead, the Board agreed with Dr. Knio's opinion that "a 'peak' would be the more appropriate factor to be considered." Bd. Op. 27.

The Board disagreed with Petitioners that the FAA regulations Part 150 provide the appropriate standard for the analysis of noise created by the proposed use.

> The Appellants would have the Board disregard Dr. Knio's finding in that he failed to base his analysis on FAA regulations. The Board views differently. Unlike Mr. Lamb, Dr. Knio had made a site visit and observed the Helmore operations and disagreed with Mr. Lamb's analysis. The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility.

Bd. Op. 46.[7]

Instead, the Board relied on Dr. Knio's testimony that estimating the peak noise created by the proposed airport was a better measure than using the measure established in the Federal Aviation Regulations, Part 150, which use the Ldn measurement that is computed on an average. Bd. Op. 46-47. Dr. Knio based his analysis on a calculation based on "an engineering correlation that falls under SAES. That standard comes from the Society of Automotive Engineering Standards." Bd. Op. 27. Therefore, instead of basing his analysis on regulations for transportation noise promulgated by the FAA, HUD and EPA, Dr. Knio's were based on a standard generated by car makers.

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[7] Mr. Lamb testified that he visited Helmore Farm on multiple occasions, and flew in and out of the facility. (T 4/27/99 p. 99)

The area of aviation has been preempted by federal regulations. It was erroneous for the Board to disregard the analysis of noise created by the proposed use under the standard mandated by the federal government. The FAA, EPA and HUD government agencies have instituted the Integrated Noise Model (INM) which looks at the Ldn level. The Board found that "the Ldn standard [was] adopted by the FAA, HUD, and EPA federal agencies for airport generated noises." Bd. Op. 46. "Ldn" stands for level day-night average. (T 4/27/99, pp. 112-119) The Board acknowledged that even Dr. Knio was aware that the Ldn analysis "come from a long review of hearings, regulations, energy and noise experts, and psychologists, which were in the area of very large airports, such as BWI, and that's where these guidelines came from."[8] Bd. Op. 28, 47, quoting T 7/1/99, p. 28. Furthermore, the FAA produced the Part 150 of the Federal Air Regulations which dictate that the Ldn averaging model is to be employed in analyzing noise created by an airport. (T 4/27/99, pp. 112-119)[9]

"The Supreme Court, in its *City of Burbank* decision is the preeminent authority regarding Federal Preemption in the area of aviation." Bd. Op. 57. The *Burbank* case held that local jurisdictions cannot enforce their own regulations over aircraft noise emissions due to the Aviation Act of 1958. "Federal courts, in the wake of *City of Burbank*, have held that various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted." *Price v. Chartered Township of Fenton*, 909 F.Supp. 498 (E.D. Mich. 1995). Since the area of aviation has been preempted by federal regulations, the Board erred as a matter of law in considering Dr. Knio's testimony that the FAA regulations were not the appropriate standard and by relying on Dr. Knio's testimony analyzing this matter under a different standard.

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[8] No testimony or evidence was supplied to the Board by Dr. Knio or anyone else to support Dr. Knio's implication that the FAA's Ldn standard for analysis was intended to apply only to large airports.

c. The Board Erred in Relying on Dr. Knio's Testimony that the Board Should Ignore the FAA's Standard for Analysis of the Noise Created at Helmore Farm Because Dr. Knio Based His Opinion on Nothing Other Than His Personal Belief.

The Board relied on Dr. Knio's testimony that the Board should utilize his peak noise analysis and his HNM analysis[10], rather than the FAA imposed Ldn standard analysis.[11], [12] Importantly, however, Dr. Knio provided no authority for his opinion that the estimated peak measurements were more valid, other than his own opinion.[13] Thus, Dr. Knio's testimony did not provide the Board with evidence on which it could have properly denied the special exception. *See* *Beatty v. Trailmaster*, 330 Md. 726, 740 (1993)(holding that an expert's testimony that was based solely on personal opinion and without regard to the relevant statutory standard, did not provide admissible evidence).[14]

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9 "The goal of coming up with a common matrix for describing transportation sound or noise impacts was so that you had a common parameter that you could accurately predict human reaction to the noise generated by the highways, airports, or other transportation facilities." (T 4/27/99 pp. 118-119)

10 Dr. Knio "opined that the HNM ("helipad noise model") was more appropriate for usage at the Helmore Farm ... 'it would have been more appropriate for the fixed wing, but not the helicopters.'" Bd. Op. 28. However, the Board's reliance on Dr. Knio's analysis using the HNM which is based on *helicopter use* is illogical in light of the Board's holding that the proposed use at Helmore Farm is an "airstrip".

11 "The Appellants would have the Board disregard Dr. Knio's finding in that he failed to base his analysis on FAA regulations. The Board views differently. Unlike Mr. Lamb, Dr. Knio had made a site visit and observed the Helmore operations and disagreed with Mr. Lamb's analysis. The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility." Bd. Op. 46.

12 In response to Dr. Knio's testimony that the HNM was more appropriate for analysis of this proposed airport, Charles Lamb explained that the FAA standard for analyzing noise from fixed wing aircraft and helicopters is to use the "current version of the Integrated Noise Model Version 5", and for that reason he employed the INM in his analysis and not the HNM. T 7/1/99 at 77. "[T]he standard of the industry, if you have mixed uses, is to use, with the Current Version 5, to use the Version 5 Model for both types of operations." Id. at 77-78. Furthermore, Mr. Lamb testified that the FAA instructed him to use the INM per the Part 150 regulations. Id. at 78.

13 During the hearing for this matter, Dr. Knio stated that this was the first time he acted as a consultant for airport noise. T 7/1/99 at 54, Ex. 9. Furthermore, he admitted that he did not look at the compatibility of land uses when performing his noise analysis for this case. Id. at 56-57.

14 In *Beatty v. Trailmaster*, the plaintiff was injured in an automobile accident and subsequently brought negligence and products liability claims against numerous corporate defendants. One of the key issues was what effect the height of the Ford Bronco bumper that collided with plaintiff's vehicle had on the Bronco's safety. Defendants demonstrated that the Bronco's bumper height complied with the statutory bumper height standard. Plaintiff provided an expert who opined that the "statutory standard was not the safest; that it was too liberal ... too high." *Id.* at 740 (internal quotations omitted).

The Court of Appeals in *Beatty* ruled that plaintiff's expert's testimony did not provide evidence "creating a genuine issue of material fact" because the testimony was only based on the expert's background, training and experience. *Id.* The Court further clarified its holding stating that,

> Without more, [plaintiff's expert's] opinion that the defendants were negligent and their product unreasonably dangerous, despite compliance with the statutory standard, is insufficient evidence ... particularly when the expert cites neither developing consensus nor sound data to buttress his opinion.

Id.

The Court's analysis of the plaintiff's expert's testimony in *Beatty* is analogous to this matter. Protestant's expert, Dr. Knio, based his opinion, that the relevant federal regulations supplying the standard for measurement of airport generated noise were not sufficient, on nothing other than his own personal feelings. As a result, the Board erred as a matter of law by relying on Dr. Knio's testimony and his testimony should not have been used by the Board in making its decision to deny the special exception.

Where, as was the case before the Board in this matter, "there is no 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 use is arbitrary, capricious, and illegal." *Schultz*, 291 Md. at 12. Therefore, the Board's decision denying the petition for special exception must be reversed.

2. The Board Erred as a Matter of Law in Holding that the Proposed Use Negatively Impacted any Horse Farms.

There was no evidence properly before the Board that any horse farms are affected by the inherent adverse effect of noise at Helmore airport. Absolutely no testimony was provided to the Board that would support the Board's holding that "the impact of the proposed operation would be greater at the subject

location than elsewhere in the R.C. 2 zone where the thoroughbred horse industry is less developed and the daily operations as proposed would be of considerably diminished proportion." Bd. Op. 50.

The Board erroneously relied on the testimony of Mr. Solomon, quoting, "in his opinion 'the adverse effect would be less in other areas of the R.C. 2 zones. You have less of an impact, with the fact that you do not have a concentration of horse farms, or the potential for concentration of horse farms.'" Bd. Op. 49, 54.

a. The Board Erred As a Matter of Law by Basing its Opinion on Factually Unsupported Testimony that Any Horse Operations Exist in the Relevant Surrounding Area.

First, there was no evidence before the Board that any horse farm other than the one at Helmore Farm exist within the relevant surrounding area. The Board cited testimony from Mr. Solomon that the horse industry in Baltimore County is "centered in the southern part of Baltimore County, 'most notably in the Valleys, in Greenspring Valley, Worthington Valley, and Western Run Valley.'" Bd. Op. 48. But nowhere in their Opinion does the Board point to any evidence of the existence of a neighboring horse operation, and that is because there was no testimony on this issue.

In fact, during the hearing for this matter, Mr. Gildea cross examined Mr. Solomon, asking him :

Q: What is the closest thoroughbred horse farm in the vicinity to this proposed airport?

A: At this time, I didn't do a survey to determine that. And there are thoroughbred horse farms in the Valley. And, as I told the Board, we are looking at the long range here. And this has historically been a thoroughbred horse farm, and one is there now. And because it's not a farm ... someone may come along, want to buy that for that use. So that's the important thing to remember, we have to maintain the potential for these uses, and maintain an infrastructure in the valley to maintain and service the thoroughbred industry.

(T Day 4, 108-109)

Mr. Lucas testified that he was proposing the airport in an effort to maintain his horse industry. But in any event, the Board erred by denying the special exception on the allegation of impact on other horse farms

without any probative evidence that any other horse farms actually exist in the relevant area and that any such operations would even be adversely impacted by the proposed use.

b. The Board Erred As a Matter of Law by Considering the Impact on Potential Future Horse Operations.

Second, it was improper for the Board to take potential future uses into consideration. The Board relied on Mr. Solomon's testimony that the proposed use "'poses a serious problem for anybody to starting and maintaining a horse operation.'" Bd. Op. 49. Mr. Solomon also opined, during the hearing for this matter, that "someone may come along, want to buy [a neighboring property] for [use as a horse farm]. So that's the important thing to remember, we have to maintain the potential for these uses," (T Day 4, 108-109, emphasis added).

The Board erred as a matter of law by considering any testimony regarding such a possible future land. "[T]estimony revealing the possibility of future residential development of this land ... does not come close to showing a future deleterious effect upon the public health, safety or general welfare." *Schultz*, 291 Md. at 12-13, *quoting Deen v. BG&E*, 240 Md. 317, 330-31 (1965).

Furthermore, evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impact that would be different ... in other [R.C. 2] Zone areas of [Baltimore County]." *Mossburg*, 107 Md.App. at 18 (holding that the Board's statement regarding a possible traffic hazard was "not a finding of what is, but what *may* be", and such a finding is "mere speculation". *Id.*). Therefore, the Board erred as a matter of law by speculating about potential adverse effects that may impact potential future uses.

c. The Board Erred As a Matter of Law in Considering the Impact on the Helmore Farm Horse Operation.

Third, it was improper for the Board to take into consideration any adverse impacts from the proposed use on Helmore Farm's horse operations. As explained in the recent decision by the Court of Special Appeals in *Hayfields*, *supra*,

> [N]one 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.

122 Md.App. at 647.

Notably though, the only evidence in the record of the existence of any thoroughbred horse farm in the Greenspring Valley was that from Dale Lucas regarding Helmore Farm. Mr. Lucas specifically testified that the proposed airport would not have an adverse impact on his horse operation. "Well, once they have seen [the aircraft], there's little or no reaction. The planes or helicopters are flying in. They're in the bottom. They won't stop eating or walk away. Most of the time, they stay laying down." (T Day 1, 46)

3. The Board Erred As A Matter Of Law By Improperly Analyzing The Adverse Impact On The Greenspring Valley.

As explained above, the Board failed to identify the relevant neighborhood, necessary to properly utilize the special exception standard. The entire Greenspring Valley is not Helmore Farm's relevant "adjoining and surrounding properties". *Holbrook*, *supra*, 314 Md. at 217-218. As cited by the Board, the Greenspring Valley contains "approximately 4800 acres." Bd. Op. 53. Maryland case law required the Board to review the proposed use in light of the "detriment to adjoining or surrounding properties". *Hayfields*, *supra*, 122 Md.App. at 656.

Petitioners respectfully submit that this erroneous analysis requires reversal of the Board's decision. Yet, in any event, the Board failed to make a necessary finding of fact in failing to articulate the reasons they believe the proposed airport negatively affects the Greenspring Valley. While the Board found the Greenspring Valley to be a "unique" area (Bd. Op. 52-56), *it failed to identify what about the proposed use imposed a greater adverse impact on the Greenspring Valley than on other areas in the R.C. 2 zone.* "[T]he Board concludes that the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones." Bd. Op. 56.

The Board's holding is insufficient since the Board failed to provide reasons for its decision. Simply stating that the proposed use's impact on the Greenspring Valley would be greater in the Greenspring Valley is not enough. As recently as last September, the Court of Special Appeals, in *Eastern Outdoor Advertising Co. v. Baltimore*, explained , "[t]he Board cannot be affirmed for findings of fact that it did not make or rely on as a basis to deny the conditional use permit." 128 Md.App. 494, 517 (1999). In reversing the Circuit Court's affirmance of the City Board's denial of the conditional use permit[15], the Court of Special Appeals held :

> [T]he Board's "findings" and rationale for its decision contained no true findings of fact.
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> ...
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> Instead, the Board based its decision on conclusions of law as to the legal effect of the Urban Renewal Plan vis a vis the City Zoning Ordinance provisions ....
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> ...
>
> Nowhere in its decision did the Board make any findings of fact regarding the billboard's adverse impact on "residences, churches and historical and preservation uses in the area" or that the sign would be hazardous to motorists using the interstate highway.

Id. at 516-17.

Similar to the City Board in that case, the Board here arbitrarily held that the proposed use has a greater impact on the Greenspring Valley without explaining which adverse impacts (if any) it considered. Instead of correctly analyzing the proposed use's inherent adverse impacts, the Board based its opinion on

large amounts of testimony that the proposed use does not belong in the Greenspring Valley. The Board's holding must be reversed.

II. THE BOARD ERRED AS A MATTER OF LAW IN RULING THAT THE PROPOSED USE IS NOT AN "AIRPORT".

A. THE BOARD'S HOLDING THAT THE PROPOSED USE DID NOT QUALIFY AS AN AIRPORT IS ILLOGICAL AND IGNORES THE COMMON SENSE CONCLUSION.

Petitioners sought approval for a special exception as an airport. Denying the petition, the Board held that "[t]he Board, considering the testimony, evidence and record as a whole, concludes that the proposed use cannot, by any stretch of the imagination, be construed as an airport." Bd. Op. 43[16]. Knowing that the Board did not believe the proposed use is an airport, a fair review of the Board's Opinion draws three conclusions as to what the Board believed is the classification for the proposed use at Helmore Farm – (1) a helicopter operation; (2) an airstrip; or (3) that the proposed use is both, yet separately, a helicopter operation and an airstrip. However, as explained below, none of these three conclusions make sense. It is clear that by breaking this matter down and only analyzing the components of the proposed use, the Board failed to see the sum of the parts. Only through such a short sighted review could the Board ignore the obvious conclusion that the combination of the elements of the proposed use equate to an airport.

One possible conclusion from a reading of the Board's Opinion is that the Board believed the proposed use was simply a helicopter operation. The Board held "a second question is also raised in connection with the helicopter operations." Bd. Op. 39. The Board found that Petitioners had been flying a helicopter in and out of the property, and that the property contained a "helicopter facility ... constructed close to the roadway ...." (Bd. Op. 45). Presumably, based on this finding, the Board denied the special exception

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15 A conditional use permit in Baltimore City is analogous to a petition for special exception in Baltimore County.

16 Interestingly, in the two sentences ahead of this conclusion, the Board implies that it partly based its decision to deny the special exception on its belief that the reason for the petition for special exception was to allow Martin Grass to commute to work. Yet, this rationale falls apart since the appellant here is Mr. Dale Lucas.

since, according to the Board, "helicopter operations [do] not come within the definition of an 'airport'". Bd. Op. 39. This view of the Board's Opinion fails though, in light of the Board's finding that Petitioners were using an "airstrip" at the property. "Indeed, even the use of the airstrip based on the totality of the testimony reflects that only limited usage of the airstrip is employed in the horse operation or 'agricultural' pursuits of the farm." Bd. Op. 46.

A second possible conclusion from a reading of the Board's Opinion is that the Board believed Petitioners' proposed use at Helmore Farm was only an "airstrip". The Board defined "airstrip" as "a runway without normal airbased or airport facilities"; and as "a cleared landing area serving a landing strip." Bd. Op. 35.

> Indeed, the [Petitioners'] "self imposed restrictions" acknowledged that the present site does not permit the fueling of aircraft, there is no aircraft storage, there is no aircraft repair, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter "events" per day, helipad construction and safety standards lend credibility to the fact that the subject site is an airstrip and not an airport.

Bd. Op. 42-43.[17] The problem here is that the Board's definition of "airstrip" does not allow the existence of helicopter operations. A helicopter operation does not utilize a runway or a landing strip, but rather operates off of a helipad. Since the Board acknowledged that Petitioners had been flying a helicopter in and out of the property, and that the property contained a "helicopter facility ... was constructed close to the roadway ...." (Bd. Op. 45), a finding that the proposed use is simply an "airstrip" is impossible. Therefore, this conclusion fails as well since it does not accommodate the Board's finding that Helmore Farm contains a helicopter operation.

Lastly, a reading of the Board's Opinion allows the conclusion that the Board believed that both a helicopter operation and an airstrip exist independently at Helmore Farm. This conclusion lacks common

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[17] This quote from the Board's Opinion is exact. It appears that the word "acknowledged" should read "acknowledging", and that the Board intended to insert a comma after "safety standards".

sense and logic. When a use contains only an airstrip or only a helicopter operations, the use is not an airport. But when there is a proposed use such as the one at Helmore Farm, which contains both an airstrip, facilities for a helicopter operation, and other airport supporting facilities such as an automatic weather station and airport lighting, the use is obviously an airport. To expend so much effort separating the components of this proposed use was ludicrous. Additionally, to purposefully ignore the plain meaning definition of airport in order to deny this special exception was a clear error of law.

B. THE BOARD ERRED AS A MATTER OF LAW BY RULING THAT HELICOPTER OPERATIONS ARE NOT INCLUDED WITHIN THE DEFINITION OF AN "AIRPORT".

The Board identified one of the "questions which need to be addressed" as "are helipads and helistops permitted uses within the meaning and definition of an 'airport'". Bd. Op. 30-31.[18] The Board analyzed this question and held that :

> The Board does not concur that helicopter operations come within the definition of an 'airport', where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C. 2 subject site.

Bd. Op. 39.

1. The Board's Decision Violates The "Plain-Meaning Rule".

The Board erroneously held that helicopter operations are not included within the Baltimore County Zoning Regulations' ("BCZR") definition of "airport". The BCZR defines an airport as "any area of land or water designated and set aside for landing or taking off of aircraft", and defines a helicopter as "any rotary wing aircraft ...", BCZR § 101, Bd. Op. 31, 36. However, the word "aircraft" itself is not defined by the regulations. The Board stated that "[o]ne would assume that the defining term 'aircraft' would include usage for helicopter functions." Bd. Op. 31. But the Board recognized that a term "not specifically defined [] under

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[18] Petitioners have never asserted that helipads and helistops are permitted uses within the R.C. 2 zone, and Petitioners submit that whether or not these uses are "within the meaning and definition of an 'airport'" is a nonsensical question. An airport is a

Section 101 ... then requires defining in the Miriam Webster Collegiate Dictionary, 10th Edition (1994) and Webster's II New Revised University Dictionary (1984, 1988)".[19] Bd. Op. 35.[20] These authorities include helicopters in their definitions of "aircraft".[21] Yet, the Board held differently, explaining its ruling as :

> While the BCZR describes an airport as "any area of land or water designated and set aside for landing or taking off of aircraft", and a helicopter fits the definition of "any rotary aircraft", nevertheless this Board concludes that the legislative history and intent of the uses permitted by special exception in the R.C. 2 zone clearly precludes such uses by helicopters.

Bd. Op. 36.[22]

The principals of statutory construction provide that "[w]hen 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). Since here the meaning of a BCZR provision was at issue, the Board's inquiry should began and ended with the words of the statute. "[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 v. Connors*, 339 Md.24, 35 (1995).

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use of its own which includes *helicopter operations*. The way the Board phrased this issue evidences the Board's illogical view and lack of common sense application to the entire matter. Petitioners explain the Board's faulty analysis herein.

19 In actuality, The BCZR, § 101 advises that *Webster's Third New International Dictionary* is to be consulted for words not defined within that section.

20 There are innumerable places in the regulations where the County Council chose to limit definitions and exclude permissible uses. The County Council was free to limit their definition of airport but they chose not to do so. Similarly, the Council was free to provide a definition for aircraft but instead chose to reference regulation users to *Webster's Dictionary*. "[I]n the absence of statutory definition, we must give the term ... its plain and ordinary meaning". *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md.App. 290, 310 (1997)..

21 *Webster's* definition for "aircraft" is: A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces – used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats.

22 Notably, from a comparison of the FAA's definition of airport with that of the Baltimore County Zoning Regulations, it is obvious that the two are extremely similar. Mr. Lamb testified that the FAA's definition of "airport" was, "[a]n area on land or water used or intended to be used for the landings and take-offs of aircraft, including its buildings and facilities, if any." (T 7/1/99, at 86.) It is certainly no coincidence that these two definitions are so similar. Obviously, the County Council drafted the BCZR definition from the FAA's definition, as is extremely proper considering that the FAA is a clear authority on airports. The Board acknowledged that "there are striking similarities" between the BCZR definition of "airport" and that of the FAA. Bd. Op. 39-40. Yet, the BCZR definition is slightly broader than that of the FAA. The County Council was fully capable of drafting a definition for airports that limited the

The principals of statutory construction mandate that if the meaning of a word is questioned, ***common sense should dictate***. The Court in *Kaczorowski v. City of Baltimore*, addressing a statutory construction issue stated, "The court, in seeking to ascertain legislative intent, may consider the consequence 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***." 309 Md. 505, 513 (1987)(emphasis added). The Board's decision is a result that is "unreasonable, illogical [and] inconsistent with common sense". It concludes that the County Council intended only large scale airports for the R.C. 2 zone.

The Board's opinion must be reversed since it erroneously relies on the Board's belief of the Council's intent. Since there is no clear authority on the Council's intention other than the plain meaning of the statute, the Board should have analyzed this matter under the plain meaning rule.

The Board referenced various case law in support of its decision to wander from the plain meaning rule and theorize on the Council's intent. Petitioners take no exception to the quotes cited by the Board and in fact the legal tenement explained by the Board supports Petitioners' argument that the Board erred as a matter of law in its analysis of this petition for special exception.

> "The meaning of the plainest language is controlled by the context in which it appears." *Kaczorowski v. Baltimore*, 309 Md. 505, 513-516 (1987)
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> .....
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> "Thus results that are unreasonable, illogical or inconsistent with **common sense** should be avoided ... with the real legislative intention prevailing over the intention indicated by the literal meaning." *Id.* at 516 (emphasis added).

Bd. Op. 37.

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inclusion of helicopter operations. However, the County Council chose not to do so, and it was not in the Board's power to impose an artificial interpretation of a term defined by the County Council.

> "Thus, we have said that a statute must be construed in context, ... consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment... **consider the consequences that may result from one meaning rather than another.**" Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990).

Bd. Op. 38.[23]

Common sense is exactly what the Board should have applied in its analysis. Common sense dictates that to deny this special exception because the Petitioners propose to limit the airport's inherent adverse impacts by eliminating fueling and storage facilities, is nonsensical. The Board failed to recognize that by ruling that the proposed use is not an airport, "the consequences that result from [that] meaning" are ludicrous. When a use contains only an airstrip or a helicopter operation, the use is not an airport. But when there is a proposed use which contains both an airstrip, facilities for a helicopter operation, and other airport supporting facilities such as an automatic weather station and airport lighting, the use is obviously an airport.

2. The Board Erroneously Relied on The Planning Office's Recommendation to Eliminate Airports and Helistops in R.C. 2 Zones in Attempting to Ascertain The Intent of The Council Regarding Its Decision to Retain Only Airports.

The Board determined that "the legislative history and intent of the uses permitted by special exception in [the] R.C. 2 zone clearly precludes such uses by helicopters. See, Board's Opinion at p. 36. Summing up its holding, the Board stated :

> The Board does not concur that helicopter operations come within the definition of an "airport", where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C. 2 subject site.

Id. at 39.

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[23] The Board accused the Deputy Zoning Commissioner of legislating instead of regulating. "It is evidence to this Board that, in reaching his decision, the Deputy Zoning Commissioner did not consider the legislative history of uses ...". Bd. Op. 38. However, it is actually the Board that is attempting to legislate through its interpretation of the County Council's intent. It is the Board who

Yet, in making this decision, the Board recognized that (1) "One would assume that that defining term 'aircraft' would include usage for helicopter functions."; (2) the Baltimore County Zoning Regulations ("BCZR") define an "airport" as "any area of land or water designed and set aside for landing or taking off of aircraft,"; (3) that the BCZR instructs Webster's New International Dictionary be consulted for words not specifically defined in § 101 of the BCZR, such as "aircraft"; (4) that Webster's defines "aircraft" as "[a] weight-carrying machine ... used of airplanes, balloons, helicopters, ..."; and (5) that "a helicopter fits the definition of "any rotary aircraft". Nevertheless, the Board ruled that under the Baltimore County Zoning Regulations, the term "airport" does not include helicopter operations. *Id.* at p. 31, 36.

The Board believed the legislative history to be the following.

- The 1955 Comprehensive Revisions of zoning regulations provided for airports as special exceptions in the B.R. zone and in what is now the D.R. 1 zone.
- The definition of "airport" has never included a specific provision for helicopter uses.
- Bill 56 in 1961 provided for "airstrips" and "heliports" as special exceptions in the M.L.R. zone.
- On August 11, 1966, the Planning Board issued a final report recommending the regulations define "heliport Type I", "heliport Type II", and "helistop".
- Bill 85 in 1967 enacted definitions for these three terms.
- Through Bill 100 in 1970, the Council permitted both airports and helistops by special exception in the R.D.P. and R.S.C. rural zones.
- Bill 98-75 permitted airports and helistops as special exceptions in the R.C. 2 and R.C. 3 zones (formerly the D.P.P. and R.S.C. zones).
- The Planning Board's final report in August of 1979 proposed repealing both helicopter and airport special exception uses in the R.C. 2 zone.
- Through Bill 178-79, the County Council deleted helistops as a special exception use in the R.C. 2 zone. The Bill did not delete airports as a special exception use in the R.C. 2 zone.
- Since 1979, other bills have amended the R.C. 2 zone regulations but none relative to airport, airstrip or helicopter uses.

Bd. Op. 31-34.

What the Board relied most heavily on in interpreting the County Council's intent was the Baltimore County Planning Board's final report on this issue. The Board found : "as part of the growth management in

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declined its obligation to regulate and went beyond analyzing this matter through use of the plain meaning rule. The Deputy Zoning Commissioner did not need to "consider the legislative history of uses" since the meaning of the statute is clear.

the R.C. zone, [the Baltimore County Planning Board] submitted its final report in August 1979". Bd. Op. 33. The Board recited the following excerpts from that final report.

> The proposed amendments ... repeal[ed] both the airport and helistop special exception uses. Thereafter, Bill 178-79 deleted "helistops" as a special exception use, but allowed continuation of the "airport" use. The R.C. 3 zone special exception for both airports and helistops were left intact. Since 1979, there have been significant amendments to other R.C. 2 zones, but no further amendments to the provisions relative to "airports", "airstrips", and helicopter uses.

Bd. Op. 34.

The Board did an extensive analysis of what it believed the relevant legislative history was. However, the Board ignored the actions of the Council, which comprise the true legislative history. The Council specifically chose to keep airports as a use permitted by special exception in the R.C. 2 zone. See Bill 178-79.

The Board's Opinion clearly provides that the Board's decision on this issue rested on the Board's interpretation that the Council's intent in Bill 178-79 was to remove helicopter operations as a special exception use in the R.C. 2 zone. On page 36 of the Board's Opinion, the Board states :

> Had the County Council not sought to specifically separate and define helicopter uses in the various zones, this Board might believe differently, and in so doing, adopt the Appellant's belief that the interpretation of an "airport" includes a "heliport or helistop".

See Board's Opinion at p. 31.[24]

The Board inappropriately relied on the testimony of Messrs. Solomon and Gerber in ascertaining the Council's alleged intent with regard to the Council's decision in Bill 178-79 to exclude helistops but retain airports as special exceptions. Numerous times in its Opinion, the Board states that the "*intent* of the uses permitted by special exception in R.C. 2 zone clearly precludes such uses by helicopters." See Board's Opinion at p. 36.

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[24] Preliminarily, the Petitioner never asserted that the BCZR definition of an "'airport' includes a 'heliport or helistop'". Petitioner does contend that helicopter operations are included within the BCZR definition of "airport". Heliports and helistops are

However, the impropriety of the Board's analysis as to that *intent* is demonstrated in the following statement.

> [T]o the extent that the Appellant argues that one should 'resolve any ambiguity as to the relevant definition of an airport, through an analysis of the County Council's intent', the Board also believes a significance must attach to the testimony of those planning experts who expressed great influence and control over the creation and development of the R.C. zones.

Bd. Op. 40 (emphasis added).

The Board's reliance on those planning experts' opinion that the Planning Board's August of 1979 final report imputes to the Council's intent was erroneous as a matter of law. In the recent case *Eastern Outdoor Advertising Co. v. Baltimore*, Baltimore City urged the Court of Special Appeals to uphold the Board's denial of the conditional use permit for a billboard in Mt. Vernon, a designated urban renewal district, asserting that the proposed sign was prohibited under the Mount Vernon Renewal Plan. The Court of Special Appeals explained why the Board's decision was erroneous as a matter of law as follows :

> Appellee [Baltimore City on behalf of the Board] focuses on the legislative purpose of the Plan which it asserts is to list expressly all of the uses permitted in the District. Any use not listed, appellee claims, is not permitted. Appellee points to § C of the Plan text which enumerates permitted uses in the Urban Renewal District, but does not include billboards .... The Board found the opposition's view of the Plan to be dispositive as a matter of law in denying the conditional use permit, ... We believe that the Board's conclusion implicitly equates the adoption of the Urban Renewal Plan with an amendment to the Zoning Ordinance .... We hold, therefore, that the Board erred as a matter of law in concluding that Eastern's proposed general advertising sign is prohibited, as a matter of law, within the Mt. Vernon Urban Renewal Area.

128 Md.App. 494, 518-19 (1999).

The Court of Special Appeal's holding in *Eastern Outdoor Advertising* is analogous to this matter. Just as it was erroneous as a matter of law for the Board in *Eastern* to "equate the adoption of the Urban Renewal Plan with an amendment to the Zoning Ordinance", the Board in this case erred as a matter of law

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types of helicopter uses that Petitioners acknowledge have been separately identified in the BCZR. Nevertheless, Petitioners maintain that helicopter operations are included within the BCZR's definition of "airport".

by relying on the Planning Board's August of 1979 report in a finding as to the Council's intent as to the operation of helicopter operations in the R.C. 2 zone and the provisions of Bill 178-79.[25]

The Planning Board's recommendation to the Council for Bill 178-79 does not provide authority as to the Council's intent in leaving airports as special exception uses in the R.C. 2 zone. What is crystal clear is that the Council simply chose not to accept the Planning Board's recommendation. Instead of properly reviewing this matter, the Board illegally attempted to query into the motives of the Council in the enactment of Bill 178-79. "The judicial branch of government **cannot institute an inquiry into the motives of the legislature** in the enactment of laws." *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 704 (1975)(emphasis added) *See also*, *O'Hara, III v. Kovens*, 92 Md.App. 9, 27 (1992)(holding that "the separation of powers doctrine bars judicial inquiry into a governor's motives for his veto."), *citing*, *District Land Corp.* at 24.

Finally, the Board's chart on page 34 of the Opinion is not a clear source of the legislative branch's intent on this issue. The Board utilization of the chart resulted in mere speculation as to whether the County Council intended to allow helicopter operations at airports.[26] Such an act by the Board is prohibited by law.

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[25] For the same reasons, the opinions of Messrs. Solomon and Gerber do not qualify as authority on the council's intent. The Board outlined testimony provided by Paul Solomon and Norman E. Gerber, both of whom testified on behalf of the Protestants. The Board notes on p. 20 of its Opinion that Mr. Solomon, "wrote substantial parts of the actual language that's currently in the zoning regulations"; and is "the one who actually drafted the words that describe the purposes of the R.C. 2 zones." The Board then quoted Solomon's testimony on this issue : "Mr. Solomon also did not believe that a special exception use of an airport included use of a helicopter operation as a collateral use."[25] Bd. Op. 19-25. However, it was erroneous for the Board to rely on these opinions. The Board's reliance on the above statements led to the Board's improper decision.

[26] One could read the chart and opine that the Council meant to restrict carving up the large chunks of R.C. 2 zoned land by allowing a number of helistops and heliports, and that the Council intended to reserve this land for the more expansive airport use since there is a much more restricted amount of other zoned land, thereby promoting the development of the best uses for each zone. For example, to allow airports in M zoned land could result in tying up large portions of the scarce amount of M zoned land. Additionally, airports are a use that promote the R.C. 2 policy of agricultural development. As explained by Mr. Lucas, the airport is needed to allow his thoroughbred horse operation to succeed. Such an "reading" of the chart actually allows a result that is more consistent with the plain meaning of the BCZR and the relevant legislative history, and more importantly is not inconsistent with these authorities while the Board's analysis is. In any event though, any "reading" into the Council's intent is speculation, not sufficient for the base of the Board's Opinion.

The Board's analysis violated the plain-meaning rule provided via case law, erroneously relied on the opinions of Messrs. Solomon and Gerber, and erroneously equated the Planning Board's final report with the intent of the County Council. For these reasons, the Board's decision must be reversed.

C. THE SELF-IMPOSED RESTRICTIONS DO NOT TAKE AWAY THE PROPOSED USE'S STATUS AS AN AIRPORT.

In reaching its decision that the proposed use was simply an airstrip, the Board penalized the Helmore facility for attempting to respond to community concerns by limiting the impact of an airport's inherent adverse effects. The Board used the self imposed restrictions against the Petitioners and classified the proposed use as an airstrip after stripping it of its supporting facilities.

> Indeed, the [Petitioners'] "self imposed restrictions" acknowledged that the present site does not permit the fueling of aircraft, there is no aircraft storage, there is no aircraft repair, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter "events" per day, helipad construction and safety standards lend credibility to the fact that the subject site is an airstrip and not an airport.

Bd. Op. 42-43.[27]

The Board further stated that "[i]t is obvious to the Board that there are distinctions between an 'airport' and an 'airstrip'." Bd. Op. 43. Yet, the Board fails to identify what it believes is lacking at the Helmore facility to keep it from being classified as an airport. "The Board, considering the testimony, evidence and record as a whole, concludes that the proposed use by Hillside Realty LLC cannot, by any stretch of the imagination, be considered as an airport." Id.[28]

In support of its decision, the Board states its belief that "the subject site has always been intended to be a private airstrip with none of the usual auxiliary functions associated with the airport." Id. However, the

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[27] This quote from the Board's Opinion is exact. It appears that the word "acknowledged" should read "acknowledging", and that the Board intended to insert a comma after "safety standards".

[28] Hillside Realty LLC is not a party to this case. Hillside Realty LLC has not proposed anything at the subject site. Petitioner submits that either the Board intended to refer to the subject property, Helmore Farm, or the Board did not intend to deny the proper Petitioners' petition for special exception.

proposed use was found by the Board to include a number of the "usual auxiliary functions" identified by Mr. Solomon as "characteristics typically found in an airport use". Bd. Op. 41. The Board relied on Mr. Solomon's testimony in defining the characteristics of a typical airport.

> Solomon :(1) strip or strips to land an aircraft; (2) gas tanks; (3) support facilities; (4) hangars, gas tanks, diesel tanks; (5) the facilities to land and to service a plane; (6) the facilities to service the passengers; (7) parking lot (or lots); and (8) infrastructure by way or road access.

Bd. Op. 41.

Petitioners were not forced to limit the proposed use with the self imposed restrictions. The Deputy Zoning Commissioner did not grant the special exception based on the existence of the self imposed restrictions. Rather, Mr. Kotroco properly evaluated the restrictions as efforts to simply "insure that the use of the property as an airport does not become too excessive or burdensome on the surrounding community." Ex. 1, p. 14. Petitioner could have sought approval to construct the additional items not proposed for the Helmore airport that Mr. Solomon listed as typically being at an airport, such as gas tanks and facilities to store and service aircraft. Instead, Petitioner offered the self imposed restrictions in an effort to limit the impact of the inherent adverse effects of an airport, a use specifically permitted in the R.C. 2 zone. Just as BWI would still be an airport if it self imposed restrictions on its operations, the self imposed restrictions do not negate this proposed use's status as an airport.

Although completely nonsensical, based on the Board's Opinion, it appears that the petition for special exception would have been granted if the proposed use contained more structures that are generally found at airports, and if Petitioners proposed a more intrusive use on the neighborhood. For example, nothing other than Petitioners' self imposed restrictions limit Petitioners from constructing storage facilities and fueling facilities. Obviously, Petitioners' attempts at mitigating the inherent adverse impacts of the proposed use did nothing but allow the Board to break down the proposed use into its components, thereby ignoring the

obvious, common sense result. Obviously an airstrip is not a helicopter operation, and obviously a helicopter operation does not utilize an airstrip. However, when one proposes a use which involves both an airstrip for the operation of fixed wing aircraft and a helipad for helicopter operations, the use is obviously an airport.

VII. CONCLUSION

WHEREFORE, for the aforementioned reasons, Petitioners respectfully requests this Honorable Court reverse the Board of Appeals' decision.

Respectfully submitted,

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

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2000, a copy of Petitioners' Memorandum of Law was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

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

Jennifer R. Busse

199603

WHITEFORD, TAYLOR & PRESTON
L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

June 16, 2000

Via Hand Delivery

Clerk of the Circuit Court
Attn: Civil Department
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, MD 21285-6754

Re: In The Matter of Edgar Lucas
Case #: 03-C-00-002648

Dear Sir or Madam:

Please accept for filing the enclosed original and one copy of Petitioners' Memorandum of Law. Please date stamp the copy and return it to the courier.

Thank you for your attention to this matter. Please contact me with any concerns.

Sincerely yours,

Jennifer R. Busse

Enclosure

cc: Mr. Dale Lucas
Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Board of Appeals

199586

5/17/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF: **EDGAR LUCAS** BY DALE LUCAS
901 GREENSPRING VALLEY RD *
BROOKLANDVILLE MD 21022

*

FOR JUDICIAL REVIEW OF THE OPINION OF CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-00-002648**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF DALE LUCAS FOR *
EDGAR LUCAS /PETITIONER

FOR SPECIAL HEARING AND SPECIAL *
EXCEPTION ON PROPERTY LOCATED ON THE
SOUTH SIDE GREENSPRING VALLEY ROAD, N/S *
HILLSIDE ROAD, W OF FALLS ROAD (901
GREENSPRING VALLEY ROAD) *
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

CASE NO. 98-294-SPHX *

* * * * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Charles L. Marks, Lawrence M. Stahl, and Thomas P. Melvin, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition 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

00 MAY 17 PM 3:32

No. 98-294-SPHX

February 11, 1998	Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner; SPH /to approve the legal non-conforming use for an airport and/or helicopter operation; and in the alternative the SE /for an airport.
March 9	Entry of Appearance filed by People's Counsel for Baltimore County.
March 19	Publication in newspaper.
March 20	Certificate of Posting.
March 25	ZAC Comments.
April 6	Hearing (Day #1) held before the Deputy Zoning Commissioner
April 7	Hearing (Day #2) held before the Deputy Zoning Commissioner
April 14	Hearing (Day #3) held before the Deputy Zoning Commissioner
April 16	Hearing (Day #4 – concluded) held before the Deputy Zoning Commissioner.
August 5	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing is DENIED and Petition for Special Exception is GRANTED with restrictions.
August 6	Amended Order issued by the Deputy Zoning Commissioner; amended as to adding a restriction.
September 4	Notice of Appeal filed by G. Macy Nelson, Esquire, on behalf of The Valleys Planning Council c/o Jack Dillon, Deidre Smith, Douglas Carroll, William Brewster, Mr. and Mrs. Stephen Immelt, and Laura J. Robertson and David B. Gorzsas.
September 8	Notice of Appeal filed by G. Scott Barhight, Esquire, on behalf of Helmore Farm and Edgar Lucas.
April 26, 1999	Entry of Appearance and Hearing Memorandum filed by People's Counsel for Baltimore County.
April 27	Hearing (Day #1) held before the Board of Appeals.
May 4	Hearing (Day #2) held before the Board of Appeals.
May 7	Rule 8 materials for The North County Coalition, Inc. and the Maryland Line Association, Inc. filed by People's County to supplement testimony of Dr. Richard McQuaid, President of both organizations.

May 18, 1999	Hearing (Day #3) held before the Board of Appeals.
June 2	On-site visit to Helmore Farm for the Board's viewing of the helicopter landing /takeoff, and fixed wing aircraft activities.
June 23	Hearing (Day #4) held before the Board of Appeals.
July 1	Hearing (Day #5) held and concluded by the Board of Appeals

Petitioner's Exhibit Nos.

1-Plat to accompany Zoning Petition (Large)
2-Rendered Version Sound Exposure Analysis (computer generated)
3-Federal Aviation Reg's Part 150
4-Letters of Administration
5-April 2, 1998 Report Miller Henning Associates
6-File Data
7-Urban Rural Demarcation Line
8-Balto. County Agricultural Land Preservation Program
9-Balto. County Agricultural Land Preservation Advisory Board (minutes) Oct. 6, 1999
10-Final Report Balto. County Planning Board Adopted July 26, 1979 & Aug. 2, 1979
11-Bill #178-79
12-Letter to Arnold Jablon – Wed. April 2, 1998 (Planning Comments)

People's Counsel Exhibit Nos.

1-Sign-In Sheet
2-1000 Scale Zoning Map (Kingsville 40)
3- (Exhibit was not submitted)
4A-National Register Historic Districts
4B-National Register Historic Districts
4C-National Register Historic Districts
5-Balto. County Office /Planning
6-Letter from May 1, 1999 (9 names signed)
7-Rule 8 – North County Coalition
8-Rule 8 – Md. Line Area Association
9-Districts listed in chronological order
10-U.S. G.S. Quad Sheet
11-Proposed May, 1999 Master Plan 2010

Protestant's Exhibit Nos.

1-Real Estate & Construction Article Dec. 4, 1998
2-Plat to aaccompany Zoning Petition
3-Video –Copy – Helicopter
4-Rule 8 Papers (Mr. Dillon) Valleys Planning Council
5-Summary of Airport & Helicopter uses as Limited by Balto. County Zoning Regs.
6-Photo (aerial) quarter quad 1"-100'

(cont'd Prot. Exhibits)	7-Duplicate #2 (Plat) marked version 8-Planning Board Letter dated Aug. 13, 1997 9-Environmental Protection & Resource Management Inter-Office Correspondence 10-C.U. Omar Knio 11-Marked Exhibits by Mr. Knio for decibal levels (other side of Prot. #2)
September 2, 1999	Memorandum of People's Counsel for Baltimore County filed.
September 3	Memorandum of Law in Lieu of Closing Argument filed by David Gildea, Esquire, on behalf of Petition.
September 3	Protestant's Memorandum In Opposition to Petition for Special Exception filed by G. Macy Nelson, Esquire
October 5	Public Deliberation conducted by the Board of Appeals. (Board determined that use is an airstrip and not an airport and therefore not permitted).
February 25, 2000	Opinion and Order issued by the Board of Appeals; Petition for Special Hearing is DENIED; and, Petition for Special Exception is DENIED.
March 15	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David Gildea, Esquire, on behalf of Edgar Lucas.
March 20	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
March 20	Certificate of Notice sent to interested parties.
March 24	Supplemental Petition for Judicial Review filed in the Circuit Court for Baltimore County by David Gildea, Esquire, on behalf of Dale Lucas.
March 29	Amended Certificate of Notice (Pursuant to Supplemental Petition for Judicial Review filed by Counsel for Petitioner on 3/24/00) sent to interested parties.
May 17	Transcript of testimony filed.
May 17, 2000	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.

Charlotte E Radcliffe

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

c: G. Scott Barhight, Esquire
David Gildea, Esquire
Dale Lucas
G. Macy Nelson, Equire
Jack Dillon /VPC
Peter Max Zimmerman
Virginia W. Barnhart

4/17/

G. MACY NELSON
ATTORNEY AT LAW
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

April 14, 2000

RECEIVED
COUNTY BOARD OF APPEALS
00 APR 17 PM 2:57

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

Re: In the Matter of Dale Lucas, Petitioner
Civil Action No. 03-C-00-002648

Dear M. Clerk:

Enclosed for filing in the above-referenced case is a Response to Supplemental Petition for Judicial Review. I have also enclosed a copy of the Response and request that you date-stamp and return it to me in the self-addressed, stamped envelope which I have enclosed for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

G. Macy Nelson

G. Macy Nelson

GMN:pwc
Enclosures
cc: County Board of Appeals of Baltimore Co.
Peter Max Zimmerman, Esq.
G. Scott Barhight, Esq.
(all w/enc.)

4/14/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF: **DALE LUCAS**
901 Greenspring Valley Rd.*
Brooklandville, MD 21022
* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE * NO. **3-C-00-002648**
OPINION OF THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
EDGAR LUCAS/PETITIONER *

FOR SPECIAL HEARING AND SPECIAL *
EXCEPTION ON PROPERTY LOCATED
ON THE SOUTH SIDE GREENSPRING *
VALLEY ROAD, N/S HILLSIDE ROAD,
W OF FALLS ROAD (901 GREENSPRING*
VALLEY ROAD)
3rd ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT
*
CASE NO. 98-294-SPHX
*
* * * * * ** * * * * *

RESPONSE TO SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

Deidre Smith, Douglas Carroll, William Brewster, Susan C. Immelt, Stephen J. Immelt, and The Valleys Planning Council, Inc. ("Protestants"), by their attorney, G. Macy Nelson, file this Response to the Supplemental Petition of Edgar Lucas, and state that they intend to participate in the action for Judicial Review. The Protestants participated in the proceeding before the County Board of Appeals.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April, 2000, a copy of the foregoing Response to Supplemental Petition for Judicial Review was mailed first-class, postage prepaid, to:

G. Scott Barhight, Esquire
David K. Gildea, Esquire
Whiteford, Taylor & Preson, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
People's Counsel for Baltimore County
Room 47 – Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

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

G. Macy Nelson

G. MACY NELSON
ATTORNEY AT LAW
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

March 30, 2000

RECEIVED
COUNTY BOARD OF APPEALS
00 MAR 31 PM 12:31

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

Re: In the Matter of Dale Lucas, Petitioner
Civil Action No. 03-C-00-002648

Dear M. Clerk:

Enclosed for filing in the above-referenced case is a Response to Petition for Judicial Review. I have also enclosed a copy of the Response and request that you date-stamp and return it to me in the self-addressed, stamped envelope which I have enclosed for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

G. Macy Nelson

GMN:pwc
Enclosures
cc: County Board of Appeals of Baltimore Co.
Peter Max Zimmerman, Esq.
G. Scott Barhight, Esq.
(all w/enc.)

3/30/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF: **DALE LUCAS**
901 Greenspring Valley Rd.*
Brooklandville, MD 21022
* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE * NO. **3-C-00-002648**
OPINION OF THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
EDGAR LUCAS/PETITIONER *

FOR SPECIAL HEARING AND SPECIAL *
EXCEPTION ON PROPERTY LOCATED
ON THE SOUTH SIDE GREENSPRING *
VALLEY ROAD, N/S HILLSIDE ROAD,
W OF FALLS ROAD (901 GREENSPRING*
VALLEY ROAD)
3rd ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT
*
CASE NO. 98-294-SPHX
*
* * * * * ** * * * * *

RECEIVED
COUNTY BOARD OF APPEALS
00 MAR 31 PM 12:31

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Deidre Smith, Douglas Carroll, William Brewster, Susan C. Immelt, Stephen J. Immelt, and The Valleys Planning Council, Inc. ("Protestants"), by their attorney, G. Macy Nelson, file this Response to the Petition of Edgar Lucas, and state that they intend to participate in the action for Judicial Review. The Protestants participated in the proceeding before the County Board of Appeals.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of March, 2000, a copy of the foregoing Response to Petition for Judicial Review was mailed first-class, postage prepaid, to:

G. Scott Barhight, Esquire
David K. Gildea, Esquire
Whiteford, Taylor & Preson, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
People's Counsel for Baltimore County
Room 47 – Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

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

G. Macy Nelson

3 3U/00

PETITION OF DALE LUCAS	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE BALTIMORE BOARD OF APPEALS	*	CIRCUIT COURT
IN THE CASE OF THE APPLICATION OF EDGAR LUCAS/PETITIONER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTH SIDE GREENSPRING VALLEY RD, N/S HILLSIDE RD, W OF FALLS RD (901 GREENSPRING VALLEY RD	*	FOR
	*	BALTIMORE COUNTY
3RD ELCTION DISTRICT 3RD COUNCILMANIC DISTRICT		
		CIVIL ACTION NO. 3-C-00-002648
IN CASE NO. 98-294-SPHX		

* * * * * * * * * * *

SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

Petitioner, DALE LUCAS, individually, by and through his attorneys, G. Scott Barhight, David K. Gildea, and Whiteford, Taylor & Preston L.L.P., hereby supplements, pursuant to Maryland Rules 7-202, and 7-203, his petition for judicial review filed on March 15, 2000, of the decision of the Baltimore County Board of Appeals ("the Board") dated February, 25, 2000.

The petition filed on March 15, 2000 was filed on behalf of Dale Lucas, as Personal Representative of the Estate of Edgar Lucas. Dale Lucas was a party to the Board's proceeding in this matter. During the Board's proceeding, Dale Lucas was named as one of the Personal Representatives of Edgar Lucas' Estate, and was thereby substituted as the

Petitioner. Since the Board's proceeding, there has been a disbursement of Edgar Lucas' Estate.

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

3/29/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: **DALE LUCAS** *
(Supplement to "PETITION OF: EDGAR LUCAS") *
901 GREENSPRING VALLEY RD
BROOKLANDVILLE MD 21022 *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. 3-C-00-002648
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
EDGAR LUCAS /PETITIONER *
FOR SPECIAL HEARING AND SPECIAL
EXCEPTION ON PROPERTY LOCATED ON THE *
SOUTH SIDE GREENSPRING VALLEY ROAD, N/S
HILLSIDE ROAD, W OF FALLS ROAD (901 *
GREENSPRING VALLEY ROAD)
3RD ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

CASE NO. 98-294-SPHX *

RECEIVED FILED
00 MAR 29 PM 2:49

AMENDED CERTIFICATE OF NOTICE

PURSUANT TO SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW FILED BY COUNSEL FOR PETITIONER ON 3/24/00

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Charles L. Marks, Lawrence M. Stahl, and Thomas P. Melvin, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Supplemental Petition for Judicial Review to the representative of every party to the proceeding before it; namely, G. Scott Barhight, Esquire, David K. Gildea, Esquire, and WHITEFORD, TAYLOR & PRESTON, LLP, 210 West Pennsylvania Avenue, Towson, MD 21204-4515, Counsel for Petitioner; Dale Lucas , 901 Greenspring Valley Road, Brooklandville, MD 21022, Petitioner; The Valleys Planning Council c/o Jack Dillon, Exec. Director, 212 Washington Avenue, Towson, MD 21285-5402, Deirdre Smith, P.O. Box 945, Brooklandville, MD 21022, Douglas Carroll, 1117 Greenspring

Valley Road, Lutherville, MD 21093, William Brewster, P.O. Box 433, Brooklandville, MD 21022, and Mr. & Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, Protestants; G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, MD 21204, counsel for Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204.

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to , G. Scott Barhight, Esquire, David K. Gildea, Esquire, and WHITEFORD, TAYLOR & PRESTON, LLP, 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Petitioner; Dale Lucas, 901 Greenspring Valley Road, Brooklandville, MD 21022, Petitioner; The Valleys Planning Council c/o Jack Dillon, Exec. Director, 212 Washington Avenue, Towson, MD 21285-5402, Deirdre Smith, P.O. Box 945, Brooklandville, MD 21022, Douglas Carroll, 1117 Greenspring Valley Road, Lutherville, MD 21093, William Brewster, P.O. Box 433, Brooklandville, MD 21022, and Mr. & Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, Protestants; G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, Maryland 21204, counsel for Protestants, and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 29th day of March, 2000.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2000, a copy of the foregoing Supplemental Petition for Judicial Review was mailed first class, postage prepaid to:

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

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Room 47 - Old Court House
400 Washington Avenue
Towson, Maryland 21204

David K. Gildea

191389

WHITEFORD, TAYLOR & PRESTON
L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

COPY

March 24, 2000

Via Hand Delivery
ATTN: CIVIL CLERK
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

COUNTY BOARD OF APPEALS RECEIVED
00 MAR 27 PM 1:11

Re: In the Matter of Dale Lucas, Petitioner
Civil Action No.: 03-C-00-002648
Our File No.: 06275/00007

Dear Sir/Madame Clerk:

You will please find enclosed for filing in the above referenced case a Supplemental Petition for Judicial Review. I have included a copy and would appreciate it if you would date stamp the copy and send it back with the messenger.

Please contact the undersigned should you require any further information. With kind regards, I am

Very truly yours,

David K. Gildea

DKG:bhb
Enclosures
cc: County Board of Appeals
G. Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Mr. Dale Lucas
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

192250

3/10/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: **EDGAR LUCAS** *
901 GREENSPRING VALLEY RD
BROOKLANDVILLE MD 21022 *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-00-002648**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
EDGAR LUCAS /PETITIONER *

FOR SPECIAL HEARING AND SPECIAL *
EXCEPTION ON PROPERTY LOCATED ON THE
SOUTH SIDE GREENSPRING VALLEY ROAD, N/S *
HILLSIDE ROAD, W OF FALLS ROAD (901
GREENSPRING VALLEY ROAD) *
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

CASE NO. 98-294-SPHX *

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

RECEIVED FILED
00 MAR 20 PM 2:47

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Charles L. Marks, Lawrence M. Stahl, and Thomas P. Melvin, constituting the County Board of Appeals of Baltimore County, has 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, David K. Gildea, Esquire, and WHITEFORD, TAYLOR & PRESTON, LLP, 210 West Pennsylvania Avenue, Towson, MD 21204-4515, Counsel for Petitioner; Edgar Lucas through Dale Lucas, Personal Representative of Edgar Lucas, 901 Greenspring Valley Road, Brooklandville, MD 21022, Petitioner; The Valleys Planning Council c/o Jack Dillon, Exec. Director, 212 Washington Avenue, Towson, MD 21285-5402, Deirdre Smith, P.O. Box 945, Brooklandville, MD 21022, Douglas Carroll, 1117 Greenspring Valley Road, Lutherville, MD

21093, William Brewster, P.O. Box 433, Brooklandville, MD 21022, and Mr. & Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, Protestants; G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, MD 21204, counsel for Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204.

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to , G. Scott Barhight, Esquire, David K. Gildea, Esquire, and WHITEFORD, TAYLOR & PRESTON, LLP, 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Petitioner; Edgar Lucas through Dale Lucas, Personal Representative of Edgar Lucas, 901 Greenspring Valley Road, Brooklandville, MD 21022, Petitioner; The Valleys Planning Council c/o Jack Dillon, Exec. Director, 212 Washington Avenue, Towson, MD 21285-5402, Deirdre Smith, P.O. Box 945, Brooklandville, MD 21022, Douglas Carroll, 1117 Greenspring Valley Road, Lutherville, MD 21093, William Brewster, P.O. Box 433, Brooklandville, MD 21022, and Mr. & Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, Protestants; G. Macy Nelson, Esquire, Suite 803, 401 Washington Avenue, Towson, Maryland 21204, counsel for Protestants, and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 20th day of March, 2000.

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

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

March 20, 2000

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204

RE: Civil Action No. 3-C-00-002648
EDGAR LUCAS

Dear Mr. Nelson

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on March 15, 2000, in the Circuit Court for Baltimore County 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-00-002648.

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

c: Valleys Planning Council c/o
Jack Dillon, Executive Director
Mr. & Mrs. Stephen Immelt
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
Dierdre Smith
Douglas Carroll
William Brewster

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PETITION OF EDGAR LUCAS	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE BALTIMORE BOARD OF APPEALS	*	CIRCUIT COURT
IN THE CASE OF THE APPLICATION OF EDGAR LUCAS/PETITIONER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTH SIDE GREENSPRING VALLEY RD, N/S HILLSIDE RD, W OF FALLS RD (901 GREENSPRING VALLEY RD	*	FOR
	*	BALTIMORE COUNTY
3RD ELCTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
IN CASE NO. 98-294-SPHX	*	CIVIL ACTION NO. C-00-2648

* * * * * * * * * * *

PETITION FOR JUDICIAL REVIEW

Petitioner, EDGAR LUCAS, through DALE LUCAS, one of the Personal Representatives of his Estate, by his attorneys, G. Scott Barhight, David K. Gildea, and Whiteford, Taylor & Preston L.L.P., hereby requests, pursuant to Maryland Rules 7-202, and 7-203, judicial review of the decision of the Baltimore County Board of Appeals ("the Board") dated February, 25, 2000. Dale Lucas was a party to the Baltimore County Board of Appeals' proceeding in this matter.

David K. Gildea, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2000, a copy of the foregoing Petition for Judicial Review was mailed first class, postage prepaid to:

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

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Room 47 - Old Court House
400 Washington Avenue
Towson, Maryland 21204

David K. Gildea

191389

2/25/00

IN THE MATTER OF THE APPLICATION OF EDGAR LUCAS /PETITIONER FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTH SIDE GREENSPRING VALLEY ROAD, N/S HILLSIDE ROAD, W OF FALLS ROAD (901 GREENSPRING VALLEY ROAD) 3RD ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 98-294-SPHX

* * * * * * * * *

O P I N I O N

This case comes before the Board of Appeals for Baltimore County based on an appeal from a decision of the Deputy Zoning Commissioner. Counsel present for hearings were: G. Scott Barhight, Esquire, and David Gildea, Esquire, representing the Petitioner; G. Macy Nelson, Esquire, representing the Appellants /Protestants, the Valleys Planning Council and various individuals, including Deirdre Smith, Douglas Carroll, Susan and Steven Immelt, and William Brewster; along with Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

Mr. Edgar Lucas, the original Petitioner, passed away on January 30, 1999 after the filing of the Petition, and Mr. Dale Lucas, one of the Personal Representatives of the estate, requested permission to continue the case on behalf of the Personal Representatives, with such permission being granted subject to Letters of Administration being provided to complete the Board's file. This was subsequently done and admitted as Petitioner's Exhibit No. 4.

Each counsel offered initial opening statements as to what would be presented during the course of the hearings and is

adequately covered in the transcript of April 27, 1999 (pps 1-32). Petitioner called Mr. Dale K.S. Lucas as their first witness. The Plat to Accompany the Zoning Petition was introduced as Petitioner's Exhibit No. 1. Mr. Lucas described the general character of Helmore Farms and the area which encompassed the property, stating the use of the farm was in the breeding, raising and training of thoroughbred horses; and also assisting in the "laying up" of injured thoroughbred horses during their rehabilitation process.

Mr. Lucas has been involved in general with farm activities since he was 19 years of age. He described the existing air traffic on the farm in a general fashion. Mr. Barhight zeroed in on the Petition for Special Exception, indicating that the nonconforming case had been terminated [T p 39, 4/27/99]. Mr. Lucas described his personal observations concerning aircraft operations at the farm which went back to 1956 when an employee wanted to practice landings. Mr. Lucas flew into the farm from College Park with his instructor and he has used it for fixed-wing aircraft and the present helicopter usage in connection with the horse business and functions. He opined that he trains horses on a full-time basis at Laurel and needs to be at that track early in the morning. Traffic is a problem, and flying is the most convenient and expeditious travel method for him, and also for clients interested in the Helmore Farms activities. He stated he has purchased a Maul M-7235 aircraft which was to be delivered around May 6, 1999, on prior order for several months. This plane can take off and land at 600 feet and carry up to five individuals.

He continues to take flying lessons out of the Baltimore Airpark near I-95 in White Marsh and is working on his instrument ratings and was hopeful of becoming a helicopter pilot in the near future. He referenced exhibit notes concerning self-imposed airport restrictions on the Helmore property to which he would agree as noted on the special exception request as 1-7.

The use of the farm by Mr. Grass was referenced as beginning in the summer of 1997. That use was granted based on the belief that the airport had been grandfathered under Baltimore County nonconforming use zoning regulations. Mr. Grass's use of the facility was permitted as a means of acquainting him with the horse operations. Mr. Lucas testified that the airport is about 500 feet from his personal residence. At the present time, 20 horses were on the property, and at times as many as 42. He opined to his knowledge that no particular problem with horses relative to the airport operations existed. While agricultural fields are leased out, which include income of about $3,000 per year, the principal use was stated to be that of a horse breeding, training, and lay-up facility [T 4/29/99, p 37].

On cross examination by Mr. Nelson, questions were posed relative to the activities of Mr. Lucas as a "construction house builder" (reference Protestants' Exhibit #1); however, the Board concurs that the total evidence substantiates Mr. Lucas principal occupation is in the horse industry. Mr. Lucas described the existing helipad as "...fenced...with a concrete" walkway to the pad, about one-third paved, the paving to keep the site free from debris and permit the helicopter a sound base when it lands on the

property. The fence dimensions were approximately 165 feet by 172 feet. Mr. Lucas opined that the use was consistent with the horse farming activities. The pad was located about 85 feet from the property line from the closest neighbor because about 35 feet additionally lay across the span of the road to the tree line to the fence and then the edge of the pad is about 50 feet back from the edge of the fence "...from the edge of the fence was probably about 35 feet." [T 4/29/99 p 53 & 54]

Mr. Lucas stated that only allowing airport uses and no helicopter uses would not be adequate because of wet fields, nor would it be satisfactory with restricted use of the helicopter only in the event of inclement weather. Restricted use of the facility as to only clients engaged in the horse business, and not Mr. Grass was not practical since one of the owners of the business (the operations entity of Helmore Farms) was Mr. Grass who had a one-third ownership of the whole operation which he had acquired over the course of the last few months [T 4/29/99 p 57]. On clarification, the witness indicated that Mr. Grass had no interest in the land, only in the horse operations, the horses, breeding interest, etc. It was Mr. Lucas' position that Mr. Grass' use of the farm could not be curtailed since he was now an owner of the horse facilities. "He is not coming from the farm to his place of business in Harrisburg when he arrives at the farm, he is at his place of business, and he's just moving to another place of business after that." [T 4/29/99 p 59] Mr. Lucas acknowledged that one of the conditions was removed from the exhibit before the Deputy Zoning Commissioner which stated that "the airport shall not

exceed 65 L.D.N." [T p 63-64] Mr. Lucas agreed to add the removed condition back onto the exhibit. The daily activities of Mr. Grass were related in detail. That activity was the principal use of the helicopter facility. Mr. Lucas leaves his home for Laurel at approximately 4:00 a.m. in the morning and is back at the farm around 11:30 a.m. or sooner. There are three employees at Laurel and two at Helmore Farms. He stated that the helicopter pad was paid for by Mr. Lucas with the witness providing the labor. Mr. Grass assisted financially after the original zoning hearings. At that time, the State of Maryland provided specifications for the pad, and the pad was enhanced to meet the requirements of the State in that connection. The pad was constructed at an estimated cost of $50,000.00, 65 percent of which came from Mr. Grass. The airport /air strip was essential, according to Mr. Lucas, to expand the horse business [T 4/29/99 p 79-80]. The question of farm usage for "laying up" practices was described at length [T 4/29/99 p 83-86] as well as Mr. Lucas deferring to his expert witness relative to L.D.N. clarification.

Mr. Charles Lamb testified in support of the Petition. He is the Chief Executive Officer of Delta Airport Consultants. This company prepares airport design, planning, and administrative services for airports with work in nine states, principally those in the Mid-Atlantic region, with 45-50 employees. Mr. Lamb obtained his extensive credentials and was offered as an expert in the field of engineering design, safety planning, construction and noise integration. Mr. Nelson offered to hold his voir dire. Mr. Lamb had reviewed the site plan, the 7-1/2 quadrangle typographic

information, and other relevant maps and data. Mr. Lamb described the Helmore Farms property and usage, stating there was approximately 1,200 feet for a runway and a helipad at one end of the facility. FAA recommended width usage for light wing aircraft as 120 feet. The actual field width was estimated at 200 feet. He described the typical flight path of a fixed-wing aircraft and helicopter pad take-off and landing. There had been compliance with the restrictions made at the Deputy Zoning Commissioner's hearing; that is, the paved area, building wind cone, automatic weather station, etc. Mr. Lamb described how access to land aircraft would be secured from Mr. Lucas. The airport is a published airport with a Federal identification number. He opined that the FAA does not mandate but a few requirements and, in his opinion, the airport met all these requirements, and also those imposed by the Maryland State Aviation Commission, and that the helicopter operation met Federal and State requirements. He opined that airports by nature have both fixed-wing and helicopter operations. He stated that an airport in the "pilot's control glossary" was "an area of land or water that is used or intended to be used for the landing and taking off of aircraft, and includes buildings and facilities, if any." [T 4/29/99 p 108] He also related the International IKO standard definition for "aircraft" is "any machine that can draw support in the atmosphere from the reaction of the air other than reaction of the air against the earth's surface. [T 4/29/99 p 109] Mr. Lamb acknowledged that at the Deputy Zoning Commissioner's hearing his testimony was limited to safety issues and not sound impact. [T 4/29/99 p 110]

Petitioner's Exhibit #2 was admitted, relative to a sound exposure analysis for Helmore Farms. This analysis is most fully described in T 4/29/99 at pages 112-114. Land uses and L.D.N. factors were also discussed in T 4/29/99 at page 115-124. Mr. Lamb did not believe the proposed airport uses of Helmore Farms would have a detrimental impact above and beyond what you normally would expect in this rural area [T 4/29/99 p 124]. Mr. Lamb acknowledged that as to zoning issues, the Federal Aviation Administration leaves such matters to local jurisdictions unless it was an "air space issue." [T 4/29/99 p 126] "As far as zoning issues, as to whether or not a community will accept the airport or not accept the airport is, from what I have seen, the FAA leaves that to the local jurisdiction as to whether the airport will be a permitted use or not a permitted use." [T 4/29/99 pp 126-127]

On cross-examination, Mr. Lamb was not able to identify how many private airstrips are in Maryland of 1,200 feet or less that were not next to a body of water. [T 4/29/99 p 140] Mr. Lamb acknowledged that he had not performed noise samples in the field as compared to another person (Mr. Miller) at the previous zoning hearing who had performed actual samples. The essence of the cross-examination was that Mr. Lamb had not used any field data to "crunch" his numbers which Mr. Lamb believed to be acceptable since that was typical for the use of the integrated noise model (INS). To develop the Integrated Morse Model, you prepare them in accordance with the flight patterns, the model flight patterns and the standard SEL curves approved by the FAA." [T 4/29/99 p 146]

Mr. James Matis also testified. He is the principal of Matis

Warfield, Inc., a civil engineering firm involved in land development in Baltimore County. The witness stated his experience in drafting and sealing plans involving special exception uses and was accepted as an expert in civil engineering and zoning, Mr. Nelson reserving his voir dire for cross-examination. The witness was familiar with the site and opined that the plan met the Baltimore County zoning checklist for such petitions. The standards imposed under Section 502.1 were reviewed with the witness by Mr. Gildea with no significant adverse effects stated. He also described the general area and the site itself. Mr. Matis indicated that the Susan Immelt property was "approximately 25 feet from the edge of the fence to the property line" (an estimate only) [T 4/29/99 p 188] Mr. Matis did not believe there was a required setback for a fence of 35 feet. In his opinion, the only setbacks are for principal structures (i.e., buildings, etc.). A paved helicopter pad was not considered a structure in his opinion. Mr. Matis agreed with Mr. Nelson that "there is plenty of R.C. 2 land based in the County where someone could build this airport with the amount of use and have the precise normal conditions which Mr. Lamb had described, and not have the problem of noise contamination penetrating the neighbor's property line [T 4/29/99 pp 194-195]. Mr. Matis also agreed that a similar operation could be conducted where the problem of noise pollution does not contaminate a neighbor's property line such as Susan Immelt's property and could be placed in other areas of Baltimore County where the land was zoned R.C. 2. He also opined that the plume of noise pollution, even if only 15 feet, is greater on the Immelt property than the

effect on the neighboring properties when the plume of noise pollution does not cross the property line. [T 4/29/99 p 196]

The second day of public hearing was held on May 4, 1999. At that time, the Board was supplied with the requested Letters of Administration. (Petitioner's Exhibit #4)

Mr. Timothy Madden testified on behalf of Petitioners. He is a graduate of the Georgia School of Environmental Design, a Maryland registered land architect, and also registered in several other states, and is certified by the American Institute of Certified Planners, with 20 years experience in land development, zoning and land and architectural services. Mr. Barhight offered Mr. Madden as an expert in the field of architecture, land planning and zoning, with Mr. Nelson withholding his voir dire until cross-examination.

Mr. Madden reviewed Petitioner's Exhibit #1 (Plat to Accompany Zoning Petition) in considerable detail, noting its R.C. 2 zoning, uses allowed by R.C. 2, and R.C. 5 uses to the south, and D.R. property to the far east. Eastward is property leased for agriculture (with a County proposal to purchase for recreational park use), to the south is a floodplain and restricted uses, to the west, principal residential and agricultural uses, and to the north pasture and residences. He explained the "urban renewal demarcation line" (a line that the County has determined should not be moved in determining where higher density development should go and where it should not go) [T 5/04/99 p. 13]. Mr. Madden related the special exception request area to nearby properties. The Immelt property was the closest residence to the special exception

area, being approximately 1,017 feet (+/-) from the limits of the special exception area. The witness was quite familiar with the self-imposed restrictions noted on Petitioner's Exhibit #1. The witness opined as to his familiarity with the R.C. 2 zones in Baltimore County, and the primary agricultural uses in the immediate vicinity. The Petitioner's property, he stated, was "operated as a horse farm for the training and general care of horses involved in the thoroughbred racing industry." [T 5/04/99 p. 22] The surrounding areas yield crops, livestock and personal residences. Mr. Madden did not believe that Section 1A01.2.C dealing with the R.C. 2 zone had any impact on the site, and agreed with the findings of the Agricultural Preservation Board in that the requested use was in compliance with agricultural usage of the property. He further stated that it does not preclude future agricultural usage of the property [T 5/04/99 p. 27], nor would it be detrimental to the agricultural use of the adjacent property. [T 5/04/99 p. 28].

Mr. Madden also proceeded to state his qualifications relative to airports and land usage in connection therewith and those adverse impacts ordinarily expected in connection with airport usage. These included lighting, structures, water quality impacts (paved runways /fuel operations), people traffic, etc. As to what "visual impacts you would ordinarily expect of an airport use located elsewhere in the R.C. 2 zone," the witness related he would expect (1) a landing strip; (2) large expansive area; (3) hangars; (4) outbuildings; (5) terminal buildings; (6) parking; (7) other support facilities; and (8) "all in contained areas." [T 5/04/99

pp 39-40]

The usual Section 502.1 questions were posed. The witness acknowledged the subject site as being within the Greenspring Valley R.C. 2 zone which is an isolated R.C. 2 area immediately adjacent to the urban demarcation line, which is next to the higher density development associated with Baltimore County and Baltimore County. [T 5/04/99 p 38] The witness saw no particular problems present "since the airport use is subservient to the agricultural use" [T 5/04/99 p. 42]. He also opined concerning the sound impact in both the subject R.C 2 site and elsewhere in the R.C. 2 zones. He did not envision any difficulties because of "(1) the limited use and (2) the adjacent land uses were primarily agricultural and agricultural uses have been found compatible at the noise levels generated by this airport, and for other airports for that matter." [T 5/04/99 p. 44]

On cross examination, Mr. Madden did not appear to be conversant with the zoning regulations with respect to the use of helicopters /helistops or the R.C. 2 zones despite his involvement in land planning in Baltimore County for 18 years. [T 5/04/99 pp 44-53] He opined that the setbacks for a helistop must be at least 500 feet from any property line. [T 5/04/99 p 54] Mr. Madden agreed that the R.C. 2 land that makes up the Greenspring Valley differs in that regard to much larger portions of R.C. 2 land which lie to the north of the subject area. [T 5/04/99 p 56] The witness also agreed that there were many farms in northern Baltimore County where this helicopter pad at a distance of greater than 15 feet from the property line could exist. [T 5/04/99 p. 59]

Mr. Madden acknowledged that he was not aware of any other use of helicopter /helistop I or II that was present in the 20 years that he had been a land planner in the County. Only one was identified as the St. Jones property where he had observed a helicopter landing. Presently only one other helicopter pad existed on the AAI property on York Road. The witness also agreed that in his 20 years as a practicing planner no helicopter operations had been authorized by law or by any zoning administration in the Greenspring Valley. [T 5/04/99 p 95]

Mr. Madden also opined that if the only criteria for placing a helistop was on a National Historical Site -- he would "look for a site other than an historical registered property." [T 5/04/99 p 98]

At this point, the Petitioner rested his case. Mr. Nelson moved for Summary Judgement as succinctly stated in the transcript of May 4, 1999, pages 102-106, that essentially as a matter of law that under the Schultz v. Pritts case, the Petitioners had failed to meet their burden. The Board took the matter under advisement and the hearing proceeded. The Protestants proceeded with their case.

A video, taken by Deirdre Smith on April 19, 1999, was shown to the Board without sound, with a proffer made by Mr. Nelson. [T 5/04/99 p. 112] Carol Trela was called as the Protestants' first witness. She expressed her objections to the helicopter usage in an R.C. 2 zone, and lack of faith in Baltimore County to enforce regulations, the sound /noise implications, impairment of property use for horse breeding, etc.

Dr. Richard McQuaid also testified in opposition to the Petitioner's request. He addressed the issue of preserving R.C. 2 land in the County, and the incompatibility of helicopter operations in the R.C. 2 zones. He opined that such flights interfere with agricultural operations (milking, breeding, sheep herding), and the precedent that would occur if the Petition were granted. Mr. Nelson indicated that Dr. McQuaid spoke on behalf of the North Coalition (18 community associations) with 400 paid members (Rule 8 papers to follow - which were received by the Board the next day).

Mr. Jorgen Jensen, Lutherville, Maryland, also spoke against the Petition. He offered essentially the same objections as the two prior witnesses.

On Day #3 of the hearing (May 18, 1999), Mr. John McGrain, the County Historian, testified in response to a subpoena issued by People's Counsel. Mr. McGrain was accepted as an expert in Baltimore County history. His testimony centered around the National Historical Districts in the County (federally approved districts; Protestants' Exhibit #4A). He opined that the Greenspring Valley District encompassed about 4,800 acres, and identified the nature of historical value of the Greenspring Valley Historical District [T 5/18/99 pp 19-20]. He expressed an opinion that the Historical District was "very well preserved for the most part." [T 5/18/99 p 21]

Mr. Jack Dillon, Executive Director of the Valleys Planning Council, also testified on behalf of that organization under the Board's Rule 8 authority. Mr. Dillon related his Baltimore County

employment from February 1962 through February 1996, and in part his extensive work with the Office of Planning & Zoning. In 1975, his work in the Planning Office involved environmental planning and the drafting of the R.C. 2 zone. In 1981, he was transferred to the Community Planning Division. He described the Greenspring Valley area as a low-lying valley "wedged between two ridges...a rather long narrow valley...probably at its widest point...probably only about one mile wide." [T 5/18/99 pp 30-32]

Mr. Dillon described the evolution of land planning for rural areas which preceded the Baltimore County Master Plan, which came about in the 1970s. The uniqueness of the Valleys area is vividly described on pages 34 -36 of the transcript. Of particular interest was (1) the viability of the agricultural area, close to urbanized areas; "It's one of the few areas in the country where you can drive from a downtown area and be in an area of green pastures and nice fields and active farming in about 15 - 20 minutes" [T 5/18/99 p 35]; (2) the aquifer beneath fertile soils; (3) high quality water supply; (4) an agricultural open space close to an urbanized area; and (5) the large community development east of Falls Road. Protestants' Exhibit #5 was introduced representing a chart of the zones in Baltimore County which permit, by right or special exception, a helicopter /helistop I or II based on Baltimore County Zoning Regulations (BCZR). Mr. Dillon "walked" the Board through the chart. Essentially, "airport is included in the R.C. 2 list. Helistops I and II are not, needing special exceptions. After Bill 178-79, helistops were even taken out. They were deleted as a special exception in the R.C. 2 zone by Bill

178-79." [T 5/18/99 p 45]

Mr. Dillon opined as to his work with Mr. Solomon and the North County Advisory Committee, and their recommendations for five new R.C. zones which were described on page 50 of the transcript. Mr. Dillon also testified as to his involvement in the drafting of the new zones and the presentation of the project to the Planning Board and County Council. He opined that the major thrust of the R.C. 2 zone was "to provide a zone that was favorable to the long-term use of agriculture." [T 5/18/99 pp 51-52] Considerable testimony was elicited relative to the R.C. 2 density issue, growth management issues which (1) changed the density in the R.C. 2 zone; (2) permitted the Agricultural Board to purchase easements for farmers; and (3) removed helistops from the list of special exceptions in the R.C. 2 zone, which Mr. Dillon believed to be consistent with the "stated goal of preserving agriculture in the R.C. 2 zone. [T 5/18/99 p 66], meaning the goal of the Planning Office and County Council was to preserve the agricultural uses in the R.C. 2 zone. Mr. Dillon opined that the proposed use has a greater impact on land usage at Helmore Farms than it would be elsewhere in the R.C. 2 zones in Baltimore County and related his reasons for same. [T 5/18/99 p. 72-73] He also stated a fixed-wing airport operation has a greater effect at this location than elsewhere in the R.C. 2 zones. Additionally, where helistops are permitted, Mr. Dillon opined that they must be 500 feet away from the property line per Baltimore County Zoning Regulations. [T 5/18/99 p 76]

It was his opinion that the helistop constructed did not meet

the setback requirements of 500 feet required by the BCZR -- citing helistop under Section 101, any area of land, water, or structural surface which is located at least 500 feet from any property line which has been authorized by the director of public safety to be used for helicopter operations, which is not a heliport, which is not served for major support opportunities, or any area of land, water or structural surface which is closer than 500 feet to a property line which has been authorized by the Director of Public Works to be used for not more than 15 helicopter operations per month, which is not a heliport, which is not served for any major support. [T 5/18/99 pp 76-77] The number of helicopter flights proposed at the site would exceed 15 a month and the 500 feet setback would apply, according to Mr. Dillon.

Mr. Douglas Carroll, 1117 Greenspring Valley Road, also testified concerning his property and others in proximity to Helmore Farms. There are presently two homes on his property. He opined that two additional homes could also be constructed. He described the various landings /takeoffs of the helicopter at minimum as 3 minutes, however averaging 10, depending on whether or not the passengers are "on time." He had witnessed this operation about 20 times. According to Mr. Carroll, Mr. Grass goes directly to the helicopter; Mr. Lucas was never with him, usually busy at the Laurel facility. Mr. Carroll stated he was a real estate agent with Herbert Davis & Associates and specialized in "protected homes," and the value of land potential.

The Board, after objection by Mr. Gildea, did not accept Mr. Carroll as an expert as to any real estate appraisal values, but

permitted questions as to his knowledge concerning his land and immediate vicinity acreage. He opined that the helicopter operation had an adverse impact on the property. The witness stated that of the 69 acres he owned only 39 acres are farmed. He opined that he had considered boarding horses (teaching riding, laying-up operations) and had secured estimates for this project and had discussed the proposed project with a number of people. The helicopter operation would, in his opinion, have an adverse effect on such a proposal.

On cross-examination, Mr. Carroll acknowledged a portion of his property being in the Agricultural Preservation Trust and that his home was 1,730 feet approximately from the special exception area. He stated his present occupation was in property management and "repair" activities. He acknowledged that at the present time he was not a horse breeder, that he did not have any expertise with horses. His concepts of having a horse farm came from Mr. Lucas and Mr. Lucas' apparent success at it. If he decided to engage in horse operations, he would hire an expert in the field to manage the facility.

Mr. Dennis Potts also testified. He stated he was a licensed thoroughbred horse owner and trainer in Maryland, and with considerable experience going back to 1972. He related his experience from 1974 to the present time. He was offered as an expert in horse operations in Greenspring Valley and what particular actions are required to run such an operation. After voir dire, he was accepted as an expert in the horse business, and the Board would consider his expertise and assessments on an

individual basis in weighing the case. The witness relayed his discussions with Mr. Carroll over the past five to six months as to starting up and running a horse operation. He described several ways this could be done. [T 5/18/99 pp 137-139] He opined that the operation of a helipad or airport in proximity would have an adverse effect on such an operation based on his extensive experience and he would not recommend anyone having horses "laid up" in such an environment. He also indicated it would have an adverse effect on any riding /teaching horse operation.

Mr. John Williams, a resident of Seminary Drive and present in the hearing room, had requested an opportunity to speak in opposition to the Petition. His testimony was brief, describing how the helicopter interfered with his personal property enjoyment as a neighbor, the noise factor, etc., and stated that he lived about one mile from the site and was in opposition to the approval of the Petitioner's request.

On day 4, the public hearing of June 23, 1999, the Board acknowledged a site visit to the subject site to observe a fixed-wing takeoff /landing and helicopter approach /landing /takeoff. The Board members made their individual observations, nothing was discussed concerning the case subsequent to the visit. The Board did request that the Appellant produce the helicopter pilot for this hearing in the event the Board had any specific questions concerning the helicopter functions. Mr. James Fanjoy, the pilot, testified in response to questions posed by Mr. Gildea. The witness indicated he had 12 years experience, was trained by the Army Reserves with extensive flying experience. Mr. Fanjoy opined

that he flies into the site from Baltimore-Washington International Airport (BWI) and returns from Harrisburg, Pennsylvania, in the evening, describing his flight pattern, with a normal landing at 8:10 a.m. The latest pick-up has been around 9:30 a.m., the earliest at 7:00 a.m. If Mr. Grass is running late in the a.m., the helicopter is shut down until he arrives. On the site is an "all-weather observation system," perimeter lights, and a guidance beam and windsock to assist in the landing operations. The helicopter is used by Mr. Grass approximately 18-19 times per month. Mr. Grass's firm, Rite Aid Corporation, has a helipad outside their Harrisburg, Pennsylvania, headquarters. The witness opined that logs are maintained by the witness. They reflect only the "lead person" (usually Grass), plus the number of other passengers. Mr. Lucas had flown with him twice; once to an airport and the other time to a Delaware racetrack. Two other pilots are also used, when the witness is not available. The Board requested the witness to answer some questions concerning organized flight paths and approach procedures. The witness had never picked up a visitor from BWI to Helmore Farms.

Mr. Paul Solomon, of New Freedom, Pennsylvania, testified on behalf of the Protestants. Mr. Solomon described his early youth activities and heavy involvement with Arabian show horses. He received his Bachelor of Science Degree from Penn State in Agriculture and Biological Sciences. He also has Master's Degree in Planning from Penn State. He owned his own Arabian breeding farm in the early 1970s-1978 in York County, Pennsylvania. He also was employed by Baltimore County from 1970 to 1992. Based on his

testimony, the witness was quite conversant with the development of the R.C. zones in Baltimore County and "wrote substantial parts of the actual language that's currently in the zoning regulations" [T 6/23/99 p 51]; and "the one who actually drafted the words that describe the purposes of the R.C. 2 zones." [T 6/23/99 p 52] He opined that the purpose of the zones was to "determine and judge what is consistent and what will protect that resource (agricultural services or usage); and that use, or what may interfere or conflict with it, or even have a potential to cause problems over time." [T 6/23/99 p 52] Mr. Solomon displayed broad knowledge concerning rural planning for Baltimore County; and, as an administrator for the Maryland Agricultural Land Preservation Trust, the program available via that State agency. Mr. Solomon was accepted as an expert in land planning [T 6/23/99 p 55] with particular expertise in the areas involving R.C. 2 zones. Mr. Solomon proceeded to testify as to the development of the R.C. zones in general and the R.C. 2 zone in particular. It was Mr. Solomon's expert opinion that, since 1979, helistops or helipads are not allowed either by right or by special exception in the R.C. 2 zones, explaining his reasons for same. [T 6/23/99 p 58]

Mr. Solomon also did not believe that a special exception use of an airport included use of a helicopter operation as a collateral use. Mr. Solomon opined that approximately 129,000 acres exist in Baltimore County, used for farming purposes. Most of this acreage exists in the northern part of the County and the Greenspring Valley area was small compared to the northern sector. He opined that the horse breeding operations are predominantly

located in the Greenspring Valley area that encompassed approximately 25,000 acres on the high side. He stated that approximately 20 percent of the R.C. 2 area was used for thoroughbred horse purposes and 80 percent for agricultural purposes. Mr. Solomon cited Section 1A01.2(c) concerning usages allowed by special exception, and such uses are allowed if it is determined that the use is not detrimental to the principal agricultural uses in the vicinity.

Mr. Solomon had heard the testimony of the helicopter pilot; and opined that the helicopter use "has the very real potential to conflict and be detrimental to, depending on various factors, the horse industry in the area." [T 6/23/99 p 70] He stated his reason as being, because the thoroughbred horses can be injured or frightened easily, any use that causes fear could cause problems and discontinuance of the operation of the horse farm. Mr. Solomon did not believe the use to be a primary one, that is one of either agriculture or horse breeding. He opined that the helicopter operation posed a serious problem for anyone "to start and maintain a horse operation." [T 6/23/99 p 72]

It was Mr. Solomon's belief that the use described the pilot, Mr. Fanjoy, was inconsistent with the spirit and intent of the zoning regulations, because "the use described in detail in a non-agricultural /commercial use which is not consistent with the R.C. 2 zoning classification, and that the overwhelming use of the helicopter as it now exists is a noncommercial /non-agricultural use." [T 6/23/99 pp 81-82]

It was his further belief that the adverse impact would be

less in other areas of the R.C. 2 zones. Because 120,000 acres of land exists in the R.C. 2 zone, with 19,000 - 20,000 in the thoroughbred portion, there would be "well over a hundred thousand acres" where there would be less of an impact "because of the fact that you didn't have a concentration of horse farms, or the potential for concentration of horse farms." [T 6/23/99 p 84]

Considerable discussion ensued relative to Protestants' Exhibit #9 concerning Hillside Realty and the denial of a helicopter operation two miles from the site to which the Board assigned minimal weight in its final analysis of the case. Mr. Solomon opined as to Section 502.1 of the BCZR and his belief that the proposed use was not one permitted under the R.C. 2 zone classification; and "there were other parts of the R.C. 2 where it would be more consistent with the agricultural use." [T 6/23/99 p 84] He also testified as to the Greenspring Valley being in the North Register as an historical district; and that the helicopter use did not enhance the image of the area in an historical agricultural sense. In other areas encompassing 100,000 acres would be better suited for such a purpose with less of an impact.

On cross-examination, Mr. Solomon again acknowledged that airports are allowed by special exception within the R.C. 2 zone; helipads and helistops are not allowed either by right or special exception in the R.C. 2 zone after 1979. He acknowledged that there is no distinction in the zoning regulations for airports, whether they are for commercial, agricultural or recreational use. [T 6/23/99 p 98] He stated he was familiar with the site because he was the administrator of the Agricultural Preservation Program

when Helmore Farm was placed in the program, for which Mr. Lucas received $653,000.00. He described his activity and research on this matter. [T 6/23/99 pp 98-101]

Mr. Solomon acknowledged that Helmore Farms was a thoroughbred farm, used for that purpose for many years. While he had difficulty identifying any other thoroughbred farms in the area, his "major concern focused as a planner that it is quite important to maintain the existing operation and allow the potential for additional operations to come in, depending on who owns the farm and for what purpose they are purchasing it." [T 6/23/99 p 111] He agreed that planes can fly over the Helmore Farms and historical district, but felt that this Board could consider the existing facility and the overall impact in the district. Mr. Solomon testified that even an airport would be inappropriate in this location. It would be better off where there would be less of an impact on the agricultural type of farms in the area. The question of an airport use for commercial purposes versus agricultural purposes was also discussed. The differences were noted by the witness. Mr. Solomon remained confident that the "impact both real and potential is greater at this site than it would be at a number of sites particularly farther north in the R.C. 2 zones." [T 6/12/99 p 121]

Based on a question from the Board, the witness explained restrictions /prohibitions placed on the use of land placed in the Preservation Trust. The Board was advised by counsel that the issue had been raised in another court for another day and time. Mr. Solomon was followed by Mr. Norman E. Gerber, Cockeysville,

Maryland, who was readily accepted as an expert in the field of zoning and land planning. (The Board notes with regret the sudden passing of Mr. Gerber several weeks after these hearings.)

Mr. Gerber was familiar with the essentials of the area. He opined that "the thing that comes closest to describing this kind of operation, i.e. read about, heard about, was an airstrip." [T 6/23/99 p 134] He agreed that an airport was permitted as a special exception in an R.C. 2 zone, and an "airstrip" was not. "Airstrips show up in only two places in the zoning regulations. The M.L. zone and by including M.L. zone in the M.H. zone, they were thought to be the kinds of areas where they could be paved, but did not have to be." [T 6/23/99 p 135] Mr. Gerber opined that airports are more full-service operations with hangers, cargo, passenger facilities, parking, maintenance, fueling facilities, etc. He believed only three currently existed in Baltimore County. These were Martin's State Airport, Back River Neck Airport, and the Baltimore Airpark - with Martin's being the larger. He opined the zoning regulations to be inclusive as to what was construed to be an airport and what was to be construed as an airstrip, and they were perfectly consistent with the R.C. 2 zones as developed. He stated that if the Board concluded that the site was an airstrip and not an airport, it was not permitted in the zone; and the County regulations are "inclusive." "If it is to be permitted in the zone, it has to be listed as of right or by special exception. [T 6/23/99 p 138]

Mr. Gerber also stated that even if a special exception were granted for the airport requested, that in the R.C. 2 zone, a

helicopter operation would not be permitted. The witness explained that the Baltimore County Zoning Regulations have gone to great length to provide for helicopter operations, heliport-type I and II and helistops and listed them specifically within zones. In the instant case, Baltimore County, by way of its regulations, chose to further define aircraft operations and talked about, at great length, helicopters and whether they should be permitted or not permitted. [T 6/23/99 pp 141-142] "No helicopter type operation is permitted as of right except the Section 420 which is basically set up for special uses, emergencies, that sort of thing. They are not permitted. They are not listed as permitted. I believe further that it was clear that the regulations intended not to permit helicopter operations in the R.C. 2 zones." [T 6/23/99 p 142] Mr. Gerber's rationale for helistops and his involvement in removing helistops for the R.C. 2 zones is clearly stated in his testimony. [T 6/23/99 pp 143-144]

Susan Immelt also testified. She identified her home on the plat and that of her brother, Doug Carroll. She was quite familiar with her property and the character of the general area. Her property line, she stated, is about 23 feet from the helipad fence. Ms. Immelt described the general helicopter "flight" pattern and procedures. Some days the noise was more intrusive than others, depending on the weather. She opined that the noise was a problem, and believed its presence would preclude building a home in the area of the pad; and had a detrimental effect on her property resale value and an impact upon any plans the farm might have in starting up a horse operation, that is, a riding stable, laying up

facility or boarding operation.

On the fifth and final day of the public hearing, July 1, 1999, the Board heard the testimony of Dr. Omar Knio, called on behalf of the Protestants. Dr. Knio is an associate professor of mechanical engineering at the Johns Hopkins University, possessing a Bachelor's Degree from the American University of Beirut, and Master's and Doctor's Degrees from the Massachusetts's Institute of Technology obtained in 1986 and 1990 respectively. He opined that mechanical engineering consisted of two major branches -- engineering and mechanics in general, both fluid and solid mechanics. He testified that acoustics are a part of fluid mechanics involving the study of motion and dynamics of all fluid, which includes acoustics. [T7/01/99 p 5] His specialty was in the area of the compatibility of fluid mechanics. He has served on the Hopkins' faculty since December 1991, dividing his time on an equal basis (50-50) both teaching and research. He also regularly teaches courses on acoustics on a graduate level. His present student base involves three PhD students and he has performed substantial research in several different countries. His abbreviated C.V. was admitted. He has been involved in a number of "referral journals" which have been concerned with detailed analysis on acoustics. Dr. Knio explained his expertise in study and compatibility of noise factors. The witness was accepted as an expert in mechanical engineering with particular emphasis on fluid dynamics, acoustics and computation of noise in a case such as this. [T 7/01/99 pp 11-12] Dr. Knio testified as to materials related to the use of the helicopter at Helmore Farms; i.e., Mr.

Miller's deposition, documents provided by Mr. Lamb and Mr. Lamb's calculations. He was also present at the same helicopter flight pattern and procedures which were attended by the Board. The Board was unaware of his presence since no introductions were made. He also had studied material provided by the helicopter manufacturer via their Web site, and additional safety data filed with the Federal Aviation Administration had also been reviewed by him.

Dr. Knio explained how, from an engineering standpoint, one analyzed noise, i.e., "peak" and "average." [T 7/01/99 pp 15-16] Essentially "peak" and "average" differ depending on the locale, with the heavier the load, the more reliable the "peak" becomes. In the instant case, the event was determined to be no more than five fixed-wing aircraft and five helicopter events per day (an event consisting of landing, idling, takeoff and fly-by). Under such circumstances, Dr. Knio believed a "peak" would be the more appropriate factor to be considered. [T 7/01/99 p 18] Another factor considered was the proximity of the helipad to the adjacent residences -- as compared to Baltimore-Washington International Airport (BWI) where the closest residences are miles away. Dr. Knio's calculations took place from the center of the helicopter pad using "an engineering correlation that falls under SAES. That standard comes from the Society of Automotive Engineering Standards. The standard is called ARR-1989." [T 7/01/99 pp 18-19] That standard calculates peak noise generated by a source and is used to estimate peak noise from various types of helicopters. Dr. Knio placed two calculations to determine peak noise (1) for hover and (2) for approach. Based on Petitioner's Exhibit #1 (Plat to

Accompany Special Exception Request), the witness stated the difference from the center of the helicopter to the property line was "a little less than 100 feet - between 90 and 100 feet."

Considerable testimony was received relative to Dr. Knio's findings. [T 7/01/99 pp 23-29) Further testimony ensued relative to the "integrated noise model" (INM) and "helipad noise model" (HNM) developed by the Federal Aviation Administration. Dr. Knio opined that the HNM was more appropriate for usage at the Helmore Farm and why he disagreed with Mr. Lamb's testimony relative to usage of the INM. In his view, "because of the specifics of the case itself and the capacities of the more appropriate model -- according to the guidelines, it would have been more appropriate for the fixed wing, but not the helicopters." [T 7/01/99 p 31]

Dr. Knio believed that LDN (landings day, night) analysis and averages come from "a long review of hearings, regulations, energy and noise expected, which were in the area of very large airports, such as BWI, and that's where these guidelines come from." [T 7/01/99 p 28] However, he did not believe these to be the appropriate guidelines for analysis of noise at the subject site. He opined that, "stretching them quite a bit, maybe. But there isn't a single data point in all the background of these guidelines that fit Helmore Farms. I haven't seen any data point in all these hearings where a helipad came a hundred feet from a neighboring or an adjacent property." [T 7/01/99 p 29]

Dr. Knio described four scenarios which he automatically computed in the entire neighborhood of the center of the helipad: (1) the helicopter idling on the ground; (2) a 2-minute static

operation at approximately 3 minutes 30 seconds at takeoff; (3) during landing when the helicopter comes in from the north; and (4) same takeoff pattern observed during the demonstration, which he indicated was the worse case scenario when the helicopter would fly over, make a turn and land, and was idling waiting for a passenger or being delayed. Each scenario and the results were discussed. [T 7/01/99 pp 36-46] In summary, the witness did not agree with Mr. Lamb's observations or calculations.

On cross-examination, Dr. Knio indicated scenario #2 was the most likely scenario, the 65 dba /LDN lines - would be 136 feet into the property line [T 7/01/99 p 57]. He also acknowledged that the Immelts' house was about 1,017 feet (+/-) from the special exception area and that "FAA regulations were not the sole guideline in this case because this case was so unusual." [T 7/01/99 p 62] This facility should not be treated as it was similar to BWI. Dr. Knio's points are succinctly stated on pages 65 and 66 (12-21; 1-3) of the transcript relative to "a standard that was developed for a very large airport where the peak at the closest residence is much lower than 97 dba, or where the average is clearly appropriate, because the noise is essentially flat, to apply in that situation, when the next situation, the peak, 26 times a day, that's fairly obvious." [T 7/01/99 p 65]

Mr. Lamb was recalled to limited testimony concerning his use of the "integrated noise model" and on a limited basis as an expert relative to FAA qualifications, but not as an expert as to local statutes covering air strips and airports. It was Mr. Lamb's opinion that Helmore Farms met the FAA definition of an airport. [T

7/01/99 pp 86-87] He cited the differences between an airport and an air strip. Mr. Lamb did agree that, if there was a mixed use (such as BWI), the Integrated Noise Model was appropriate. Also, if there was only helicopter usage, the average noise level would go down. Additionally, if the Maule aircraft was taken out of the equation, he would not criticize the decision to run the helicopter noise model. [T 7/01/99 p 92] Mr. Lamb continued to state that, based on the factors presented at the hearing, the district and size of the noise contour, the two models point out basically the same result - that the airport has minimal impact on adjacent land use without a detrimental impact. The adjacent land uses are compatible to the subject use.

The hearing was concluded without closing statements. Both counsel agreed to submit simultaneous briefs on September 1, 1999, with the Board scheduling a public deliberation before the end of the month. Public deliberation occurred on October 5, 1999.

In this case, the Appellants seek a special exception for an airport on Helmore Farms located on a site near the intersection of Greenspring Valley Road and Falls Road, just slightly north of the intersection of I-83 and I-695. During the several days of hearings, both sides produced a myriad of both lay and expert witnesses in addition to substantial documentary evidence. There is no dispute that the subject site is located in an R.C. 2 (rural conservation) area. Additionally, within the R.C. 2 zone, an airport is permitted by way of a special exception. A helistop, however, is not permitted by special exception within the confines of the R.C. 2 zone. The questions which need to be addressed by

the Board are essentially two-fold:

> 1. Is the site an airport permitted within the R.C. 2 zone; and, if so, are helipads and helistops permitted uses within the meaning and definition of an "airport"; and
>
> 2. Based on the weight of the testimony and evidence submitted at the hearings, has the Appellant met his burden that the use proposed does not produce any "adverse effects above and beyond those inherently associated with such special exception uses irrespective of its location in the zone." [Schultz v. Pritts, 291 Md. 1, 22-23 (1981)]

Unquestionably, the R.C. 2 zone does not allow "heliports," "helistops," or "airstrips." The zone does permit an airport by special exception. In seeking out defining terms, one must consult the Baltimore County Zoning Regulations, Section 101. Within those confines are found the Baltimore County definition of an airport as:

> Any area of land or water designed and set aside for landing or taking off of aircraft.

One would assume that the defining term "aircraft" would include usage for helicopter functions. However, an examination of the 1955 Comprehensive Revisions of zoning regulations provided for airports as special exceptions in the R40 zone (the predecessor to the D.R. 1 zone) and in the B.R. zone (BCZR 200.15, 236.4). The definition of an airport has remained unchanged, and significantly, there was no specific provision for helicopter uses. It was not until Bill 56 in 1961 created the M.L.R. zone which specifically included "airstrip" and "heliport" as special exception uses (BCZR 248.4.A). This resulted from the impact of the Planning Board's Report of September 30, 1960 in which the function of an M.L.R. zone was described as a transitional zone to control impact on

residential and institutional areas. Why the term "airstrip" was introduced over "airport" is not mentioned, nor for the inclusion of "heliport." However, five years later the Planning Board issued a final report under date of August 11, 1966 on five subjects, one of which was "Helicopter Landing Facilities." The essence of that report recommended defining a heliport, type I, heliport, type II, and helistop. Subsequently, Bill 85, 1967, enacted definitions for "heliports" and "helistops," placed zoning clarifications, and added a new Section 420. Bill 85 represents current helicopter provisions in the residential, business and manufacturing zones. The rural zones had yet to be created. Those definitions are as follows:

> Heliport, Type I: Any area of land, water or structural surface which meets the design standards of the Federal Aviation Agency and has been authorized by the Maryland State Aviation Commission to be used for scheduled operations by helicopter carriers certified by the Civil Aeronautics Board.
>
> Heliport, Type II: Any area of land, water or structural surface which has been authorized by the Maryland State Aviation Commission to be used for nonscheduled but regular helicopter operations, and which does not serve for major support operations. As used herein, the term "major support operations" means "maintenance other than fueling; cargo loading; or any accessory operations using 2500 square feet or more of floor area."
>
> Helistop: Any area of land, water or structural surface which is located at least 500 feet from any property line, which has been authorized by the Director of Public Safety to be used for helicopter operations, which is not a heliport, and which does not serve for major support operations (see definition for "Heliport, Type II"); OR any area of land, water or structural service which is located closer than 500 feet to a property line, which has been authorized by the director of Public Safety to be used for not more than 15 helicopter operations per month, which is not a heliport, and which does not serve for major support operations.

Subsequently, in 1970, the Baltimore County Council enacted Bill 100. Significantly, this Bill created the first rural zones ("Rural Deferred Planning") and R.S.C. zones ("Rural, Suburban Conservation"). In each of those zones, the Council saw fit to permit both airports and helispots by special exception (BCZR 1A00.2B1.12 and 1A01.2B1.11). Also amended was BCZR 253 to permit airstrips or airports by special exception in the M.L. zone. Thereafter, Bill 98-75 replaced the R.D.P. and R.S.C. zones with the present R.C (rural conservation) zones. The Council permitted airports and helispots as special exceptions in the R.C. 2 and R.C. 3 zones. They were not permitted in the R.C. 4 and R.C. 5 zones as reflected in the hearing memorandum submitted by People's Counsel since these did not appear to be any examples of rural principal helicopter uses. In fact, the first problem area involving R.C. 2 zoned land and the use of a helicopter surfaced in proximity to the subject site in the Greenspring Valley. The controversy led to a Petition for Special Exception for a helistop being approved in Case No. 78-193-X by the then Deputy Zoning Commissioner, and subsequently approved by the Board of Appeals in October 1980.

The Planning Board was aware of the helicopter controversy and as part of the growth management in the R.C. zone, submitted its final report in August 1979 which recited in part:

> Agricultural and environmental protection. The amendments to regulations of the Resource Conservation classification contained in this report would significantly strengthen those classifications to more fully achieve their intended purposes. The R.C. 2 (agricultural) zone regulations would be revised to allow uses that would enhance the economic viability of agriculture, to prevent continued usurpation of productive farmland by residential development or other uses not supportive of agriculture, and generally to

encourage the preservation of agricultural land.

The proposed amendments included a revised list of R.C. 2 uses, repealing both the airport and helistop special exception uses. Thereafter, Bill 178-79 deleted "helistops" as a special exception use, but allowed continuation of the "airport" use. The R.C. 3 zone special exception for both airports and helistops was left intact.

Since 1979, there have been significant amendments to other R.C. 2 zones, but no further amendments to the provisions relative to "airports," "airstrips," and helicopter uses. So, at the present time, under current BCZR regulations, we have the present status concerning where certain facilities are permitted by special exception and by right.

By special exception:

Airport	: R.C. 2, R.C. 3, D.R. 1 and B.R.
Airstrip	: M.L.R., M.L.
Heliport, Type I	: B.M., B.R.
Heliport, Type II	: B.C., B.M., B.R., M.L.R.
Helistop	: R.C. 3, D.R. zones

By right:

Airport	: None
Airstrip	: None
Heliport, Type I	: M.L., M.H.
Heliport, Type II	: M.R., M.L.
Helistop	: B.L., B.M., B.R., M.R., M.L.R. M.L., M.H.

[Note: Notwithstanding other provisions of the Baltimore County Zoning Regulations (BCZR), certain helicopter operations are permitted as provided by Section 420 of the BCZR.]

In light of all the legislative history and specific definitions found in the BCZR, Section 101, the Board is also required to consider the nature of what constitutes an "airstrip," for the County Council has seen fit to permit such a facility to exist in the M.L.R. and the M.L. zones. Unfortunately, the Council

has not specifically defined the term under Section 101 which then requires defining in the Miriam Webster Collegiate Dictionary, 10th Edition (1994) and Webster's II New Revised University Dictionary (1984, 1988) -- the first definition (p 26):

A runway without normal airbased or airport facilities.

The second at page 89:

A cleared landing area serving a landing strip.

Reaching its conclusions, the Board must examine the facts and circumstances of the case; the legislative history of the zones, applicability of uses (permitted by right or by special exception) and statutory construction. The Petitioner asserts that the special exception use of an airport includes helicopter activity. While the proceeding before the Board is a de novo hearing, the Board has considered the rationale employed by the Deputy Zoning Commissioner in his opinion (Case No. 99-294-SPHX) and the decision of a prior Deputy Zoning Commissioner in Case No. 90-1-SPHX, both of which proceeded in opposite directions. Deputy Zoning Commissioner Ann Nastarowicz ruled in 1989 that heliports or helispots are not airports. Until this case (Helmore Realty LLC) came along, there had been no challenge to that opinion; and despite continuation and other R.C. 2 use regulations, the County Council had the opportunity to introduce specific legislation that would overrule the 1989 Smith decision. Moreover, the Council had continued to decline the specific addition of heliports or helipads as permitted uses in the R.C. 2 zone (helistops are permitted by special exception only in an R.C. 3 zone). The Petitioner relies heavily on the present Deputy Zoning Commissioner's opinion that

"helicopters would, in fact, be included within the special exception regulations for an airport operation." [Case No. 99-294-SPHX at page 12, Exhibit No. 1] Based upon the de novo proceedings and considering the testimony and evidence being offered, this Board does not agree. While the BCZR describes an airport as "any area of land or water designated and set aside for landing or taking off of aircraft," and a helicopter fits the definition of "any rotary aircraft," nevertheless this Board concludes that the legislative history and intent of the uses permitted by special exception in R.C. 2 zone clearly precludes such uses by helicopters.

The Petitioner and Appellants both widely reference the meaning of the statute. The Board must reference not only the statute involving the definition of an airport, but also the statutes to which the words of the statute reference. The Board recognizes that the New International Dictionary is to be consulted for words not specifically defined within Section 101. Webster's definition for "aircraft" is:

> A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces -- used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats.

Appellants allege therefore that the definition of an "airport" adopted by the Baltimore County Zoning Regulations clearly includes helicopter operations. This Board believes differently. Had the County Council not sought to specifically separate and define helicopter uses in the various zones, this Board might believe

differently, and in so doing, adopt the Appellant's belief that the interpretation of an "airport" includes a "heliport or helistop." That, however, is not the case. Clearly the legislative Council of Baltimore County had very narrowly addressed helicopters and uses within the various zones. That body has very clearly and precisely defined them by clarification as permitted uses either by right or by special exception.

Section 420 outlines and permits certain additional operations. The Board is constrained to remind itself that legislation "...usually has some objective, goal, or purpose. It seeks to remedy some end, to advance some interest, or to attain some end." [Section III of Kaczorowski vs. Baltimore, 309 Md. 505, 513-516 (19987)] In that case, Judge Adkins wrote:

> Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The "meaning of the plainest language" is controlled by the context in which it appears. 309 Md., at 514

Additionally, Judge Adkins references Justice Holmes for the concept that "the general purpose is more important than any rule which grammar or formal logic may lay down." He cited examples of cases in which legislative history was critical to proper intent:

> The purpose, in short, determined in light of the statute's context, is the key. And that purpose becomes the context within which we apply the plain-meaning rule. Thus "results that are unreasonable, illogical or inconsistent with common sense should be avoided...with the real legislative intention prevailing over the intention indicated by the literal meaning'. 309 Md, at 516.

Additional cases cited by People's Counsel in his Brief are also of

significance and should be noted by the Board as applicable in its decision-reaching processes.

In Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990), the Court wrote:

> Thus, we have said that a statute must be construed in context, because the meaning of the "plainest language may be governed by the context in which it appears."...In this regard, words in a statute must be read in a way that advances the legislative policy involved.... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment.... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent.

Similarly, in Comptroller v. Jameson, 332 Md. 723, 733 (1993, the Court said:

> In addition, we look to the context surrounding the enactment of a statute to determine the intention of the legislature. For example, we recently said:
>
> > When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may and often must consider other "external manifestations" or "persuasive evidence," including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.

It is evidence to this Board that, in reaching his decision, the Deputy Zoning Commissioner did not consider the legislative history of uses - permitted by right or special exception - in the various zones and to include the use of helicopter operations within the scope of an "airport" is to legislate and not regulate.

Clearly, the functions of the zoning authority or this Board are not to assume legislative functions inherent in the County Council, members of which are subject to the electorate every four years for accountability of their actions. The Board does not concur that helicopter operations come within the definition of an "airport," where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C. 2 subject site.

However, a second question is also raised in connection with the helicopter operations. Reference Transcript 4/29/99, pp 54-55, Mr. Nelson to Mr. Lucas: "Now, in the event the Board were willing to, over our objection, in spite of the evidence, grant a special exception for an airport, would you be satisfied if the Board said to you, Mr. Lucas, you can fly your Maule (on order) in and out of there but no helicopter?" Mr. Lucas: "No, we would not. [Line 18] No, I wouldn't because if it's restricted to just those occasions, then one of the things we are trying to do is we can operate as an airport as such allowing our clients to use our facilities..."

The Board has addressed the question of helicopter uses within the context of the definition of an airport. That problem being resolved, the question arises as to whether or not the subject site is in fact an airport or is it in reality a "landing strip." The Board considers the fact that the County Council has indicated a "airstrip" as a permitted special exception use in the M.L.R. and M.L. zones. While not defined in the BCZR, it has been defined as:

> A runway without normal airbase or airport facilities.
> A cleared area serving a landing strip."

Appellants proceeded at great length to compare the

similarities with the BCZR definition of an "airport" as derived from the FAA definition. Indeed, there are striking similarities. However, nowhere in the Appellant's brief is any reference made to the Council's inclusion of an "airstrip" within the zones. Indeed, "airstrips" are not permitted in the R.C. 2, R.C. 3, D.R. 1 and B.R. zones. They are permitted in the M.L.R. and M.L. zones (where airports are not). Why the specific differentiation? -- unless the County Council had in mind two separate and distinct uses.

Interestingly enough, Petitioner's brief does not resolve the issue other than to look at the Smith case in which Smith planned to operate only helicopters on his property. There was no suggested use as an airport. In the more recent Kaczorowski case, the Petitioner recites "what sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the Smith case is not directly applicable to the special exception regulation before me." The Deputy Zoning Commissioner was correct concerning the airstrip, but if it is an airstrip, is it also an airport? If it is an airstrip, it is not a permitted use in an R.C. 2 zone.

What did the County Council envision to be the difference between an airport and an airstrip to require different uses in different zones? The Board considers the factor to be an important use in its analysis. Is the term "airport" more inclusive than the term "airstrip" and is there a difference? The Board concurs that it is, and to the extent that the Appellant argues that one should "resolve any ambiguity as to the relevant definition of an airport, through an analysis of the County Council intent" (Appellant's

Brief, p 42), the Board also believes a significance must attach to the testimony of those planning experts who expressed great influence and control over the creation and development of the R.C. zones. The Board considered the testimony of Mr. Lamb who provided the FAA definition of an airport. That definition would infer that the presence of an airstrip alone without any building or support facilities would qualify that facility as an airport under Federal definitions. The Board, however, is the interpreter of the County's zoning laws; and concludes that the County Council had a very different view when separating "airports" and "airstrips" as to their uses in the Baltimore County Zoning Regulations. Considerable weight attaches to the testimony of Mr. Paul Solomon and Norman Gerber as to the characteristics typically found in an airport use: Solomon: (1) strip or strips to land an aircraft; (2) gas tanks; (3) support facilities; (4) hangars, gas tanks, diesel tanks; (5) the facilities to land and to service a plane; (6) the facilities to service the passengers; (7) parking lot (or lots); and (8) infrastructure by way of road access; Gerber: "The thing that comes closest to describing the kind of operation I heard about (during the hearings) and I believe is the airstrip." [T 6/23/99, p 134] Continuing with Gerber's testimony:

> As I said, the only two places that airstrip show up in the zoning regulations are in the ML zone and by virtue of including ML zones in the MH zone, and they were thought to be the kinds of areas where they could be paved, but didn't have to be. They were simply a place for a plane to land for an owner or worker or visitor to maybe a plant who owned a strip or maybe a couple of plants that owned a strip to be there for a day or an hour or whatever. Maybe. This seems to be the kind of activity that I heard about and read about so far being proposed here.

> On the other hand, an airport generally is used -- it is used with more of a full service type of facility in that there are facilities to care for the aircraft in some fashion. There are facilities to care for potential passengers, or maybe even cargo. I haven't heard any real discussion of those kinds of facilities being proposed to be placed here. So I believe that the term "airport" is more appropriately applied to those kinds of facilities.
>
> There are only a few, quote, airports in Baltimore County. Probably the best known is the Martin State Aviation Airport. There are a couple privately owned airports which I hope one is still in operation, but I'm not sure. There is one on Back River Neck, which has been there for some time. And there's one out, which can be seen as you drive up I-95, just before you enter into Harford County, I guess. To my knowledge, they are the only airports left operating in Baltimore County as an airport.
>
> Then, Martins Airport is much bigger than the other two. They have a wide variety of the kinds of facilities I am talking about at each of those.
>
> But, to me, I believe that's how the zoning regulations views an airport and how that views an airstrip.
>
> I believe that's perfectly consistent with the way the RC 2 zones were developed, because one would not expect to see a lot of airports in Baltimore County, even in 1969, '70, '71, '72, and '79, probably even less so today, based upon the demand; the fact the Martin Airport has taken a great deal of whatever void was thought to have been in Baltimore County in those other decades.
>
> On the other hand, an airstrip could normally be expected to be found at a lot of locations in terms of the kind of use. So far, they have only been permitted in the ML and MH zones in Baltimore County. [T 6/23/99, pp 135-136]

Indeed, the Appellant's "self imposed restrictions" (Appellant's Brief, p 7) acknowledged that the present site does not permit the fueling of aircraft, there is no aircraft storage, there is no aircraft repair, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter "events" per day, helipad construction and safety standards lend credibility to the fact that the subject site is an

airstrip and not an airport. There is no dissention within the Board that throughout the process the subject site has always been intended to be a private airstrip with none of the usual auxiliary functions associated with an airport. Reference Lucas testimony, April 27, 1999, p 39 (use of facility), lines 10 through 20, p 44 17-21. The question of an "airport" use only comes into play with the introduction of Mr. Grass in the summer of 1997. Where subsequent involvement is evident from the testimony of Mr. Lucas is not one of interest in horse operations as an owner but one of convenient transportation to and from the Rite Aid facility in Pennsylvania. The Board, considering the testimony, evidence and record as a whole, concludes that the proposed use by Hillside Realty LLC cannot, by any stretch of the imagination, be construed as an airport. It is obvious to the Board that there are distinctions between an "airport" and an "airstrip." To permit continued uses thereof as an airstrip is in direct violation of Baltimore County Zoning Regulations, Section 102.1:

> No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with this regulation. Kowalski v Lamar, 25 Md.App. 493 (1975)
>
> Any use other than those permitted and being carried on as of right or by special exception is prohibited.

Assuming arguendo, however, that an airport is present on the site and further assuming that helicopter operations are included within the definition of an airport, then the question is present whether or not the Appellant has met his burden considering the "impact" factors required under BCZR 502.1, expressed on page 11 of Appellant's brief and in the Schultz v. Pritts case, 291 Md. 1, 432

A.2d 1319 (1981). So the facts and circumstances demonstrate that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. The Board recognizes principles established by the Maryland courts relative to special exception uses, and that they are "expressly permitted" (Mossberg v. Montgomery County, 107 Md.App. (1995).

Additionally, the legislature has determined special exception uses to be permissible absent any facts or circumstances negating the presence (Schultz v. Pritts, id.). A special exception 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.... The duties given the Board are to judge...whether the use in the particular case is in harmony with the general purpose and intent of the plan. The fact that special exception uses may have an adverse effect at the proposed location is not an issue in the approval of a special exception use since such uses carry with them inherent adverse effects. The question is one of whether or not the adverse effects are greater at the proposed site than they would be elsewhere in the County where they may be established, i.e., the other areas within the R.C. 2 zones.

During the course of several hearing days, the Board heard an abundance and plethora of testimony from a number of acknowledged experts in the fields of aviation, airport planning, local planning, and general horse operations. Much of the testimony was conflicting and contradictory. The Board recognizes that the

expert witness has become a standard component of the zoning hearing. Professional planners make frequent appearances on all zoning forums and are to be listened to carefully. However, in the final analysis, it is up to the Board to make a critical appraisal of such witnesses. It is well-settled law that a Board of Appeals has sufficient expertise to judge the evidence on its merits and that such a Board is not so bound by opinion evidence that it may not reach a conclusion at odds with such evidence. Additionally, a Board may support the findings by knowledge gained through a view of the premises, and a reviewing court will give weight to the superior knowledge of the Board gained in this manner. "The opinion of an expert must be based on knowledge gained from observation or experience, statistical books, maps of recognizable authority or on other reliable sources." State Department of Health v. Walker, 209 A.2d 555, 238 Md. 512

Based on the testimony, evidence and weight assigned thereto, the Board has determined that the impact of the proposed facility at the subject site would be greater there than at any other location in the R.C. 2 zone.

1. Location of the site: Helmore Farms consists of 87 acres in Baltimore County. For reasons which appear patently obvious to the Board, the helicopter facility was constructed close to the roadway for convenience of the principal (and apparently only) user, Mr. Martin Grass, and his daily commuting to and from the Rite Aid facility in Harrisburg. While Mr. Grass has a financial interest in Hillside Realty LLC, testimony clearly reflects no direct participation or direct interest in the horse operation. Indeed,

even the use of the airstrip based on the totality of the testimony reflects that only limited usage of the airstrip is employed in the horse operation or "agricultural" pursuits of the farm. The conflicting testimony of the noise experts, Mr. Lamb for the Appellants and Dr. Knio for the Protestants, requires this Board to assess credibility. The Board recognizes that noise is an adverse effect inherent in the operation of an "airport" or "airstrip." Mr. Lamb's testimony essentially stated in his opinion that the Helmore facility had the least impact in the rural community then he had ever seen and related the research his firm conducted and the sound exposure analysis that his firm had prepared. Much of his testimony revolved around the LDN standard adopted by the FAA, HUD, and EPA federal agencies for airport generated noises.

Considerable data was employed by Mr. Lamb based on the "integrated noise model" prepared in accordance with flight patterns, the model flight patterns, and the standard SEL curves approved by the Federal Aviation Administration. The Board viewed much of his testimony as "academic" based on average noise exposures provided by the airport. The airport could be a large one such as BWI or as small as the Helmore Farms facility. The Appellants would have the Board disregard Dr. Knio's finding in that he failed to base his analysis on FAA regulations. The Board views differently. Unlike Mr. Lamb, Dr. Knio had made a site visit and observed the Helmore operations and disagreed with Mr. Lamb's analysis. The Board concurs with Dr. Knio's opinion that the "average" noise analysis is not appropriate for the analysis of noise at the Helmore Farms facility. As he stated in his testimony

(July 1, 1999), "the average analysis came from a long series of hearings, regulations, energy noise experts, and psychologists, which were in the neighborhood of very large airports, such as BWI. None of these have characteristics that are applicable to Helmore Farms. Additionally, Dr. Knio utilized a heliport noise model (HNM) for his analysis of the average noise -- which has been approved by the FAA. Mr. Lamb agreed that the introduction of the heliport noise module was better suited to the analysis of the helicopter (T 7/01/99, p 89). The totality of the testimony of Dr. Knio compared to that of Mr. Lamb was superior in demonstrating that the impact level of noise at this site was greater than elsewhere in the zone.

The Board also assessed and gave considerable weight to the testimony of Douglas Carroll and Susan Immelt whose mutual properties border the Helmore Farms site.

2. The impact of an airport facility on horse operations in the R.C. 2 zone: "We [the Court of Appeals] look for evidence, if any, in the record of the adverse effects and impacts that could be generally expected [Mossberg, 107 Md.App. 13] 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." The Board accordingly reviewed testimony from a number of individuals concerning noise impact of the facility as it related to horse operations. Noise is to be expected from the operation of any airport facility in the R.C. 2 zone. The principal noise factor here was concerned with the helicopter functions. Testimony was fairly consistent that approximately

129,000 acres of R.C. 2 land exist in Baltimore County. Mr. Paul Solomon testified as to his work experience as a Baltimore County employee from 1970 to 1992 [T 6/23/99, p 51]. He opined that he had written substantial portions of the actual language that is currently employed in the zoning regulations [p 52]. He was the one who actually drafted the words that describe the purposes of the R.C. 2 zones which became law [p 52]. Its purpose was to foster and protect the agricultural resources or uses within the 129,000 acres as it stands in the agricultural zones. "Protect means to determine and judge what is consistent and what will protect that resource and that use versus what may interfere or conflict with it, or even have a potential to cause problems over time." [p 52] He worked very closely with those regulations. He reviewed zoning petitions individually as part of the comprehensive zoning process. He was the administrator for the Maryland Agricultural Land Preservation Policy division. Mr. Solomon was accepted as a professional planner with particular expertise in the R.C. 2 zones. He explained his opinion, based on 22 years employment as a Baltimore County Planner. He described the horse industry in Baltimore County. He referenced that it was centered in the southern part of Baltimore County, "most notably in the Valleys, in Greenspring Valley, Worthington Valley, and Western Run Valley [p 65]. Those valleys approximate 25,000 acres -- on the high side [p 67] and constitute 20 percent of the R.C. 2 land area. He acknowledged that one of the primary agricultural uses of Greenspring Valley was the production of thoroughbreds. He opined that the intended use by the Appellant "has the very real potential

to conflict and be detrimental to, depending on various factors, the horse industry in the area" [p 70]. He stated that thoroughbreds are "injured and frightened easily" and that investors are not going to pick a spot where they feel their horse is not totally protected. "It poses a serious problem for anybody to starting and maintaining a horse operation" [p 72].

Section 502 was reviewed with the witness. The witness had been present during the testimony of the pilot, Mr. Fanjoy. He opined that the use described in detail, was a non-agricultural/commercial use which is not consistent with the R.C. 2 zoning classification. "The purpose of this zone is to protect it and foster it and otherwise enhance the agricultural uses in the zone...the overriding, overwhelming use of the helipad as it now exists is a commercial /nonagricultural use" [p 83]. He opined that in his opinion "the adverse effect would be less in other areas of the R.C. 2 zones [p 84]. "You have less of an impact, with the fact that you do not have a concentration of horse farms, or the potential for concentration of horse farms" [p 84].

The Board also considered the testimony of Mr. Norman E. Gerber, also accepted as an expert in the fields of zoning and land planning [p 131]. The Board considered the testimony of Mr. Dennis Potts, a licensed thoroughbred and trainer in the State of Maryland who has been involved in the horse industry since 1972, breeding, breaking, laying up, etc. He was accepted as an expert in the horse business [T 5/18/99, p 135]. Mr. Potts testified as to the type of "viable, profitable self-sustaining horse operations one could set up at the Carroll property - lay-ups, boarding facility,

injured /post-operative cases...thoroughbred horses, show horses, that have been injured" [T 5/18/99, pp 137-138]. It was Mr. Potts' opinion that the daily use of an helicopter and airplane right next door, 100 feet away, would have a negative effect on the ability to run an effective horse operation on adjacent properties from the site [T 5/18/99, p 141]. The Board found it interesting that on the day of the site visit there were no horses visible nor, within the Deputy Zoning Commissioner's reference, any horses present on his site visit.

Mr. Lucas described the horse operation as "generally the whole back of the farm up in the middle of the farm around the barns, up into the front of the farms" [T 4/27/99 p 37]. He indicated that 23 horses were on the premises on 4/27/99.

Mr. Carroll testified that during his one-day visit there was a noticeable, considerably less number of horses on the property at that time. It was the consensus of Mr. Lucas' testimony that the operation of the helicopter or airplane facilities did not act as a deterrent to his horse operation.

While Helmore Farms is held out to be a horse facility, the conflicting testimony requires the Board to assess the totality of the evidence and the testimony. In so doing, the Board has concluded that the impact of the proposed operation would be greater at the subject location than elsewhere in the R.C. 2 zone where the thoroughbred horse industry is less developed and the daily operations as proposed would be of considerably diminished proportion.

3. The impact on the Greenspring Valley district: The nature

of the site within the Greenspring Valley was adequately described by a substantial number of witnesses. This Board has heard many cases involving the Greenspring Valley and the uniqueness of the Valley as it is situated. Mr. Lamb, the Appellant's expert witness, did not believe the "airport" would not have an adverse impact on the community "...based on the flight characteristics into and out of the facility, and also based upon the requirements of the sound exposures that were completed...and that it had a minimum sound impact on the surrounding community" [T 4/27/99 pp 124-125]. His analysis was based on "everything from planning issues in accordance with FAA guidelines, environmental issues, noise issues, their construction of aprons, runway expressways, navigational facilities, airplane issues, and approach procedures" [T 4/27/99 p 98].

Mr. James Matis, offered by the Appellants as an expert in the field of civil engineering and zoning, testified as to the standards imposed by Section 502.1 [T 4/27/99 pp 182-186] and did not believe any adverse effects were present in the proposed usage of the site.

Mr. Timothy Madden was submitted by Appellants as an expert in the fields of landscaping architecture, land planning, and zoning. He aptly described the site and general locale of the area [T 5/04/99 pp 10-13]. The rural demarcation line was discussed. Mr. Madden did not believe the airport would be detrimental on the agricultural usage of the property [T 5/04/99 p 27]. The adverse effects normally associated with airports were described [p 32]. He also found no adverse effects inconsistent with R.C. 2

regulations [p 37].

The Board took note of the witness's comments concerning the Greenspring Valley R.C. 2 zone "which is an isolated R.C. 2 area that is immediately adjacent to the urban rural development associated with Baltimore City and Baltimore County....It is on the fringe of that area; and it's aligned very close, residing adjacent to more heavily developed property, the Baltimore Beltway, I-83, etc. So I believe that it is -- I would characterize it as being on the fringe of the agriculturally zoned land." [T 5/04/99 p 39] The Board takes significant note of the lack of testimony from all three witnesses as to the unique characteristics of the Greenspring Valley that was subsequently described in greater detail by witnesses for the protestants.

Mr. James Matis, testifying for the Petitioner, agreed that "as a general rule, the R.C. 2 land in the Greenspring Valley, unlike the R.C. 2 land in the northern part of the County, is surrounded by some more densely populated land, such as R.C. 5 or D.R. and that the Greenspring Valley differs in those regards to the much greater, larger portion of R.C. 2 land to the north [T 5/04/99 p 57]. Mr. Matis acknowledged that "McCard's Design on the Land" was a "classic land use analysis that one of the examples was the Valley's Study...a groundbreaking piece of land preservation...known for its methodology of law." [T 5/04/99 p 94] "The point of the study was to identify its unique resources and come up with a way to develop that that would be sensitive to those resources" [p 95]. As a planner, Mr. Matis was not able to cite any examples of how an helicopter operation that was authorized by

law or by the zoning administrator in the Greenspring Valley [p 95]. Mr. Matis agreed that the only criteria between putting a helistop in a National Historic District or some place else that was not an Historic Site, he would look for a site other than an historically registered property. [p 98]

In connection with the unique and unusual characteristics of the Greenspring Valley, the Board was impressed with the testimony of several witnesses called by the Protestants. John McGrain, County Historian in the Office of Planning for Baltimore County, testified. He is an acknowledged expert in Baltimore County history. The rural districts were described with particular emphasis on the Greenspring Valley. He described the Greenspring Valley as containing approximately 4800 acres [T 5/18/99 p 15]. Significant houses, structures considered as resource were discussed as well as the nature of the historical value of the Greenspring Valley Historic District [T 5/18/99 pp 19-21].

Mr. Jack Dillon, Executive Director of the Valleys Planning Council, testified concerning the Valley, his experience in the R.C. zones, and his familiarity with the Valley [T 5/18/99 pp 30-34]. The unique characteristics of the Valley are vividly outlined by him [T 5/18/99 pp 34-36]. The summary of his research concerning airports, helistops, heliports I and II were introduced as Protestants' Exhibit 5 and each was "run through" [T 5/18/99 pp 40-51]. Mr. Dillon opined that he believed the proposed use "has a more direct adverse impact here than it may in an R.C. 2 area somewhere else." His reasoning is explained on pages 72 through 75 of the May 18, 1999 transcript. Mr. Dillon also opined that a

fixed wing aircraft would have a greater impact on land around Helmore Farms than elsewhere in the R.C. 2 land in Baltimore County, because of the proximity to additional housing and residences in the area - the introduction of another nuisance factor [p 74].

Mr. Paul Solomon testified at length as a professional planner relative to the history and development of the R.C. 2 zones in Baltimore County, and as a previous administrator for the Maryland Agricultural Land Preservation program. He described the Greenspring Valley and Worthington Valley as the core of the thoroughbred horse industry. Having heard Mr. Fanjoy's testimony concerning activity on the property relative to the aircraft which he piloted, Mr. Solomon stated that "the use has the very real potential to conflict and be detrimental to, depending on various factors, the horse industry in the area." His reasonings are stated in the transcript of June 23, 1999 at pages 70 through 71.

Mr. Solomon also believed that the uses described by Mr. Fanjoy were inconsistent with the R.C. 2 zoning classification since the overwhelming use of the helicopter as it currently existed was a commercial /non-agricultural use [p 82]. The Board in its analysis concurs based on the totality of the testimony of Mr. Lucas and Mr. Fanjoy. He also opined that the adverse impact on this site would be less than other areas of the R.C. 2 zones [p 84], because of a lesser impact due to the fact that "you don't have a concentration of horse farms or the potential for concentration of horse farms." Additionally, the Greenspring Valley, as indicated, is on the National Register as an historical

district; and certainly a helicopter flying up and down this 3,000 acre valley does not enhance the image of an historical district -- which is historical in an agricultural sense [p 85]. He testified that approximately 110,000 acres existed in the R.C. 2 zones where the impact would be less than anywhere other than at the eastern end of the Greenspring Valley. He opined that Mr. Lucas had received $650,000 for putting his farm in the Maryland Agricultural Preservation program. Mr. Solomon did not suggest that the Board restrict aircraft flights over the historical district in Baltimore County, but "a consideration in this case whether this use as intended is consistent with the range of things, including the fact that this is an historic district" [pp 112-113]. Mr. Solomon was requested to respond to the question "In your experience, do you have an opinion as to whether the use of a fixed wing aircraft at this site in the heart of the thoroughbred industry in Baltimore County, which is the heart of the thoroughbred industry in Maryland, whether the use of the fixed wing aircraft at this site would have a greater impact on the surrounding primary agricultural uses than it would elsewhere in roughly 110,000 acres of R.C. 2 land which are in crop, no thoroughbred horse racing. Do you have an opinion?" [T pp 120-121] Mr. Solomon believed that "the impact both real and potential was greater at this site than it would be at a number of sites particularly farther in the R.C. 2, with the acreage of the other sites being approximately 110,000 acres [T p 121].

Mr. Norman Gerber also testified as an expert in the field of zoning and land planning and related his considerable experience

concerning the R.C. 2 zone and essentially agreed with the testimony of Mr. Solomon. Essentially Mr. Gerber believed that the type of operation which was occurring at the Helmore Farms was a "airstrip" and that an airstrip was not permitted by special exception in an R.C. 2 zone. As such, it was inappropriate to have such a facility operating in the Greenspring Valley area.

There is no doubt but that the testimony concerning the "impact" factors relative to the plume noise factor and the proposed use impact factors with applicability to both the thoroughbred horse industry and historical district were inconsistent, and the burden of determining same and application of the facts to the law reside with the Board. It is the responsibility of the Board to access credibility and weight of evidence in achieving a conclusion.

The Board recognizes the standards imposed by both Sections 502.1 of the BCZR and Schultz v. Pritts. The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone). The Board must also determine that "the proposed use of the property is consistent with the purposes of the property's zoning classification."

To that end, the Board concludes that the impact upon the National Historical District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones. Relying considerably on the expertise of Messrs. Dillon, Solomon and Gerber, there are individual areas in the Northern part of the county that would be less impacted than at the present site. The

Board concludes that it is not a matter of finding a better site for the proposed use in the R.C. 2 zone, but rather the question is one of total impact; and the Board concludes that the Appellants have not established that fact by the preponderance of the evidence to the Board's satisfaction. Acknowledging that airport and helicopter uses have inherent negative impacts, the detrimental effects upon the smaller Greenspring Valley district would clearly have a greater negative impact than if located elsewhere in the vast acreage constituting the R.C. 2 zone of Baltimore County.

The Petitioner has recited in its brief that (1) the area of aviation is preempted by the Federal Regulations; (2) The U.S. Supreme Court in its City of Burbank decision is the preeminent authority regarding Federal Preemption in the area of aviation; and (3) the F.A.A. Regulations preempt any state or local regulations on noise emissions.

They rely heavily on the Burbank case in restricting any opinion on any regulations regarding noise compatibility other than the FAA Part 150 Regulations; regulation of flight operation by local authorities or the placement of any restrictions that would affect flight operations. The latter two items reference the Deputy Zoning Commissioner's "Order and Opinion," referenced on pages 15 to 17. Since the Board has determined the subject site to be an "airstrip" and not an "airport," with an airstrip not permitted in the R.C. 2 zone, the question of restrictions was not dealt with in this Opinion. The Board has adequately covered the noise element provided in this Opinion.

In determining that the subject site constitutes a "landing

strip," the Board concurs that local zoning law is applicable. Basic uses of land are left to the local zoning authority (reference cases cited in People's Counsel's Brief, pages 19 and 20).

O R D E R

THEREFORE, IT IS THIS 25th day of February, 2000 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use be and the same is **DENIED**; and it is further

ORDERED that the alternative request for a special exception for an airport pursuant to Section 1A01.2.C.1 of the BCZR be and the same is **DENIED.**

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

Charles L. Marks, Chairman

Lawrence M. Stahl

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2/25/00

County Board of Appeals of Baltimore County

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RE: Case No. 98-294-SPHA In the Matter of Edgar Lucas -Petitioner

Dear Counsel:

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, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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

Kathleen C. Bianco
Administrator

encl.

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/Estate of Edgar Lucas
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Valleys Planning Council c/o
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Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt
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September 3, 1999

Via Hand Delivery
Mr. David Marks, Chairman
Board of Appeals
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Towson, Maryland 21204

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Re: Helmore Farm Airport
Case No.: 98-294-SPHX
Our File No.: 06197/00001

Dear Mr. Marks:

Enclosed please find Petitioner, Edgar Lucas', Memorandum of Law in Lieu of Closing Argument in regard to the above captioned matter. I have enclosed the original Memorandum and three copies. I have also included a copy of the Memorandum and would appreciate it if you would date stamp the copy and send it back with the messenger. Please feel free to contact me with any concerns.

Sincerely yours,

David K. Gildea

JRB:bhb
Enclosures
CC: Peter Max Zimmerman, Esquire
Macy Nelson, Esquire
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
176141

9/3/99

(C)

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Road, N/S Hillside Road, 2000' W of Falls Road, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
EDGAR LUCAS Petitioner	*	Case No. ~~99~~ 98 **99-294-SPHX**

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

Protestants' Memorandum in
Opposition to Petition for Special Exception

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IN RE: HELMORE FARM SPECIAL HEARING/ SPECIAL EXCEPTION	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
LEGAL OWNER/PETITIONER ESTATE OF EDGAR LUCAS	*	CASE NO.: 98-294 SPHX

****

MEMORANDUM OF LAW
IN LIEU OF CLOSING ARGUMENT

Respectfully submitted by:
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IN RE: HELMORE FARM SPECIAL HEARING/ SPECIAL EXCEPTION 901 Greenspring Valley Rd, S/S Greenspring Valley Rd., N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
LEGAL OWNER/PETITIONER: Estate of Edgar Lucas	*	Case No: ~~99~~ 98 - 294 - SPHX

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

MEMORANDUM OF LAW
IN LIEU OF CLOSING ARGUMENT

The Estate of Edgar Lucas, ("Lucas") Petitioner, by and through his attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submits this Memorandum of Law In Lieu of Closing Argument and states:

I. INTRODUCTION

For the reasons set forth herein, Petitioner's request for the special exception use of a private airport at Helmore Farm must be granted. The Helmore Farm Airport satisfies the requisite special exception conditions set forth in the Baltimore County Zoning Regulations. Furthermore, the Helmore Farm Airport meets the special exception standard set forth by the Maryland Courts through case law. As explained below, a denial of Petitioner's request would be improper.

II. STATEMENT OF THE CASE

Petitioner filed a petition for special exception for the Helmore Farm Airport pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (herein "BCZR"). Approval was granted for that petition by the Baltimore County Deputy Zoning Commissioner in August of 1998. *See* Deputy Zoning Commissioner Timothy M. Kotroco's Opinion in this case dated August 5, 1998, and attached hereto as **Exhibit 1**.

Deputy Commissioner Kotroco held that Petitioner "has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest." Id. at p. 15. Importantly, citing the Maryland Court of Appeals case of *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), Deputy Commissioner Kotroco concluded:

> The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone.

Id.

Looking to *Webster's Third New International Dictionary, Unabridged*, Deputy Commissioner Kotroco found that helicopters are "aircraft". *Id.* at p. 12. He noted that Baltimore County Zoning Regulation ("BCZR") § 101, defines an airport as an area for "landing and taking off of aircraft", and thus ruled that "helicopters would, in fact, be included within the special exception request for an airport operation." *Id.* at pp. 11-12. He further recognized that the Helmore airport has been in operation for over 40 years

and that until the filing of this case, no one had complained about the airport and its operation. Id. at p. 14.

Protestants appealed this case to the Baltimore County Board of Appeals (herein "the Board"), and the Board heard testimony in this matter on five (5) days, beginning on April 27, 1999, and ending on July 1, 1999. The Board will publicly deliberate its decision in this matter on September 16, 1999.

III. STATEMENT OF FACTS

A. HELMORE FARM - ITS LOCATION, GEOGRAPHY, AND USE.

Petitioner, the Estate of Edgar Lucas, is the owner of Helmore Farm, a rectangular shaped property comprised of approximately 87 acres in Baltimore County. The property is bordered by Greenspring Valley Road on its north side, while Falls Road is located just east of the property. Just south of the property is Hillside Valley Road. Additionally, the Baltimore Beltway and I-83 are both located just beyond Hillside Valley Road.

The parcel is zoned R.C. 2, as is all of the surrounding area except that to the south side of Hillside Road which is zoned R.C. 5. *See* testimony of James Matis, pp. 176-178, 4/27/99 hearing, and attached hereto as **Exhibit 2**, and the testimony of Timothy Madden, pp. 10-13, 5/4/99 hearing and attached hereto as **Exhibit 3**.

Helmore Farm is used to breed, raise and race thoroughbred racehorses. In addition, horses recovering from injury are boarded at the farm. *See* testimony of Dale Lucas, p. 37, 4/27/99 hearing and attached hereto as **Exhibit 4**. Helmore Farm is improved with two primary residences, several tenant dwellings, stables and

outbuildings. The topography of the site is such that the property is at its highest elevation along Greenspring Valley Road and then drops down into a stream valley at the rear of the property. The Jones Falls stream runs across the back of the parcel, which is a heavily wooded area. Treelines are located on both the east and west sides of the property. *Id.*

B. THE SURROUNDING PROPERTIES.

The majority of the surrounding land is used for agricultural purposes, with the property to the east of Helmore Farm being in row crops, the property to the west being in cover crops, and the property to the north being in pasture for the care of livestock. Both Helmore Farm and the property immediately to its west are contained within agricultural preservation easements owned by the State of Maryland through the Agricultural Preservation Foundation, an agency of the Maryland Department of Agriculture. *See* testimony of Timothy Madden, p. 20-22, 5/4/99 hearing. (Ex. 3).

Primary residences are located on the parcels on the north, west and south sides of Helmore Farm. *Id.* at pp. 12, 20-22. The distances of the primary residences from the special exception area of Helmore Farm were measured and submitted to the Board. *Id.* at 15-16. Additionally, the distances of these surrounding residences from the helicopter pad at Helmore Farm were measured.

Specifically, Douglas Carroll, who owns 65 acres on parcels to the south, southwest, and west of Helmore Farm, owns a principal residence that is 2080', over a third of a mile, from the Helmore airport. *Id.* Three other large parcels of property lie between Mr. Carroll's residence and Helmore Farm. Other than his primary residence,

all of Mr. Carroll's property is used for agricultural purposes, and is all included in the Maryland Agricultural Preservation Program with the exception of a portion along Hillside Road that is part of the Maryland Environmental Trust. *See* testimony of Douglas Carroll, pp. 85, 105, 5/18/99 hearing and attached hereto as **Exhibit 5**.

Susan Immelt owns two parcels to the west of Helmore Farm. The property adjacent to the Farm is titled in her name only, and is unimproved land used for agricultural purposes. The parcel to the west of that is owned by Susan Immelt and her husband Stephen Immelt. Susan Immelt's two parcels combined total 40 acres. The Immelts have a primary residence on the property they jointly own that is 1480', the distance of approximately five football fields, from the Helmore airport. *Id.* at 83; *See* testimony of Susan Immelt, pp. 146-148, 6/23/99 hearing and attached hereto as **Exhibit 6**.

C. THE AIRPORT AT HELMORE FARM.

There has been aircraft operating out of Helmore Farm since at least 1956. Dale Lucas, Edgar Lucas' son, is one of the personal representatives of Edgar Lucas' estate and resides on the farm. He testified that his father made improvements to the property in 1956 so that aircraft could safely and conveniently fly into and out of Helmore Farm. Mr. Lucas further testified that the airport has been used for business purposes through flying to horse races out of state. Mr. Lucas explained that the airport is necessary for his horse business' success.

Specifically, Mr. Lucas needs to be able to fly to other racing tracks to observe the horses he manages and observe mares for the farm's breeding program. He also needs

to be able to offer clients and potential clients the opportunity to fly into the farm to view its operation. *See* testimony of Dale Lucas, pp. 39-41, 4/27/99 hearing. (Ex. 4). The airport allows functions as a marketing tool for Mr. Lucas that allows him to attract and retain clients which are obviously essential to the success of the farm. The use of the airport as a marketing tool is but one innovative technique that Mr. Lucas has fashioned to maintain the viability of the agricultural use at Helmore Farm.

The Helmore Farm Airport is located midway towards the rear of the property. *See* Petitioner's Exhibit 1, Plat to Accompany Petition for Special Exception. The airport's runway is 1200′ in length and approximately 200′ in width. Along the western boundary of the property, and at the end of the airstrip, there is an 150′ x 150′ paddock upon which a 20′ x 20′ helicopter touchdown pad is located. *Id.; See also* testimony of Charles Lamb, pp. 100-101, 4/27/99 hearing and attached hereto as **Exhibit 7**; Findings of Fact and Conclusions of Law issued in this case by Deputy Zoning Commissioner Timothy M. Kotroco, at p. 2. (Ex. 1).

Since its origination, the airport has been improved with some of the typical airport structures and accessories. Charles Lamb, Petitioner's expert on airport construction, explained the physical condition and capabilities of the Helmore airport. In addition to the airport's runway, the airport has a paved area for helicopter touch down and lift off, a lighted wind cone/sock, an automated weather station that relays information to pilots, and airport facility lighting. *See* testimony of Charles Lamb, pp. 102-103, 4/27/99 hearing. (Ex. 7).

The airport has other aviation facilities such as obstruction lighting, and taxi landing. Furthermore, the airport is registered with the state as an airport. *See*, testimony of Charles Lamb, pp. 86-87, 7/1/99 hearing. (Ex. 7). Finally, the Helmore airport has been approved by both the Federal Aviation Administration (FAA) and the Maryland Aviation Administration (MAA), and exceeds all relevant FAA and MAA requirements. *See*, testimony of Charles Lamb, pp. 106-107, 4/27/99 hearing. (Ex. 7).

D. THE AIRPORT'S SELF-IMPOSED RESTRICTIONS.

Petitioner voluntarily placed self-imposed restrictions on the Helmore Farm Airport. Seven of the eight restrictions Petitioner has voluntarily agreed to are listed on the plat submitted to the Board as Petitioner's Exhibit #1. They are as follows:

1. There be no fueling of aircraft at the airport;
2. There will be no aircraft storage at the airport for more than 14 consecutive days;
3. There will be no aircraft repair at the airport, except emergency repairs;
4. There will be no sale of aircraft at the airport;
5. The hours of taking off and landing of aircraft will be between 7:00 a.m. and 10:00 p.m.;
6. The airport use shall be limited to no more than five (5) fixed wing aircraft events per day and five (5) helicopter events per day. An event consists of landing, idling, take-off and fly by; and
7. The airport shall meet the Zoning Commissioner's Policy Manual ("ZCPM" Section 420.1, page 4-85) in regard to helipad construction and safety standards approved May 13, 1992.

Additionally, Petitioner voluntarily agreed to move the airport or change its operation if, at any point in the future, the Ldn level of the airport renders the special exception use incompatible with existing surrounding land uses. For example, if a dwelling was constructed on Susan Immelt's property to the west of Helmore Farm that would be inside the 65 Ldn line, Petitioner would relocate the airport facility or

otherwise change the nature of the airport operation to ensure that the noise level was compatible with the residential land use. [1]

IV. SPECIAL EXCEPTIONS

The Baltimore County legislature designated airports in the R.C. 2 Zone as valid special exception uses that are in the interest of the general welfare. To be approved as a proper special exception, the Petitioner has the burden to show that the Helmore airport meets the statutory conditions set forth in BCZR § 502. Maryland case law has set forth a standard by which special exception uses are to be reviewed. This special exception standard is an "overlay" of the statutory conditions with the restrictions provided through the case law.

A. SPECIAL EXCEPTION USES ARE PRESUMED TO BE IN THE INTEREST OF THE GENERAL WELFARE.

Special Exception uses are "expressly permissible." *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995). In fact, "the legislature has determined [special exception uses] to be permissible absent any fact or circumstance negating the presumption." *Schultz v. Pritz*, 291 Md. 1, 11 (1981). Furthermore, as explained and reiterated again by the Maryland Courts:

---

[1] Notably, as explained by Petitioner's expert on noise generated by the airport, the 65 Ldn line falls 15' into Susan Immelt's property. See, testimony of Charles Lamb, p. 161 from 4/27/99 hearing. (E. 7). Therefore, because the setback requirement in an R.C. 2 Zone for a principal dwelling is 35', in order for her to construct a residence that would fall within the 65 Ldn line, she would have to obtain a variance. The Courts have held that variances are presumptively impermissible. See, Cromwell v. Ward, 102 Md.App. 691, 699-703 (1995)("The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances ... A variance should be strictly construed ...").

> [A] special exception 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. ... The duties given the Board are to judge ... whether the use in the particular case is in harmony with the general purpose and intent of the plan.

See Anderson v. Sawyer, 23 Md.App. 612, 617 (1974)(affirming the approval of a funeral home as a special exception use in Baltimore County); *Schultz*, 291 Md. at 11 (establishing the standard for review of a petition for special exception).

In the *Schultz* case, *supra*, the Court of Appeals was faced with a petition for special exception for the development of a funeral home in a residential district. In addressing the Baltimore County legislature's intent regarding uses permitted by special exception, the Court stated:

> By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community.

Schultz at 14.

The Court in *Schultz* further noted that there were obvious "inherent deterious effects" involved in funeral homes. *Id.* However, the Court explained that those effects do not overcome the presumption that the general welfare is benefited by allowing funeral homes in a residential district "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." *Id.*

The fact that special exception uses may have adverse effects at their proposed locations is not an issue involved in the approval of a special exception use. Special

exception uses are recognized to have inherent adverse effects. *See* *Mossburg*, 107 Md.App. at 8. The conditions imposed on special exception uses and the proper standard used to evaluate their approval was explained in *Mossburg*. The special exception at issue in *Mossburg* was for a solid waste transfer station. The Court, recognizing the inherent adverse effects of a solid waste transfer station, stated:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. As Judge Davidson opined in *Schultz*:
>
> 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, 432 A.2d 1319 (emphasis added). 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 other few I-2 Industrial Zones.

Id. at 8 - 9.

In sum then, special exception uses inherently involve factors that many would consider to be detrimental. However, special exception uses are nonetheless "valid". *Schultz*, 291 Md. at 11. The legislature has determined that special exception uses, such

as an airport in an R.C. 2 Zone, are "desirable and necessary ... provided certain standards are met." *Mossburg*, 107 Md.App. at 8.

B. AN AIRPORT IS SPECIFICALLY ALLOWED AS A SPECIAL EXCEPTION IN THE R.C. 2 ZONE.

The Baltimore County legislature has determined that airports are to be allowed by special exception in R.C. 2 zones. *See* BCZR § 1A01.2.C.1. The legislature has provided conditions which all special exception uses must meet before being properly approved. *See* BCZR § 502.1.

C. SPECIAL EXCEPTION USES MUST MEET THE STATUTORY CONDITIONS PROVIDED IN BCZR § 502.

Special Exceptions and their approval are governed by § 502 of the Baltimore County Zoning Regulations. Before a hearing officer can grant a petition for special exception, the petitioner must demonstrate that certain conditions have been met. Specifically, the proposed use cannot:

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 way inconsistent with the spirit and intent of these zoning regulations; nor

H. Be inconsistent with the impermeable surface and vegetative retention provision of these zoning regulations.

BCZR Section 502.1.

D. THE SPECIAL EXCEPTION STANDARD IS AN "OVERLAY" OF THE STATUTORY CONDITIONS WITH THE RESTRICTIONS PROVIDED THROUGH CASE LAW.

The Board's review of a petition for special exception in light of the above conditions is further subject to the special exception standard set forth through case law, first in the *Schultz v. Pritts* case, and then in numerous cases by the Maryland Courts. *See e.g., Mossburg*, 107 Md.App. at 22 (holding that "such general conditions 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").

As explained in the recent case of *Hayfields v. Valleys Planning Council*, 122 Md.App. 616 (1998):

> 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, 666 A.2d 1253. 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].

Id., at 641.

Therefore, the *Hayfields* Court demonstrated how the BCZR § 502.1 conditions are analyzed in conjunction with the special exception standard. Id. at 641. Thus, in this instant case, the Board must analyze the BCZR § 502.1 conditions as follows in determining whether the Helmore airport will:

A. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with an airport would be generally elsewhere in the zone];
B. Tend to create [more] congestion in roads, streets or alleys therein [than the congestion normally inherent with an airport generally elsewhere in the zone];
C. Create [more] potential hazard from fire, panic or other dangers [than the potential hazard normally inherent with an airport generally elsewhere in the zone];
D. Tend to overcrowd land and cause undue concentration of population [more than would be expected with an airport generally elsewhere in the zone];
E. Interfere [more] with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements [than the interference normally inherent with an airport generally elsewhere in the zone];
F. Interfere [more] with adequate light and air [than the interference normally inherent with an airport generally elsewhere in the zone];
G. Be [more] inconsistent with the purposes of the property's zoning classification [or] in any way [more] inconsistent with the spirit and intent of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone];
H. Be [more] inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone].

See, BCZR Section 502.1; *Mossburg*, 107 Md.App. at 21-22; *Hayfields*, 122 Md.App. at 641.

As is explained below, Petitioner thoroughly demonstrated to the Board, through the use of expert testimony, that the airport at Helmore Farm meets all of the above listed conditions, and that the airport does not involve adverse impacts "greater than or above and beyond the effects normally inherent with [an airport] anywhere within the relevant zones ...". *Mossburg*, 107 Md.App. at 22.

E. THE SPECIAL EXCEPTION STANDARD AS DEFINED THROUGH CASE LAW REQUIRES THAT A SPECIAL EXCEPTION USE ONLY BE DENIED WHEN THE PROPOSED USE'S ADVERSE IMPACTS ARE "GREATER THAN OR ABOVE AND BEYOND THE EFFECTS NORMALLY INHERENT WITH SUCH A USE ANYWHERE WITHIN THE RELEVANT ZONES".

As part of the analysis involved in determining whether a proposed special exception satisfies the general conditions of BCZR § 502.1, the Board applies the balancing test set forth by the Court of Appeals in *Schultz v. Pritz*, 291 Md. 1 (1981). The *Schultz* case, "remains the standard by which special exception questions are resolved." *Mossburg v. Montgomery County*, 107 Md.App. 1, 8 (1995).

The subject of the petition for special exception in *Schultz* was the proposed development of a funeral home in a residential district. In addressing special exception uses, the Court of Appeals stated:

> The 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 ***that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses.***

Schultz, 291 Md. at 14 (emphasis added).

The Court formed the current standard by which special exception uses are judged through the above quoted language. More recently, in the case of *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995), the Court of Special Appeals fully explained the *Schultz* standard and stated,

> By reasons of the holdings in *Schultz v. Pritts*, 291 Md. 1 (1988) and its progeny, [the general conditions listed in BCZR Sections 502.1(a) through (h)] 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 ([Baltimore County]) in this case.

Mossburg, 107 Md. App. at 21.

The standard then, for the approval of special exception uses, has clearly been defined by precedent Maryland case law. A special exception use may not be approved if its adverse effects are "greater than or beyond" those that are typical to such a use. *Id.* Furthermore, after providing an analysis of the special exception standard as defined through precedent case law, the Court in *Mossburg* stated:

> We also keep in mind the standard of review we reiterated in *Mangione*, at 750, 584 A.2d 1318:
>
> . . .
>
> Specifically, we 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.

Mossburg, 107 Md.App. at 11-12, *quoting* *People's Counsel v. Mangione*, 85 Md.App. 738, 750 (1991), *citing* *County Commissioners for Cecil County v. Holbrook*, 314 Md. 210, 217-18 (1988).

Lastly, it is clear that in performing the above explained analysis, the standard requires a comparison of the proposed use's adverse impacts with "the inherent ones ordinarily associated with such uses." Schultz, 291 Md. at 14; Mossburg, 107 Md.App. at 21 ("the adverse effects must be greater than or above and beyond the effects normally inherent with such a use ..."). Therefore, the focus in this regard is on the adverse impacts that would be expected from, in this case, any airport that would be allowed by special exception in the R.C. 2 zone. Id.

In Sharp v. Howard County Board of Appeals, 98 Md.App. 57 (1993), the Court of Special Appeals affirmed the grant of a special exception use. The special exception use approved was an airport in a R (Rural) Zone in Howard County. In explaining the relevant special exception standard, the Sharp Court provided the following excerpt from the Schultz case which included a quote from Anderson v. Sawyer, a case which dealt with a special exception use for a funeral home in a residential zone.

> Because 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 a way other than would result from the location *of any funeral home in a residential zone*, the evidence presented by the protestants was, in effect, no evidence at all.

Sharp, 98 Md.App. 57, 79, *quoting* Schultz, 291 Md. at 13-14, *quoting* Anderson, 23 Md.App. at 624-25 (emphasis added).

The Sharp case provides valuable insight into the manner in which this Board must evaluate the inherent adverse impacts of this proposed special exception. As was done in Sharp, this Board must look at the inherent adverse impacts that would result from a typical airport. In reviewing the Board's opinion in Sharp, the Court of Special

Appeals held that there was no evidence that the Board applied "an erroneous understanding of *Schultz*, no matter how unartfully the Board framed the language of the decision." *Id.* at 86. The Court of Special Appeals explained the Board's decision in *Sharp* as follows:

> In any case-by-case analysis, the zoning body may, in the application of its expertise, recognize effects of a proposed use that it considers common to that use regardless of where it may be located in the applicable zone(s).
>
> . . .
>
> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind and degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id.

The Court of Special Appeals in *Sharp* noted that the Board had correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Id.* at 87.

Finally, again demonstrating the correct manner in which to analyze adverse impacts under the *Schultz* standard, the Court of Special Appeals noted that the Board properly "resolved that the actual noise generated by Glenair's operations did not rise to the level of adverse effects beyond those inherent in such an airfield located anywhere in the R-District." *Id.*

Below, Petitioner applies the Special Exception Standard to Helmore Airport. Preliminarily though, it is necessary to understand petitioner's burden and protestant's burden in a special exception case.

F. PETITIONER HAS THE BURDEN TO DEMONSTRATE THAT HELMORE AIRPORT MEETS THE SPECIAL EXCEPTION STATUTORY CONDITIONS.

Before addressing the conditions the legislature has established in regard to approval of special exception uses, it is important to note exactly what Petitioner's burden is in a case such as this. "The applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements." *Schultz*, 291 Md. at 11. These statutory conditions and the proper way to analyze them is fully explained above, and Petitioner demonstrates in the following section that the Helmore Airport does in fact meet these statutory conditions.

However, a petitioner "does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community." *Id.* In fact, it is the protestant's burden to show that the proposed use would have an adverse impact on the relevant area(s) different than the adverse impact that would be expected from the specific type of special exception use. As set forth in the *Anderson* case, and noted in both the *Schultz* case and the *Sharp* case:

> Because there [are] 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 would 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.

Id.

V. THE APPLICATION OF THE SPECIAL EXCEPTION STANDARD TO HELMORE AIRPORT

As shown below, the Helmore Airport satisfies the requisite statutory conditions for special exception uses. Additionally, the Helmore Airport does not have a greater detrimental impact on the surrounding areas than the detrimental impact ordinarily associated with an airport. Since there is no legally sufficient evidence that Helmore Airport's detrimental effects are above and beyond those inherently associated with an airport, a denial of Petitioner's request would be arbitrary and capricious.

A. THE HELMORE AIRPORT SATISFIES THE SPECIAL EXCEPTION STATUTORY CONDITIONS.

The Airport at Helmore Farm is a privately owned and operated airport. As explained above, Petitioner has voluntarily placed self-imposed restrictions on the airport, its structure and its use. There is no evidence that the Helmore Farm Airport fails to meet the requisite conditions involved with special exceptions. The self-imposed limitations Petitioner has placed on the airport only further diminish the detrimental effects inherent with the special exception use of an airport. The testimony from Petitioner's experts clearly evidences that the airport meets all the of BCZR § 502.1 and does not detrimentally affect the surrounding areas.

Timothy Madden testified on behalf of the Petitioners and was accepted as an expert in the fields of landscape architecture, land planning, and zoning. Mr. Madden testified that the Helmore airport met all the conditions of BCZR § 502.1. *See* testimony of Timothy Madden at pp. 33-38, from the 5/4/99 hearing. (Ex. 3).

Specifically, Mr. Madden gave his opinion that the Helmore airport would not tend to create congestion in roads beyond what he would ordinarily expect for an airport in the R.C. 2 zone because "the use proposed here is a very lightly used and controlled facility, that will generate well below what you normally find as an airport impact in the R.C. 2 zone. He further testified that the Helmore airport "operation will not affect the adjacent land uses negatively." *Id.* at 33-34. Regarding whether the airport at Helmore Farm will create a potential hazard from fire, panic or other dangers beyond what he would ordinarily expect for an airport use in this zone, Mr. Madden gave his opinion that "this airport use will generate an impact well below what you would normally expect to find of airports, ... [t]hat greatly reduces those potential hazards. *Id.* at 34. Further, as to whether the Helmore airport will tend to overcrowd the land beyond what he would normally expect for an airport use in this zone, Mr. Madden testified, "I believe that those congestions and/or other impacts associated with an airport in the R.C. 2 zone will not be created at this facility." *Id.* at 34-35. Additionally, with regard to whether the airport will interfere with provisions for schools, water, sewage and transportation beyond what he would expect for an airport use in this zone, Mr. Madden stated, "there will be no impact. ... [I]t will have no impact on those facilities." *Id.* at 35-36.

Madden also testified as to his opinion regarding the Helmore airport's impact on the surrounding area.

> [C]omparing this specific proposed airport to what I would expect to see of an airport in the R.C. 2 Zone, I believe since the facilities, or activity, are so greatly reduced in this case, that I do not see any impact greater than

> what we would expect. On the contrary, I would find the impact from this facility to be much lower than expected of that of an airport in an R.C. 2 Zone.

Id. at 38.

Additionally, Petitioner submitted testimony from James Matis as an expert in civil engineering and zoning. Mr. Matis explained that the Helmore airport met all the conditions of BCZR § 502.1. *See* testimony of James Matis at pp. 182-186 from 4/27/99 hearing. (Ex. 2).

Mr. Matis testified that the airport at Helmore Farm would not tend to create congestion in roads, streets, or alleys above and beyond what would normally expect for an airport use in the R.C. 2 zone "based on the self-imposed restrictions on the plan ...". *Id.* at 182-183. He further testified that the Helmore airport would not create a potential hazard from fire or other dangers beyond what he would expect from an airport use in this zone based on "the limitations imposed on the plan, for example, with respect to fire, there [is] no fuel storage proposed on the site, no fueling of aircraft." *Id.* at 183. As to whether the Helmore airport would overcrowd the land beyond what he would normally expect for an airport use in this zone, Mr. Matis gave his opinion that it would not since "there will be a very limited number of flights, very few people embarking or arriving on flights, ...". *Id.* at 183-184.

In sum, he opined that the airport would meet all the requisite conditions since based on the airport's self imposed restrictions the intensity of the airport's use is much less than a typical airport. *Id.* Mr. Matis explained that because of the self-imposed

restrictions, the Helmore airport will not have all of the things he would expect with a typical airport.

> [B]ased on the self-imposed restrictions on the plan; the fact the facility is a private facility as opposed to a commercial facility, and, as such, there are no ground support or hangers or aircraft control towers associated with this proposed use.
>
> . . .
>
> I don't believe it will overcrowd the land in that there will be a very limited number of flights, very few people embarking or arriving on flights, no ground support staff, that type of thing that I normally associate with an airport.
>
> . . .
>
> [O]nce again, the intensity of this use, the limitations imposed on the plan are such, there's not - once again - there's very few passengers. Also, there's not ground support staff in terms of transportation. There are no failing intersections in the area.
>
> . . .
>
> [T]here are no buildings associated with this particular proposal and, therefore, there should not be any interference with the light and air.

Id. at 183 - 186.

B. THE APPLICATION OF THE *SCHULTZ* STANDARD TO THE HELMORE FARM AIRPORT - THE AIRPORT DOES NOT HAVE A GREATER DETRIMENTAL IMPACT THAN THAT ORDINARILY ASSOCIATED WITH AN AIRPORT IN AN R.C. 2 ZONE.

Protestants submitted no evidence that the Helmore Farm Airport manifests any detrimental effects above and beyond those ordinarily associated with an airport. In fact, Protestant's own expert, Paul Solomon, who testified as an expert on land planning, not only agreed that there are different types of airports, but testified that the Helmore Farm Airport is a less intensive use of an airport than what is typically expected for an airport. *See* pp. 117 and 119 of 6/23/99 testimony from Paul Solomon and attached hereto as **Exhibit 8**.

Furthermore, when Mr. Solomon was asked a series of questions regarding the types of characteristics he would expect to typically be related with an airport, he answered as follows:

A. "You would find a strip to land an airplane, or series of strips and support facilities, including hangars, gas tanks, d[i]esel tanks. So it would include the facilities to land a plane and to service a plane, and service the passengers that are involved with that airport, so it could be a very large airport, it could be a small airport, it could be simply fixed - wing."

Q. Do you normally expect a parking lot to park the cars, would [that] be a typical aspect?

A. Consistent with an airport, yes.

Q. You could typically expect some infrastructure by way of roads to access?

A. Yes. Most likely.

Id. at pp. 117-118.

Clearly, the self-imposed restrictions that Petitioner has instituted on the Helmore Farm Airport have caused the airport to have less detrimental effects than those typically associated with an airport.

C. EVIDENCE OF DETRIMENTAL EFFECTS ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH AN AIRPORT IS REQUIRED TO DENY PETITIONER'S PETITION FOR SPECIAL EXCEPTION.

Protestants put forth testimony from neighbors of Helmore Farm. Those individuals oppose the airport based on the noise generated from the airport. However, the fact that there is opposition to the airport, and that there arguably may be some detrimental effect resulting from the airport, does not defeat the petition for special exception. Only in the event that this particular airport is shown to have detrimental

effects "above and beyond the inherent [detrimental effects] ordinarily associated with [an airport]" would the petition correctly be denied. Mossburg, 107 Md.App. at 22.

As explained by the Court of Appeals in Mossburg, supra,

> We therefore 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***.

Mossburg, 107 Md.App. at 13 (emphasis added).

Although the Mossburg case dealt with a petition for a different type of special exception use that was proposed in a differently zoned area, the analysis and standard are the same. Therefore, applying this standard to this instant matter, the focus required of the Board must be to "look for evidence ... of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the [R.C. 2] Zone in order to determine whether the ... impact at the subject site is greater." Id.

In this case, Protestants have failed to provide testimony that the adverse effects from Helmore airport were greater than those that would generally be expected from a typical airport anywhere in an R.C. 2 Zone. Paul Solomon, who testified on behalf of Protestants as an expert in land use planning, was asked by counsel on direct examination:

Q: [D]o you have an opinion as to whether the proposed use at this site has an effect, adverse effect, on the adjoining and surrounding properties that is above and beyond those inherently associated with the same use elsewhere in the 129,000 acres of R.C. 2 land of Baltimore County, do you have an opinion?

A: Well, my opinion is that this use can more consistently be accommodated in other parts of the R.C. 2 zone, that there are better - there are locations where it would be consistent with the agricultural use, more consistent with the purpose

and intent of the agricultural zone.

Q: Let me rephrase my question. My question is whether - do you have an opinion as to whether the adverse effect with respect to this site is the same as or greater than the adverse effect at another site elsewhere in the R.C. 2 zone?

A: The adverse impact would be less in other areas of the R.C. 2 zones.

See testimony of Paul Solomon, pp. 83-84, from 6/23/99 hearing. (Ex. 8).

In the first question asked of Mr. Solomon by Protestants' counsel, Mr. Solomon declines to fully answer the question by not giving an opinion as to whether Helmore airport's adverse effects are above and beyond those inherently associated with the same use. Instead, Mr. Solomon opines that an airport "can more consistently be accommodated in other parts of the R.C. 2 zone ... where [the airport] would be more consistent with the agricultural use ..." *Id.* Mr. Solomon's answer clearly did not address the question and therefore, Protestants' counsel asked the follow-up question (provided above). However, this time, in "rephras[ing]" his question, Protestants' counsel left out important language that was included in the first question. *Id.* In the rephrased question, Protestants' counsel declined to ask Mr. Solomon whether Helmore airport's adverse effects are greater than the adverse effects "**inherently associated with the same use elsewhere in the 129,000 acres of R.C. 2 land ...**", language that was included in the first question but obviously did not obtain the result Protestants' counsel was seeking. *Id.*

Further, Mr. Solomon's response to this follow-up question did not address whether the adverse impacts at this particular location were greater than one would ordinarily expect. Mr. Solomon only stated the obvious, that there are other locations

that are more suitable. His testimony misses the point of *Schultz* and *Mossburg*. The Petitioner need not prove that there is no better location. The Petitioner only needs to prove that the special exception standard is met.

There is simply no evidence that the detrimental effects that can be ordinarily expected from an airport are greater at the areas surrounding the Helmore Farm Airport than would be expected to exist at an airport in other R.C. 2 Zones. Without such evidence, the standard set forth in *Schultz* and recognized as the existing standard regarding the approval of special exception uses dictates that Petitioner's petition be granted.

D. THERE IS NO LEGALLY SUFFICIENT EVIDENCE THAT THE AIRPORT GENERATED NOISE IS AN ADVERSE IMPACT ON THE SURROUNDING AREAS BEYOND THE ADVERSE IMPACT INHERENT IN SUCH A USE LOCATED ANYWHERE IN THE R.C. 2 ZONE.

1. NOISE IS AN ADVERSE EFFECT INHERENT IN THE OPERATION OF AN AIRPORT.

Obviously, the operation of all airports inherently produces some degree of noise. The Court of Special Appeals, in the *Sharp* case, noted that the Howard County Board of Appeals correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Sharp*, 98 Md.App. at 87.

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind and degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District.

Id. at 86.

The Board in *Sharp* approved the Glenair airport as a special exception use, and "resolved that the actual noise generated by Glenair's operations did not rise to the level of adverse effects beyond those inherent in such an airfield located anywhere in the R-District." *Id.*

However, the finding that the operation of a private airport inherently involves noise as an adverse effect does not preclude the approval of the special exception request. In *Sharp*, the Board found that the noise generated at Glenair was an inherent adverse effect but approved the special exception use since they also found that the noise generated "did not rise to the level of adverse effects beyond those inherent in such [a use] ...". *Id.* at 87.

Similarly, in this instant matter, while the operation of the airport at Helmore Farm naturally causes some degree of noise during the taking off and landing of aircraft, Deputy Zoning Commissioner Kotroco approved the special exception request. He noted that [t]he effects of an airport at this location are very limited in duration. The arrival of an airplane takes only seconds." *See*, Deputy Commissioner Kotroco's Opinion at p. 12. (Ex. 1). He further noted that "[t]he sound of an airplane was not offensive, even when standing on the edge of the runway." *Id.* As to the helicopter operations, he stated that while "[s]tanding directly aside the landing area, I found the noise from the helicopter to be offensive, but only for "about 10-15 seconds." *Id.* at 13. Importantly, Mr. Kotroco held that:

> I believe longer periods of noise will be generated by the development of the Elder tract, ... low drone of traffic on I-695 and I-83; the newly acquired traffic and news helicopters put into service ...; the heavy farm equipment; and traffic in general on Greenspring Valley Road, then the limited operation of this airport at this location.

Id. at 13 – 14.

The self-imposed restrictions Petitioner has placed on this private airport will clearly limit the impact of the inherent adverse effect of airport generated noise on the surrounding communities. Since as held by Deputy Commissioner Kotroco and as testified to by Petitioner's experts, the airport generated noise does not adversely impact the surrounding areas in a manner beyond that normally associated with such a use, a denial of Petitioner's special exception request would be wrong as a matter of law.

2. PETITIONER'S EXPERT CHARLES LAMB TESTIFIED THAT THE HELMORE AIRPORT HAS THE LEAST AMOUNT OF NOISE IMPACT ON SURROUNDING COMMUNITIES THAT HE HAS EVER SEEN.

Charles Lamb, who was accepted as an expert on behalf of Petitioner in the field of airport engineering design which included noise impact, testified as to the compatibility of the current land uses at and around Helmore Farm that are affected by the airport generated noise. He explained the research his firm conducted and the sound exposure analysis regarding Helmore airport that his firm prepared. *See* Petitioner's Exhibit #2.

Mr. Lamb testified that the Federal Aviation Administration ("FAA"), Housing and Urban Development ("HUD"), and Environmental Protection Agency ("EPA") have all accepted an Ldn standard for evaluation of airport generated noise. *See*

testimony of Charles Lamb, pp. 113, 164-165, from the 4/27/99 hearing. (Ex. 7). He further explained that an Ldn standard is the average from noise levels taken with nighttime operations being penalized by ten decibels. Id. at 113. (Ex. 7)

Mr. Lamb testified that at Helmore Farm, the area within the 65 Ldn noise line encompasses only land uses that are compatible with that level of noise. Specifically, agricultural uses and horse breeding with riding stables are all uses which are compatible with land subject to noise levels up to 75 Ldn. Id. at pp. 114-117. (Ex. 7)

Regarding the noise levels at all of the surrounding residences, Mr. Lamb testified that none of the levels were close to 65 Ldn, which is the national limit at which land may be used residentially. Id. at 116, 120-121. (Ex. 7).

Furthermore, Mr. Lamb testified that in his opinion the Helmore airport has no adverse impact on the adjacent community. Id. at 124. (Ex. 7). In fact, Mr. Lamb explained that comparing the Helmore airport to all the other airports he has studied, "this airport has the least amount of noise impact on the adjacent residence that [he] has seen ...." See, testimony of Charles Lamb at p. 155, 4/27/99 hearing. (Ex. 7). Earlier in his testimony, Charles Lamb stated that, "In the twenty-seven years I have been working ..., I have not done a project where the impact of the airport were less than this on adjacent residential structures." Id. at 122. (Ex. 7). He also testified that the Helmore airport has the least sound impact on *the surrounding community* that he has ever seen. Id. at 125. (Ex. 7).

Lastly, only one neighboring property is affected by the noise generated by the Helmore airport by having a portion of the property fall within the 65 Ldn line. As

testified to by Charles Lamb, the property to the west of the airport that is owned by Susan Immelt includes 15' of which is encompassed within the 65 Ldn line. *Id.* at 161. (Ex. 7).

However, the Ldn value thirty-five feet off of the Helmore Farm property line into Susan Immelt's property was calculated by Charles Lamb to be 61.3 Ldn. *Id.* at 120. (Ex. 7). As previously stated, residential uses are compatible with an Ldn level below 65 Ldn. Additionally, the setback requirements for a dwelling in an R.C. 2 area is thirty-five feet from a lot line other than a street line. *See*, BCZR § 1A01.3.B.3.

Therefore, a dwelling could be constructed on Susan Immelt's property as close as permitted under the Baltimore County zoning regulations to the airport at Helmore Farm, and the noise generated by the airport still would not cause a situation where any land use was incompatible with the federal noise compatibility requirements.

In order for Susan Immelt to construct a residence that would fall within the 65 Ldn line, she would have to obtain a variance. The Courts have held that variances are presumptively impermissible. *See, Cromwell v. Ward*, 102 Md.App. 691, 699-703 (1995)("The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances ... A variance should be strictly construed ...").

In spite of those facts which demonstrate that it would not be possible for the airport to generate noise which would be incompatible with residential use, Petitioner has voluntarily agreed to relocate whatever portions of the airport would be necessary

or to alter the airport operation in the event that a land use is ever incompatible with the airport generated noise levels.

3. PROTESTANTS' EXPERT DR. KNIO FAILED TO BASE HIS ANALYSIS ON THE FAA REGULATIONS.

Protestants offered Dr. Knio as an expert in regard to the computation of the noise generated by the Helmore airport. *See* pp. 11-12 from transcript dated 7/1/99 and attached hereto as **Exhibit 9**. Dr. Knio opined that in contrast to the testimony of Charles Lamb, it is more appropriate to view the peak noise levels as the appropriate measure, rather than the average noise levels. *Id.* at 17-18. (Ex. 9). Dr. Knio testified that estimating the peak noise was a better measure than using the measure established in the Federal Aviation Regulations, Part 150. *Id.* at 17-18, 28,61. (Ex. 9).

Petitioner's expert, Charles Lamb, explained that his measurements were taken from Federal Aviation, Part 150 Regulations developed and adopted by the FAA and in concurrence with HUD and the EPA. *See* testimony of Charles Lamb, p. 112 of 4/27/99 transcript. (Ex. 7). As Mr. Lamb explained, those regulations use the Ldn measurement, which is computed on an average. *Id.* Furthermore, Mr. Lamb testified that he based his analysis on regulations produced by the FAA regarding noise compatibility planning and found in the *Federal Air Regulation Part 150 Airport Noise Compatibility Plan*. *Id.* at 115. (Ex. 7).

However, Dr. Knio chose to base his analysis on "a simplified calculation based on an engineering correlation that falls under SAES, Society of Automotive Engineering Standards." *See* Dr. Knio's testimony on p. 18-19 from the 7/1/99 hearing. (Ex. 9).

Therefore, while Mr. Lamb's analysis was based on regulations promulgated by the FAA, HUD and EPA, Dr. Knio's were based on a standard used by car makers.

Dr. Knio provided no authority for his opinion that the estimated peak measurements were more valid, other than his own opinion. Looking to Dr. Knio's experience with airport noise, Dr. Knio stated that this was the first time he acted as a consultant for airport noise. Id. at 54. (Ex. 9). Furthermore, he admitted that he did not look at the compatibility of land uses when performing his noise analysis for this case. Id. at 56-57. (Ex. 9).

4. DR. KNIO'S TESTIMONY SHOULD NOT BE GIVEN ANY PROBATIVE VALUE AND SHOULD NOT AFFECT THE BOARD'S DECISION IN THIS MATTER.

Dr. Knio's testimony regarding the proper standard to be used in evaluating the airport noise is solely based on his own personal beliefs. His opinion in this regard lacked any scientific or evidentiary support. As a result, Dr. Knio's testimony simply does not provide evidence that should be afforded any probative value. See *Beatty v. Trailmaster*, 330 Md. 726, 740 (1993)(holding that an expert's testimony that was based solely on personal opinion and without regard to the relevant statutory standard, did not provide admissible evidence).

In *Beatty v. Trailmaster*, the plaintiff was injured in an automobile accident and subsequently brought negligence and products liability claims against numerous corporate defendants. One of the key issues was what effect the height of the Ford Bronco bumper that collided with plaintiff's vehicle had on the Bronco's safety. Defendants demonstrated that the Bronco's bumper height complied with the statutory

bumper height standard. Plaintiff provided an expert who opined that the "statutory standard was not the safest; that it was too liberal ... too high." Id. at 740 (internal quotations omitted).

The Court of Appeals ruled that plaintiff's expert's testimony did not provide evidence "creating a genuine issue of material fact" because the testimony was only based on the expert's background, training and experience. Id. The Court further clarified its holding stating that,

> Without more, [plaintiff's expert's] opinion that the defendants were negligent and their product unreasonably dangerous, despite compliance with the statutory standard, is insufficient evidence ... particularly when the expert cites neither developing consensus nor sound data to buttress his opinion.

Id.

The Court's analysis of the plaintiff's expert's testimony in Beatty is analogous to this matter. Protestant's expert, Dr. Knio, based his opinion, that the relevant federal regulations supplying the standard for measurement of airport generated noise were not sufficient, on nothing other than his own personal feelings. As a result, Petitioner submits that Dr. Knio's testimony holds no probative value and should not influence the Board's decision in this matter.

"[I]f there is no 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 use is arbitrary, capricious, and illegal." Schultz, 291 Md. at 12.

VI. PROTESTANTS ASSERT AN INCORRECT INTERPRETATION OF THE SPECIAL EXCEPTION STANDARD.

At the beginning of these proceedings before the Board, Protestants' attorney provided opening statements identifying his clients' arguments in this matter. One of these concerns the impact the Helmore airport has on the surrounding properties. As explained below, whether the Helmore airport would have less impact if it were located in other areas is not the proper focus for this Board to consider.

A. THE CORRECT FOCUS REGARDING ADVERSE IMPACTS IS ON THOSE ASSOCIATED WITH A TYPICAL AIRPORT. IT IS INCORRECT TO LIMIT THE ANALYSIS TO THE SUBJECT AIRPORT'S ADVERSE IMPACTS.

Maryland case law provides ample discussion regarding the standard to be used in considering special exception uses. There is no need for the Board to look to any source other than the *Schultz* standard which has been thoroughly explained in recent case law. *See e.g., Mossburg, supra; Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.App. 616 (1998); *AT&T Wireless Services v. Baltimore*, 123 Md.App. 681 (1998).

Protestants assert that it is relevant to analyze whether or not the Helmore airport would have less of an impact on surrounding areas if it were located elsewhere in an R.C. Zone. *See* Opening Arguments of Macy Nelson, Counsel for Protestants, pp. 14-15, 4/27/99 hearing and attached hereto as **Exhibit 10**. To perform such an analysis would be to incorrectly apply the *Schultz* standard and therefore should not be considered by the Board.

A special exception use is only to be denied if it "is properly determined to have an adverse effect upon neighboring properties in the general area." *AT&T Wireless*

Services, 123 Md.App. at 691. Maryland Courts have, numerous times, explained how to properly determine this. The case law requires that the reviewing agency examine the adverse effects of the proposed special exception use "at the particular location proposed", and then compare those to the adverse effects "ordinarily associated" with that **type** of special exception use. *Id.* at 692 (holding that, "The standard to be considered by the Board is whether the adverse effects of the use at the particular location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the R-1 Zone. ").

Therefore, the correct focus in this case is a comparison of Helmore airport's adverse impacts with those of a typical airport. As demonstrated through expert testimony, the adverse impacts resulting from Helmore airport are considerably less than those of a typical airport based on Petitioner's self-imposed restrictions. Helmore airport, while meeting all relevant regulations as an airport, simply does not have all of the deterious effects that are inherent in a typical airport.

B. THERE IS NO NEED TO CONSIDER WHETHER HELMORE AIRPORT'S ADVERSE IMPACTS WOULD BE LESS IF THE AIRPORT WAS IN A DIFFERENT LOCATION. THE PROPER ANALYSIS IS WHETHER HELMORE AIRPORT'S ADVERSE IMPACTS ARE GREATER THAN THE ADVERSE IMPACTS THAT WOULD RESULT FROM THE EXISTENCE OF A TYPICAL AIRPORT "ELSEWHERE IN THE ZONE".

Protestants brought much attention to the possibility that Helmore airport's adverse impacts on the surrounding area could be less if the airport was located elsewhere. Again, Protestants are confusing the requisite standard to be applied. What is relevant to the examination of special exception uses is whether the adverse impacts

from the proposed use are greater than "the effects normally inherent with **such a use** would be generally elsewhere in the zone." *Hayfields*, 122 Md.App. at 640 (emphasis added).

Therefore, in performing this analysis, one does not compare the **Helmore airport** impacts at Helmore Farm with those that may exist if the **Helmore airport** existed elsewhere. Instead, one looks at what the effects would be of **a typical airport** *anywhere in the zone* and compares those effects to Helmore airport's effects at Helmore Farm. The Court in *Mossburg* clarified this issue as "the requirement that such adverse effects be greater, i.e., above and beyond, the adverse impact generally in other areas where such special exceptions are permitted." *Mossburg*, 107 Md.App. at 13.

Maryland Courts have made it clear that only if the adverse effects of Helmore airport are greater than those of a **typical airport located anywhere in the zone**, should the petition for special exception should be denied. *See e.g.*, *Schultz*, 291 Md. at 22-23, ("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**." (emphasis added)); *Hayfields*, 122 Md.App. at 642 (quoting *Schultz* at 642); *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18 (1988)("Where 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 application should be denied."); *AT&T Wireless Services v. Baltimore*, 123 Md.App. 681, 692 (1998)(quoting *Holbrook* at 217-18);

Petitioner submitted expert testimony that the adverse effects that would be associated with a typical airport far exceed those of Helmore airport. Therefore, the Deputy Zoning Commissioner's approval of Helmore airport as a special exception must be affirmed. To apply the standard asserted by the Protestants would actually penalize the Petitioner for self imposing certain operational restrictions, and render the results of any analysis absurd.

C. PROPOSED FUTURE AND SPECULATIVE USES OF THE LAND SURROUNDING HELMORE FARM ARE IRRELEVANT TO THE APPLICATION OF THE SPECIAL EXCEPTION STANDARD.

During the hearings in this matter, Protestants introduced testimony from Douglas Carroll and Susan Immelt, owners of property adjacent to Helmore Farm, regarding a possible future use for the Carroll and Immelt properties. Specifically, both Carroll and Immelt testified that they have considered using their properties for horse operations. *See*, testimony of Douglas Carroll, pp. 105-108, 5/18/99 hearing (Ex. 5); testimony of Susan Immelt at pp. 162-171, 7/23/99 hearing. (Ex.6) . Both Douglas Carroll and Susan Immelt further testified that they believed that the helicopter operation would negatively affect the ability for them to use their land for horse operations. Id.

Both Carroll's and Immelt's testimony regarding such a possible future land use may not be considered by this Board. "[T]estimony revealing the possibility of future

residential development of this land ... does not come close to showing a future deleterious effect upon the public health, safety or general welfare." Schultz, 291 Md. at 12-13, *quoting* Deen v. BG&E, 240 Md. 317, 330-31 (1965)(affirming a grant of a special exception use for a portion of proposed transmission lines that traversed a rural area not then serviced by public facilities).

Furthermore, evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impact that would be different ... in other [R.C. 2] Zone areas of [Baltimore County]." Mossburg, 107 Md.App. at 18 (holding that the Board's statement regarding a possible traffic hazard was "not a finding of what is, but what *may* be", and such a finding is "mere speculation". Id.).

Therefore, Douglas Carroll's and Susan Immelt's testimony regarding the possibility of using their land for a purpose other than the current agricultural use cannot properly be considered by this Board to have any probative value. Similarly, the testimony from another of Protestants' witnesses, Dennis Potts, also cannot properly have any probative value.

Mr. Potts testified that he has spoken with Douglas Carroll about the possibility of setting up a horse operation on Douglas Carroll's property. See testimony of Dennis Potts, pp. 136-137, 5/18/99 hearing and attached hereto as **Exhibit 11**. Counsel for Protestants asked Mr. Potts if having a helicopter operation next door to a horse operation would effect the ability to run the horse operation. Id. at 140-141. In response, Mr. Potts stated, "I certainly would think so. My opinion, it would." Id. Later Mr. Potts was asked if he would advise a "hypothetical client" to invest in a

hypothetical horse operation on Douglas Carroll's property. Id. at 144-145. Mr. Potts responded that he would no so advise a "hypothetical client" because Mr. Potts was "not sure you can get an umbrella [insurance] policy, and I think that would be a limiting factor." Id.

Dennis Potts testimony cannot properly be considered as having any probative value in this matter because he failed to provide any relevant testimony. Mr. Potts could not provide any evidence that there was any detrimental impact on the current agricultural business on Carroll's property.

Further, although as explained above future possible uses of the property surrounding Helmore Farm is not relevant to this Petition for Special Exception, Mr. Potts also could not provide any evidence that there would be any detrimental impact on a horse operation business. All that Mr. Potts essentially testified to was his personal opinion which was not based on any relevant experience with the relationship between the horse operation business and airport operations. Mr. Potts did not even provide any evidence that the airport operation at Helmore Farm had a detrimental effect on the current and fully operating horse business being performed at Helmore Farm. Finally, Mr. Potts admitted that he had only "been by [Helmore Farm]", and was not familiar with the FAA's Part 150 Regulations. Id. at 146. Clearly, Mr. Potts testimony fails to provide any relevant evidence which should be considered as having any probative value in this matter. The testimony of Mr. Potts completely ignores that a successful horse farm is operated on the same site as the airport today.

As explained above, there is no relevant, probative evidence before this Board that would allow a reversal of Deputy Zoning Commissioner Kotroco's Opinion in this matter.

> [I]f there is no 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 use is arbitrary, capricious, and illegal.

See e.g., Schultz, 291 Md. at 11; *Richmarr Holly Hills, Inc. v. American PCS*, 117 Md.App. 607 (1997).

VII. THE DEFINITION OF AN "AIRPORT" INCLUDES HELICOPTER OPERATIONS.

Protestants argue that the BCZR do not allow a special exception use of an airport to include helicopter activity. However, Protestants contention is incorrect and without basis. Deputy Zoning Commissioner Timothy M. Kotroco, as part of his Decision in this matter, reviewed the definition of an airport in both the BCZR and Webster's Dictionary. Deputy Commissioner Kotroco held that "helicopters would, in fact, be included within the special exception request for an airport operation." *See* Deputy Commissioner Kotroco's Opinion in Case 99-294-SPHX at p. 12. (Ex. 1)

A. THE BCZR DEFINITION OF "AIRPORT" IS CLEAR ON ITS FACE.

To begin an analysis of the definition of an airport, the Baltimore County Zoning Regulations are the primary authority. Specifically, BCZR § 101 defines "airport" as: "Any area of land or water designated and set aside for landing or taking off of

aircraft." While the regulations define a helicopter as "any rotary wing aircraft ...", the word "aircraft" itself is not defined by the regulations.

"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 v. Connors*, 339 Md.24, 35 (1995)(quoting *Jones v. State* 36 Md. 255, 261 (1994)).

Furthermore, the principals of statutory construction mandate that if the meaning of a word is questioned, common sense should dictate. The Court in *Kaczorowski v. City of Baltimore*, 309 Md. 505, 513 (1987), addressing a statutory construction issue stated, "The court, in seeking to ascertain legislative intent, may consider the consequence 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.***" (emphasis added).

Principals of statutory construction also mandate that when "interpreting a statute, we assume the words of the statute have their ordinary and natural meaning, absence some indication to the contrary." *Atkinson v. State*, 331 Md. 199, 215 (1993). "A principal rule of statutory construction is that 'when the legislature uses commonly

accepted words or terms in a statute without qualification, courts construing the statute can and should assume that the legislature was aware of the commonly accepted meaning of the word{s} or terms{s}.' " *In re Douglas P.*, 333 Md. 387, 392 (1994); (citation omitted) *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md.App. 290, 310 (1997)("in the absence of statutory definition, we must give the term ... its plain and ordinary meaning").

Lucas proposes to place an airport on Helmore Farm which is zoned RC-2, where airports are permitted by special exception. The Baltimore County Zoning Regulations, § 101 advises that *Webster's Third New International Dictionary* is to be consulted for words not defined within that section. *Webster's* definition for "aircraft" is:

> A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces – used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats.

Therefore, the definition of "airport" adopted by the Baltimore County Zoning Regulations clearly includes helicopter operations.

B. ANY AMBIGUITY AS TO THE RELEVANT DEFINITION OF "AIRPORT" IS RESOLVED THROUGH AN ANALYSIS OF THE COUNTY COUNCIL'S INTENT.

As explained above, the zoning regulations clearly adopt the definition of "airport" to include helicopter operation. However, in the event there is any perceived ambiguity in the definition of "airport", further analysis demonstrates the legislature's intent on this issue.

There are innumerable places in the regulations where the County Council chose to limit definitions and exclude permissible uses. The County Council was free to limit their definition of airport but they chose not to do so. Similarly, the Council was free to provide a definition for aircraft but instead chose to reference regulation users to *Webster's Dictionary*.

In 1979, the Baltimore County Planning Board adopted its final report entitled, Growth Management Legislation, Phase I. [Petitioner's Ex. 10] Within that report, the Planning Board did not recommend airports be permitted by special exception in R.C. 2 Zones. *Id.* at p. 4. Later that same year, the County Council passed County Council, Baltimore County, Maryland Bill No. 178-79. [Petitioner's Ex. 11] Bill 178-79 permits airports as special exception uses in R.C. 2 Zones.

As was the case with all R.C. Zones, the Baltimore County Council was free to exclude airports from R.C. 2 Zones. However, as testified to by Jack Dillon who appeared on behalf of the Protestants, the County Council chose to allow airports as a special exception use in the R.C. 2 Zone. *See* testimony of Jack Dillon, pp. 78-80, 5/18/99 hearing and attached hereto as **Exhibit 11**; BCZR § 1A01.2.C.1; Maryland Bill No. 178-79. In fact, also as testified to by Mr. Dillon, the County Council took this action against the recommendation of the Baltimore County Planning Board. *See* testimony of Jack Dillon at p. 80 (Ex. 12); Baltimore County Planning Board Final Report, Growth Management Legislation, Phase I, submitted as Petitioner's Exhibit 10.

Since the legislature could have either excluded airports from R.C. 2 Zones or limited the definition of airport so as not to include helicopter operations, clearly the

legislature intended to allow the existence of airports like the Helmore Farm Airport as a special exception use in R.C. 2 Zones.[2] In light of the conditions imposed on special exception uses, along with the exclusion of various types of aircraft operations in other R.C. Zones, the County Council more than likely felt that the regulations in place were more than adequate to protect the County's interests.

C. THE BCZR DEFINITION OF "AIRPORT" WAS DERIVED FROM THE FAA DEFINITION OF "AIRPORT".

Petitioner submitted testimony from Charles Lamb, who was accepted as an expert on airport engineering design including the impact of airport generated noise, as to the FAA's definition of an airport. Mr. Lamb testified that the FAA's definition of "airport" was, "An area on land or water used or intended to be used for the landings and take-offs of aircraft, including its buildings and facilities, if any." *See* testimony of Charles Lamb, p. 108, 4/27/99 hearing and p. 86, 7/1/99 hearing. (Ex. 7).

From a comparison of the FAA's definition of airport with that of the Baltimore County Zoning Regulations, it is obvious that the two are extremely similar. The definition in the Baltimore County Zoning Regulations for an airport is found at BCZR § 101 and provides, "Any area of land or water designed and set aside for landing or taking off of aircraft." It is certainly no coincidence that these two definitions are so similar. Obviously, the County Council drafted the BCZR definition from the FAA's

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[2] *See e.g., Schultz*, 291 Md. at 11 ("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.")(emphasis added).

definition, as is extremely proper considering that the FAA is a clear authority on airports.

Yet, the BCZR definition is slightly broader than that of the FAA. Again, the County Council was fully capable of drafting a definition for airports that limited the inclusion of helicopter operations. However, the County Council chose not to do so, and it is not in this Board's power to impose an artificial interpretation of a term defined by the County Council.

D. THE *SMITH* DECISION IS CLEARLY DISTINGUISHABLE AND DOES NOT REQUIRE A DENIAL OF THIS PETITION FOR SPECIAL EXCEPTION.

Protestants unsuccessfully contended, before the Deputy Zoning Commissioner, that a decision in a previous zoning case establishes that by definition, an airport does not include a helicopter facility. The decision Protestants cite to is Robert J. Smith's 1989 Petition for Special Hearing and Special Exception, Case No. 90-1-SPHX. However, as noted by Deputy Zoning Commissioner Timothy M. Kotroco, the *Smith* decision is distinguishable from this instant matter.

In the *Smith* case, the petitioner requested:

1) "a special hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) [was] permitted under the special exception requirements for an airport in an R.C. 2 Zone", and

2) "a special exception to approve the use of the property as an airport (private grass landing strip), to include the landing of a helicopter". *See, Smith* decision, p. 1.

The crucial difference between the facts in *Smith* and those before the Board is that Robert Smith's property was not equipped for use as an airport. Indeed, he only planned to operate helicopters on his property, and only could operate those aircraft on

his property. Mr. Smith admitted that he had only flown helicopters and did not own an airplane. Mr. Smith did not submit any expert testimony as to the ability of his property to function as an airport. In reality, Mr. Smith really was not seeking to use his land as an airport.

In his opinion in this case, Deputy Zoning Commissioner Timothy M. Kotroco stated that although he agreed with the decision in the *Smith* case, he believed the Helmore Farm Airport "pose[d] a different scenario." *See Smith* decision at p. 11. Mr. Kotroco noted that between the *Smith* case and the facility at Helmore Farm:

> What sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the *Smith* case is not directly applicable to the special exception request before me.

Id. Unlike the facts in this matter, in the *Smith* case there was no airport but rather only helicopter activity. Therefore, the question of whether by definition an airport included helicopter operations was not a relevant matter.

In contrast, Petitioners here have demonstrated through expert testimony that the airport at Helmore Farm functions as an airport, is in full compliance with all relevant regulations, and is recognized as an airport by the FAA and the MAA. The *Smith* decision is not binding on this Board. In fact, all of the relevant precedent case law supports the findings in the Deputy Zoning Commissioner's decision.

VIII. THE AREA OF AVIATION IS PREEMPTED BY THE FEDERAL REGULATIONS.

Petitioner has voluntarily imposed restrictions on Helmore Airport and its operation. These self-imposed limitations will reduce the adverse effects on the

surrounding areas. Petitioner has the ability to limit Helmore Airport and its operation but the Board does not. The Supreme Court has held that attempts by local governments to control aviation operations are preempted by federal law.

A. THE U.S. SUPREME COURT DECISION IN *CITY OF BURBANK* IS THE PREEMINENT AUTHORITY REGARDING FEDERAL PREEMPTION IN THE AREA OF AVIATION.

The U.S. Supreme Court in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854 (1973) held that local regulation of aircraft noise emissions and flight operations at airports were preempted by federal statute, through the Federal Aviation Act of 1958. The Supreme Court in *City of Burbank* discussed at length the Congress' intent regarding the preemptive scope of the Federal Aviation Act.

In *Price v. Chartered Township of Fenton*, 909 F.Supp. 498 (E. D. Mich. 1995), the Court stated,

> "**Federal courts, in the wake of *City of Burbank*, have held that various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted.** *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F.Supp. 678 (N.D.Y. 1989) (ordinance that limits, interlia, decibel levels in flight paths of airplanes is preempted); *U.S. v. City of Blue Ash*, 487 F.Supp. 135 (S.D. Ohio 1978) (ordinance requiring aircraft to make "noise abatement turns" is preempted)"; *Command Helicopters, Inc. v. City of Chicago*, 691 F.Supp. 1148 (N.D. Ill. 1988)(ordinance regulating lifting operations of helicopters is preempted); *Gustafson v. City of Lake Angelus*, 856 F.Supp. 320 (E.D. Mich. 1993) (ordinance restricting the storage, landing and flight altitude of aircraft are preempted). (emphasis added).

The Court of Appeals of Maryland in *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528 (1990) held that the County Board of Zoning Appeals' conditions placed on approval of an airport that limited the frequency of take-offs and landing of aircraft and

established a curfew for operation of those aircraft were preempted by federal law. The *Harrison* Court, quoting *Blue Sky Entertainment, Inc. v. Town of Gardiner*, stated:

> "The Supreme Court's decision in *City of Burbank* is the 'preeminent authority on the question of federal preemption in the area of aviation' ."

The *Harrison* Court concluded that:

> "The Board's condition three -- the curfew -- falls directly within the preemption rule of *City of Burbank*, as well as that of other cases we have cited. It is plainly an intent to limit aircraft noise by regulating the operation of aircraft in navigable airspace over which the FAA has control. Condition two is a less direct effort to control noise by controlling aircraft operations, but it is one, nevertheless ... We hold that both conditions are preempted under *City of Burbank* and, therefore, unconstitutional."

B. THE FAA REGULATIONS PREEMPT ANY STATE OR LOCAL REGULATIONS ON NOISE EMISSION.

Under *City of Burbank* and its progeny, the federal regulations preempt State and local regulations regarding noise emissions. Protestants, through the testimony of their expert Dr. Knio, have attempted to persuade this Board that the regulations within the FAA's Federal Aviation Regulations Part 150 are not authoritative in this matter.

However, the Supreme Court in City of Burbank, and other courts since then, including the Maryland Court of Appeals, has held that state and local regulations are preempted by the federal regulations. Therefore, the federal regulations found in the Federal Aviation Regulations Part 150 Airport Noise Compatibility Plan are not only authoritative, but also preempt any state or local attempts at such regulation.

Accordingly, this Board is restricted from basing its opinion in this matter on any regulations regarding noise compatibility other than the FAA's Part 150 Regulations.

Dr. Knio's opinion that the Part 150 Regulations do not constitute the appropriate standard in this matter is contrary to clear legal precedent and therefore must not be given any weight by this Board.

C. THE FAA REGULATIONS PREEMPT ANY STATE OR LOCAL REGULATIONS ON FLIGHT OPERATION.

Counsel to Protestants asked a series of questions regarding flight operation issues such as length of runways, clearance of obstacles, types of planes permitted to land at the airport and the creation of the "safest" airport. All those issues raised by counsel are flight operation issues which the FAA regulates.

Lamb testified that there are extensive FAA regulations regarding all of those flight operation issues. Clearly, based on *City of Burbank*, any its progeny above-cited, the FAA regulations preempt any local regulation which attempts to regulate flight operations. The Board may not deny the special exception on the basis of flight operations issues raised by the Protestants -- to do so would be an unconstitutional act. *See Harrison v. Schwartz*, 319 Md. 360 (1990). The FAA regulates flight operation issues, and the United States Supreme Court has ruled in *City of Burbank* that any regulating of flight operations by local authorities is unconstitutional.

D. THE BOARD CAN NOT LAWFULLY IMPOSE RESTRICTIONS ON THE HELMORE AIRPORT THAT WOULD AFFECT FLIGHT OPERATIONS.

Lucas has unilaterally limited and restricted his airport use further than what this Board would be permitted to do under the law. For example, Lucas placed a self-imposed curfew on his airport which this Board would not have the power to impose. Further, Lucas unilaterally imposed a condition of the number of flights at his airport,

another condition which the Board would not have the power to impose. Similarly, several of the self-imposed restrictions, such as the fueling of aircraft and the storage of aircraft, would also be conditions which the Board would not have the ability to impose.

The self-imposed restrictions and limitations, limitations which even the Board could not impose as conditions for special exception approval, further demonstrate that the proposed airport use at Helmore Farm would not have an adverse impact on the surrounding community above and beyond that which you would normally expect for an airport use in the RC-2 zone. A typical airport would have an unlimited number of take-offs and landings, no curfew, and a significant amount of storage of aircraft and fueling, etc., all without the ability of the Board to place restrictions on any special exception approval to minimize the adverse impacts of the airport.

While Petitioner has placed its own restrictions and limitations on the Helmore airport and its operation, the Board has no power to impose restrictions that would affect flight operations.

IX. CONCLUSION.

WHEREFORE, for the foregoing reasons, Petitioner, the Estate of Edgar Lucas, respectfully requests this Board affirm the decision of the Deputy Zoning Commissioner which granted Petitioner's Petition for Special Exception and Petition for Special Hearing.

Respectfully submitted,

Jennifer R. Busse

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 1999, a copy of this Memorandum of Law in Lieu of Closing Memorandum was mailed, first class, postage prepaid, to:

Macy Nelson, Esq.
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Towson, Maryland 21204

Peter Max Zimmerman, Esq.
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Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Ave.
Towson, Maryland 21204

Jennifer R. Busse

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173996

EXHIBIT 1

IN RE:	PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 98-294-SPHX
	Edgar Lucas Petitioner	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire. The Petitioner seeks approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requests a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plans submitted which were accepted and marked into evidence as Petitioner's Exhibit 1, 2A and 2B.

Appearing at the hearing on behalf of the Petitions were Dale Lucas, a representative of Helmore Farms, James Matis, Professional Engineer with Matis Warfield, Inc., the consulting firm which prepared the site plan for this property, Charles Lamb with Delta Airport Consultants, an expert in airport design and engineering, Kevin Miller with Miller Henning Associates, consultants in acoustical engineering, and Counsel for the Petitioners, G. Scott Barhight, Esquire and David K. Gildea, Esquire. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Susan Immelt, Stephen Howard, Deirdre Smith, Lynne Ellis, Harold Burns, Jorgen Jensen, Douglas Carroll,

EXHIBIT 2

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

EXHIBIT 3

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 4, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 4, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

EXHIBIT 4

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

EXIBIT 5

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * June 23, 1999

EXHIBIT 6

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 9:45 o'clock a.m., June 23, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

EXHIBIT 7

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * June 23, 1999

EXHIBIT 8

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 9:45 o'clock a.m., June 23, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

EXHIBIT 9

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * July 1, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., July 1, 1999.

* * * * *

OPY

Reported by:

C.E. Peatt

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

EXHIBIT 10

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

EXHIBIT 12

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

9/3/99

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Road, N/S Hillside Road, 2000' W of Falls Road, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
EDGAR LUCAS Petitioner	*	Case No. ~~99~~ 98 **~~99-294-SPHX~~**

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

Protestants' Memorandum in
Opposition to Petition for Special Exception

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STATEMENT OF THE ISSUES

A. Whether the BCZR allow the proposed use as a Special Exception in the RC2 zone.

1. Whether the proposed use is an airstrip.

2. Whether the BCZR allow the proposed helicopter use as a Special Exception in the RC 2 zone.

B. Whether the Petitioner met his burden of proving 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 Special Exception use irrespective of its location in the zone." *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981).

A. Did the Petitioner prove that the impact of the plume of noise contamination generated by the proposed use at the proposed site would be no greater at the proposed site than elsewhere in the RC2 zone?

B. Did the Petitioner prove that the impact of the proposed use at the proposed site would be no greater on the ability of adjoining property owners to carry on a horse operation than it would be elsewhere in the RC2 zone, where the adjoining land is primarily used for crops or livestock?

C. Did the Petitioner prove that the impact of the proposed use at the proposed site would be no greater on the neighboring historic district properties than it would be elsewhere in the RC 2 zone, where the neighboring properties are not in any historic district?

D. Did the Petitioner meet his burden under BCZR 502.1 of proving that the proposed use is "consistent with the purposes of the property's zoning classification" or "in any

other way inconsistent with the spirit and intent of these Zoning Regulations?"

E. Did the Petitioner meet his burden under BCZR 1AO1.2C of proving that the proposed "use would not be detrimental to the primary agricultural uses in the vicinity? "

STATEMENT OF FACTS

The Petitioner constructed a helicopter landing pad in the southwestern portion of Helmore Farm. Helmore Farm is zoned RC2 and is in the Maryland Agricultural Land Preservation Program. The distance between the nearest property line and the edge of the helicopter pad is approximately 20 feet. (Plat; testimony of Susan Immelt at 147).

Petitioners seek a Special Exception to operate a helicopter and an airplane. The Petitioners propose "no more than five (5) fixed-wing aircraft events per day and five (5) helicopter events per day. An event consists of landing, idling, take-off and fly-by."

A. RC 2 land in Baltimore County

Baltimore County has approximately 129,000 acres of RC2 land. It includes crop land, livestock operations, and horse farms. (Testimony of Paul Solomon at 64). The horse industry uses approximately 25,000 acres or 19% of the total RC2 land. (*Id.* at 67). Approximately 124,000 acres or 81% of the total is used for crop farming and livestock operations. (*Id.* at 68).

Baltimore County's horse industry is on 25,000 acres in the Greenspring Valley, the Worthington Valley, the Western Run Valley, and

in Belfast Valley. Each of those locations is a National Historic District. Baltimore County is the core of Maryland's thoroughbred industry; Greenspring Valley and Worthington Valley are the core of Baltimore County's horse industry. (*Id.* at pp. 66-67). Generally speaking, the larger farms are in the northern Baltimore County. Most of the farms in the Greenspring Valley are relatively small. (*Id.* at 65).

B. Zoning History of Helmore Farm

Jack Dillon described the history of the zoning at Helmore Farm. (Testimony of J. Dillon at pp. 36-67). Baltimore County's first zoning regulations were adopted in 1945. There was no reference to heliports or Helistops in the 1945 regulations. These regulations remained in effect until the zoning code was amended in accordance with Title 30, § 532(c) of the Code of the Public Local Laws of Baltimore County (1955 edition). These regulations were adopted on March 30, 1955. The new residential zones were identified in the following manner - R.40 zone - residence, 1-family; R.20 zone - residence, 1-family; R.10; or R.6. The number following the "R" described the size of the lot. For example, the R.40 zone contained 40,000 square foot lots.

Because new zoning maps had not been adopted for all parts of the county, particularly in the rural areas, the 1945 zoning maps continued in use. Areas formerly classified as the "A: Residence zone" were now considered the "Residual R.6" zone. Helmore Farm fell into this category until the area was rezoned to R.40 on January 16, 1957.

The 1955 zoning regulations allowed an airport by Special Exception in the R.40 zone and specifically restricted it from the R.20 zone. An airport was not listed in the R.10 or the R.6 zone Special Exception list. There was no reference to helicopters or a helistop in any of these zones until the 1963 amendment when "Helistop" was added to the R.40 and the R.10 Special Exception list. These regulations remained in effect until 1970 when Bill 100-70 was adopted.

Bill 100-70 again changed the zoning classifications. The "D.R." (Density Rural Zones) inside the URDL replace the "R" zones. Two new rural zones were developed: the "RDP" (Rural Deferred Planning) and "RSC" (Rural Suburban Conservation) zones. The majority of the rural land outside the URDL was RDP. Land adjacent to the reservoirs and major streams flowing to the reservoirs was RSC. Both the RDP and the RSC zones permitted an airport and helistop by Special Exception. Helmore Farm was zoned RDP.

In 1974, Jack Dillon transferred from his position in the zoning office and became an environmental planner for Baltimore County. In that capacity, he worked with Paul Solomon and Pamela Budeshian. Their assignment was to formulate a plan to curtail sprawl in northern Baltimore County. They recommended the new "RC" zones. This recommendation was a radical step which dramatically decreased density in northern Baltimore County. The land planners decided to defer to a later date the revision of the list of Special Exception uses in the RC zones.

In 1975, the County Council approved Bill 98-78, which established the RC zones. These four new rural zoning classifications divided the rural part of Baltimore County into preferred land-use categories. The RC2 (agricultural) zone was placed on what is now approximately 129,000 acres with the intended purpose of protecting and promoting the continuation of agriculture. The RC3 (Deferral of Planning) zone was intended to discourage development until a future time when more specific zoning classifications would be applied. The RC4 (watershed protection) zone was established to provide some basic protection to the reservoirs and their tributaries. The RC5 (rural residential) zone was designed to accommodate residential development in a rural setting. Airports and Helistops were

permitted in the RC2 and RC3 zones by Special Exception. Helmore Farm was zoned RC2.

At about the same time, Baltimore County land planners also began to work on what has become known as the Growth Management Legislation. During the course of this work, the Zoning Commissioner granted a Special Exception for a Helistop in the RC2 zone in the *Buzz Berg* case. This decision created controversy. After hearing many complaints, land planners in Baltimore County decided to recommend the removal of Helistops from the list of Special Exceptions in the RC2 zone. One of Protestants' witnesses, Norman Gerber, was the Acting Director of the Office of Planning and Zoning when he signed the Planning Board report to the County Council recommending the deletion of airports and Helistops from the list of Special Exceptions for RC2 land. (Testimony of Norman Gerber at 144).

In 1979, the County Council passed Bill 178-79, the Growth Management Legislation. This legislation changed the RC2 zones in several material respects. First, the density for the RC2 zone was reduced even further. In order to protect the equity of the farmers, the Agricultural Board was created in order to purchase easements from commercial farmers. Consistent with the stated desire to protect the agricultural areas in the

northern Baltimore County, the County Council affirmatively decided to remove Helistops from the list of Special Exceptions. Airports remained permitted by Special Exception in the RC2 zone.

Today, the RC2 and RC3 zones permit a Special Exception for an airport and the RC3 zone permits a Special Exception for a Helistop. RC2, which includes Helmore Farm, does not permit a Special Exception for a Helistop.

C. <u>The Proposed Use</u>

The best evidence of the purpose of the proposed use is the video of Martin Grass and his business colleagues arriving by chauffeur-driven car to fly away by helicopter. Dale Lucas agreed:

> [T]hat most every work morning... around 8:00, a chauffeur-driven car comes down the road to the airstrip, has a helicopter waiting for Mr. Grass, he gets out of his chauffeur-driven car, walks to the helicopter, and flies away....

"[j]ust" about every weekday. (Testimony of Dale Lucas at 65-66). He also agreed that "the overwhelming majority of the time that a helicopter leaves [Helmore Farm], it goes not to a racetrack, but to Rite-Aid in Harrisburg, Pennsylvania." (*Id.* at 69). Mr. Lucas described it as an "every-day affair." (*Id.* at 45). James Fanjoy, the pilot, concurred with Mr. Lucas' description:

on 18 to 19 days out of the month, either he or Tim McAdams arrives at Helmore at about 7:10 to pick up Mr. Grass. They then fly him to Rite-Aid in Harrisburg. After playing golf in Harrisburg, they fly Mr. Grass back to Helmore at about 6:30 p.m. (Testimony of Jim Fanjoy at pp. 13-14).

Jim Fanjoy testified that he has flown the helicopter from Helmore just once to the Delaware racetrack in the last two years. (*Id.* at 18). Mr. Fanjoy has never flown to Kentucky, Monmouth Park, or to Laurel Racetrack. (*Id.* at 21). He was unable to name any individual whom he flew to Helmore to look at horses.

D. <u>The Adjoining Properties</u>

The Greenspring Valley is a National Historic District. Unlike the majority of the RC2 land, the nearby ridges are densely populated. Property owned by Douglas Carroll and Susan Immelt borders on Helmore Farm. (Testimony of Douglas Carroll at p. 83). Susan Immelt and her husband own approximately 40 acres. (*Id.* at 83). Douglas Carroll owns approximately 65 acres which is in the agricultural preservation program. He has the right to build two additional houses. (*Id.* at 85). He opined that, assuming no helicopter operation at the Helmore Farm, the house site which is approximately 600 feet from the helicopter pad would be worth

approximately $750,000. (*Id.* at 103). He also testified that the proposed use would significantly devalue the house site. (*Id.* at 104). Susan Immelt has one additional building right: "a very spectacular house site on the edge of the hill that overlooks the Jones Falls Valley." (*Id.* at 86). Susan Immelt testified that the proposed use would devalue this house site. (Testimony of Susan Immelt at 157).

E. <u>Effect of Noise on Adjoining Properties</u>

Douglas Carroll described the helicopter noise as follows:

> Usually you can hear the helicopter about three or four minutes before it appears in the air. And it's usually - and it's depending on the weather conditions - it's at times quite loud and sometimes not.
>
> If there's a northwest wind and a clear day, it's often not overwhelmingly loud. If there's an overcast day or it's night, or no leaves on the trees, it can be extremely loud, enough to wake you up, and it often comes in just before 10:00 at night.
>
> If you are at the site walking down on the property, it's very loud. In fact, it's as loud a noise as you can have in the air, except for a gun shot or thunder.
>
> At the house, it averages about 80 decibels. I have measured it many times.
>
> ***

> At the house, right. When it's in the area either coming or taking off, it's very loud. Usually they rotar down if they are going to be there awhile, and it's not loud.
>
> The process is often - it can be as short as three minutes. I think it averages ten. I think the times I've filmed it, it's been ten or fifteen minutes each time. Over 15 minutes.

(Testimony of Douglas Carroll at pp. 91-93).

> The worse case scenario is that you would actually be inside the house and have to raise your voice to have to talk to someone on an overcast day with low pressure and no leaves on the tree.

(*Id.* at 110). *Accord*, Testimony of Susan Immelt at pp. 152-154.

Petitioners' noise expert, Charles Lamb, testified on April 27, 1999 that a plume of noise contamination averaging 65 ldn would trespass approximately fifteen feet onto Susan Immelt's property. Petitioner also admitted that the proposed use will lead to "adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone." Petitioner's civil engineer, James Matis, who has expertise in civil engineering and zoning, agreed that:

> There is plenty of RC2 land in this county where someone could build this airport with this amount of use and have the precise noise contour Mr. Lamb described, and not have that plume of noise contamination across the neighbor's property line.

(Testimony of James Matis at pp. 174, 95)

When asked whether there are countless places in the RC2 zone in Baltimore County where one could construct the proposed use of an airport identical to the proposed use where the plume of noise pollution does not cross a neighbor's property line, Mr. Matis testified "Yes." When asked whether the effect at the proposed site where the plume of noise contamination crosses the Immelt property line is greater than the effect at the other countless sites in the RC2 zone in Baltimore County where the plume of noise contamination would not cross the adjoining property line, he said "Yes." (*Id.* at 196-197). Petitioner's other expert witness, Timothy Madden, also agreed that the proposed use would generate less noise offsite if it were located on a larger piece of property elsewhere in the RC2 zone. (Testimony of Timothy Madden at 58-59, 62).

Omar Knio, Ph.D. testified for the Protestants. He is an associate professor of mechanical engineering at Johns Hopkins University. Acoustics is part of fluid mechanics which is a branch of mechanical engineering. (Testimony of Omar Knio, Ph.D. at p. 5). Dr. Knio splits his time 50/50 between teaching and research. He has taught courses which include acoustics. (*Id.* at 6).

Dr. Knio conducts his research with collaborators in France, Germany, at the national laboratories, and at the San Diego laboratory in California. He supervises three Ph.D. candidates, one of whom is specifically working on thermal acoustics. (*Id.* at 7). He has published 37 refereed articles. (*Id.* at 9). "A referee journal is usually the highest standard... of cross examination. The paper goes to three referees who are expert in the field, and they write their detailed paper on it." (*Id.* at 9). Several of his refereed articles addressed acoustics. (*Id.* at 9). Dr. Knio has published in the Journal of Acoustical Society of America. (*Id.* at 10).

Dr. Knio reviewed various documents, including specifications from the manufacturer of the helicopter and safety data sheets that the manufacturer filed with respect to this specific helicopter with the FAA. He was also present at the demonstration of the helicopter in June. (*Id.* at 14).

Dr. Knio explained that one could look at either the peak or the average noise.

> Average is basically an average representation of all the data points in a given structure or event or scenario that's been analyzed. While a peak is a more direct measure of a single event, rather than the collection of the whole. Now, there are situations where peak is more appropriate and other situations where average is more appropriate.

(*Id.* at 15).

From an engineering point of view, Dr. Knio explained that it was more appropriate to look at the peak noise for the proposed use than the average noise:

> [T]here are... five events consisting of take-off and landing. And there's also another factor which makes this case quite different, which is the proximity of the helipad... to the adjacent residence, which makes this case quite different from a scenario like BWI Airport where the closest resident is really on the order of miles away, and there are many more number of events there.

(*Id.* at 18).

Dr. Knio calculated the peak noise at a given distance from the center of the helicopter pad based on a standard engineering correlation that was "specifically designed to estimate peak noises from various types of helicopters." (*Id.* at 19).

He calculated peak noises at 30 and 152 meters from the center of the helicopter pad. At 30 meters, the peak noise was 91.5 dba in hover and 97 dba in approach. At 152 meters, the peak noise was 74.6 dba in hover and 80 in approach. (*Id.* at 21-23).

Dr. Knio performed his calculations using data from the manufacturer of the helicopter itself. (*Id.* at 27).

Dr. Knio testified that the average noise analysis is not appropriate for the analysis of noise at the Helmore Farm. The average analysis "came from a long series of hearings, regulators, energy noise experts, psychologists, which were in the neighborhood of the very large airports, such as BWI." (*Id.* at 28). None of these characteristics is applicable to Helmore Farm. (*Id.* at 29).

Dr. Knio used a Heliport Noise Model for his analysis of the average noise. The FAA commissioned and approved this Heliport Noise Model. The helicopter noise model ("HNM") is more appropriate than the integrated noise model ("INM"), according to the instructions that come with the noise models because:

> The HNM differs from the INM in its ability to accommodate the [greater] complexity of helicopter noise activities compared to the activities of a fixed-wing aircraft.

(*Id.* at 31). In fact, the Petitioner's expert witness, Charles Lamb, agreed that the instructions to the helicopter noise model say that it is better suited to the analysis of helicopters. (*Id.* at 89). (Testimony of Charles Lamb at 89).

Dr. Knio calculated the average noise in four different scenarios. (Testimony of O. Knio, Ph.D. at 32).

Scenario One: Standard flight pattern; 45 second idle time during the approach phase; a two minute idle time at take-off.

Scenario Two: Standard flight pattern; two minute static operation at approach; three minutes, thirty seconds idle time at take-off. Dr. Knio explained that this is what he witnessed at the demonstration after the Board left Helmore Farm. Dr. Knio observed the helicopter "idling, waiting for Mr. Grass." Dr. Knio "observed the helicopter with the engine idling on the ground for a period of eight minutes." In view of these facts, Dr. Knio thought that a total time of five minutes, 30 seconds was "a representative, quite likely, scenario." (*Id.* at 34). Dr. Knio testified that he believed that scenario two was the most appropriate scenario. (*Id.* at 40).

Scenario Three: Helicopter flies in from the north; two minutes idle time during approach; three minutes, 3 seconds idle time during the take-off.

Scenario Four: Worse case scenario: Helicopter flies over house; two minutes of idle time during approach; ten minutes, 30 seconds of idle time at take-off.

Dr. Knio calculated the ldn for each of these scenarios. (*Id.* at 36). The contour for the average ldn of 65 "is roughly circular." In scenario one, the 65 dba contour line trespasses 83 feet onto the Immelt property. In scenario two, the 65 dba contour line trespasses 136 feet onto the Immelt property. (*Id.* at 37). In scenario three, the 65 dba contour line trespasses 139 feet onto the Immelt property. In scenario four, the 65 dba contour line trespasses 255 feet onto the Immelt property. (*Id.* at 38). Protestant's Exhibit No. 11 contains a chart with Dr. Knio's calculations. Dr. Knio explained that this analysis did not include noise from the fixed-wing

aircraft. Had he included that noise, the contour line for particular average ldn would move further away from the helicopter pad. (*Id.* at 66-67). Charles Lamb testified that he "would accept [Dr. Knio's] numbers...." (Testimony of Charles Lamb at 95).

Dr. Knio critiqued the "input data" of the Petitioners' expert witness, Mr. Lamb. Dr. Knio reported that Mr. Lamb did not take into account idling time on the ground. This failure keeps the 65 ldn contour line closer to the helicopter pad than it really is. (Testimony of Omar Knio, Ph.D. at 43). Although Charles Lamb testified as a rebuttal witness, he never refuted Dr. Knio's opinion that Mr. Lamb failed to take into account idling time on the ground. Dr. Knio also explained that the input data that Mr. Lamb had used for thrust was "way too low as the helicopter is approaching the landing pad." (*Id.* at 44-45). The thrust goes up as a helicopter approaches the landing spot. "The higher the thrust, the higher the power develops, the higher the noise is generated." (*Id.* at 45). Dr. Knio explained that Mr. Lamb's use of a thrust that was too low keeps the 65 dba contour line closer to the helipad than it really is. The use of a 30% thrust "doesn't conform with what's recommended in the helicopter noise model." (*Id.* at 46). Although Charles Lamb testified in rebuttal, he never refuted Dr. Knio's criticism of his thrust figure.

When asked, "If we take the Maule [airplane] out of the equation, you would not criticize [Dr. Knio's] decision to use the helicopter noise model, would you," Charles Lamb answered, "No, I would not." He also agreed that if one used the helicopter noise model [and there was no fixed-wing aircraft], it would generate accurate numbers." (Testimony of Charles Lamb at 92). Finally, he agreed that if you added the fixed-wing aircraft to the equation, it is not going to reduce the noise. (*Id.* at 93).

SUMMARY OF ARGUMENT

Petitioner seeks a Special Exception which would allow Mr. Martin Grass to commute by helicopter on a daily basis from RC2 land at Helmore Farm to Rite-Aid headquarters in Harrisburg, Pennsylvania. The best evidence of the purpose of the proposed use is the video of Mr. Grass and his business colleagues arriving by chauffeur-driven car to fly away by helicopter. Protestants oppose this Petition for Special Exception.

The proposed use is really an airstrip, which is neither permitted by right or Special Exception in the RC2 zone.

If the proposed use is not an airstrip, it is a Helistop. The RC2 zone does not now permit a Helistop as of right or by Special Exception.

Prior to 1979, the BCZR allowed both airports and Helistops by Special Exception in the RC 2 zone. In 1979, the County Council adopted Bill 178-79 which deleted Helistop from the list of Special Exceptions. The Petitioner may not avoid this express prohibition by arguing that the Helicopter use is a lawful collateral use to an airport. The BCZR have consistently carefully drawn distinctions between airports and Helistops.

Furthermore, the Petitioner has failed to meet its burden 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 Special Exception use irrespective of its location in the zone." *Schultz v. Pritts,* 291 Md. 1, 22-23 (1981). In fact, Petitioner's zoning expert, James Matis, admitted that the impact of the proposed use at the proposed location *would* have a greater impact than at many other parcels of land elsewhere in the zone. (Testimony of James Matis at 196).

Although the Protestants do not have the burden of proof, they proved that the impact on the adjoining properties at the proposed side would be greater than it would be elsewhere in the RC2 zone. First, the plume of noise contamination trespasses onto the adjoining Immelt property. There are countless places in the RC2 zone where the proposed use could be

conducted where the plume of noise contamination would not trespass onto the adjoining property.

Second, the proposed use is located in Greenspring Valley which, along with Worthington Valley, is home to the core of the Baltimore County horse industry. The impact of the proposed use on the ability to raise, care for, and train horses and on the ability to operate a horse stable is far greater at the proposed location than it would be elsewhere in the majority of the RC2 land which is used for crops or livestock. Protestants presented evidence that a neighboring land owner, Douglas Carroll, would have difficulty using his land for a horse operation if the proposed use is allowed.

Third, the proposed use is located in a National Historic District. National Historic Districts constitute a small percentage of Baltimore County's RC2 land. There are many other locations in the RC2 land where the proposed use would have *no* impact on a National Historic District.

ARGUMENT

A. The BCZR do not allow the proposed use as Special Exception in the RC2 zone.

1. The proposed use is an airstrip. RC2 does not allow airstrips either as of right or by Special Exception.

Norman Gerber opined that the proposed use was an airstrip. (Testimony of Norman Gerber at p. 134). An airstrip is an area that could be paved, but did not have to be. (*Id.* at 135). Airstrips "were simply a place for a plane to land...." (*Id.* at 135). In contrast, an airport "... is used with more of a full service type of facility in that there are facilities to care for the aircraft in some fashion. There are facilities to care for potential passengers, or maybe even cargo." (*Id.* at 135-136).

The RC2 zone permits an airport by Special Exception, but not an airstrip. Airstrips are permitted by Special Exception in other zones. (*Id.* at 137). The fact that RC2 allows airports, but not airstrips, by Special Exception is "perfectly consistent with the way the RC2 zones were developed, because one would not expect to see a lot of airports in Baltimore County.... On the other hand, an airstrip could normally be expected to be found at a lot of locations in terms of the kind of use." (*Id.* at 137).

The Board should deny the Petition because the RC2 zone does not allow airstrips by Special Exception.

2. The current law allows airports by Special Exception in the RC2 and RC3 zones and allows Helistops by Special Exception in the RC3 zone. This Board should deny the Petition for Special Exception because it seeks a Helistop by Special Exception for land in a zone that does not allow it.

Helistops are not permitted as of right or by Special Exception in the RC2 zone.

Norman Gerber, Paul Solomon, and Jack Dillon testified that Helistops are not now permitted as a right or by Special Exception in the RC2 zone. (Norman Gerber transcript at pp. 140-144; Paul Solomon transcript at pp. 57-61; Jack Dillon transcript at pp. 70-71). Each reasoned that a review of the zoning history reveals that the County Council has historically made distinctions between airports and Helistops. For example, in 1975, the zoning regulations allowed both airports and Helistops by Special Exception in the RC2 zone. In 1979, the County Council adopted Bill 178-79 which continued to allow an airport by Special Exception in the RC2 zone, but deleted Helistops from the list of Special Exceptions. That certain zones allow Helistops by Special Exception proves that the Zoning Regulations distinguish between airports and Helistops. Protestants incorporate by reference People's Counsel's pre-hearing memorandum on this issue.

Earlier, when Martin Grass attempted to obtain a Special Exception for the use of a helicopter at his own farm, the Office of Planning reached the same result that Norman Gerber, Paul Solomon, Jack Dillon and People's Counsel reached. Jeffrey W. Long wrote:

> The DR zones and the RC3 zones list Helistop as a use permitted by Special Exception. It appears that a deliberate Legislature decision was made to include Helistop as a permitted use in those zones. Therefore, the absence of Helistop, as a listed permitted use in the RC2, RC4, and RC5 zones indicates a similar deliberate decision to exclude helicopter operations from these zones.

(Protestants' Exhibit 8).

The Zoning Regulations do not contemplate that the Petitioner may have a helicopter operation as a collateral use to an airport when the Petitioner cannot obtain a Special Exception for a Helistop. The Board should deny the Petition because the RC2 zone does not allow Helistops by Special Exception.

B. Petitioner has not met the test for a Special Exception.

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 Petitioner also has the burden of proving that the proposed private airport will be (1) consistent with the purposes of the property zoning classification, (2) 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. B.C.Z.R. § 502.1.

1. The Board of Appeals should deny the petition for Special Exception because the proposed use will lead to "adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone."

James Matis, Timothy Madden, Jack Dillon, and Paul Solomon each testified that the proposed use will lead to "adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone" because, unlike those countless other sites in the RC2 zone, the plume of noise contamination will travel off site. Jack Dillon testified that the effect of the noise will be particularly acute because, unlike other RC2 land, the nearby ridges are densely populated.

The adjoining properties to Helmore Farm, unlike many sites in the RC2 zone, are particularly suited to a horse operation which is incompatible with the proposed use. Mr. Solomon testified that the impact of the proposed use at the particular location will be greater here than elsewhere in

the RC2 zone because horse farms consist of only 19% of all the RC2 land in Baltimore County. In every instance, a helistop would have less of an impact on an adjoining crop farm than it would on land that is suitable for a horse farm. Therefore, there are approximately 104,000 acres of RC2 land (81% x 129,000) where the impact on adjoining land would be less than it is here.

Finally, the Greenspring Valley is a National Historic District. There are thousands and thousands of acres of RC2 land where the proposed use would have no impact on a National Historic District.

The Petitioner presented evidence that the impact of the proposed use on property bordering on Helmore Farm would be greater than elsewhere in the RC2 zone and then advocated a new standard: a petition for Special Exception should be granted because the effect of the proposed use would be less than it would be if there were a larger airport at the *same* site. When asked, "You're comparing what you characterize as a relatively small airport with a larger airport and saying the impact is less? Mr. Madden said "Yes." (Testimony of Timothy Madden at 64). If the Board rejects the traditional test for a Special Exception and applies Petitioner's new test, no Special Exception can ever be denied because any petitioner will always be

able to show that a more intense use at the same site would have more adverse effects than his proposed use.

2. The Board of Appeals should deny the petition for Special Exception because the proposed use is inconsistent with the purposes of the property's zoning classification and is inconsistent with the spirit and intent of the regulations.

The spirit and intent of the RC2 zone 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 "the continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurred, but is incompatible with the agricultural use of the surrounding area." B.C.Z.R. 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." B.C.Z.R. 1A00.2C. Jack Dillon drafted B.C.Z.R. 1A01.1, which states that the purpose of the RC2 zone is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County."

Douglas Carroll testified that the most viable use he has for the use of his land is operating a horse riding facility or a lay-up facility for injured

horses. (Testimony of Douglas Carroll at 105-106). He estimated that the income from his property would increase from around $3,000 a year to $40,000 a year if he were to make this change to a horse operation. (*Id.* at 107).

Mr. Carroll expressed the opinion that the proposed use at Helmore Farm would make it very difficult for him to operate a horse operation.

> I don't think it would work. I think that if you had the same horses there all the time and didn't rotate them and you had horses that were used to a helicopter landing, I think you could. And they were your own horse, I think you could do it.
>
> I don't think you can rotate horses there, though, and train kids on their own horses they bring, which is often the case, or rotate high-[strung] race horses that are injured. And I don't think that anyone will put their horse there.

(*Id.* at 107-108).

Mr. Solomon testified that the proposed helicopter use precludes Mr. Carroll's plan for creating a horse stable or a lay-up operation at his farm. He explained that helicopters can cause horses to panic. No reasonable client would place horses not acclimated to helicopters next to a helicopter operation. (Testimony of P. Solomon at pp. 72-75)

Dale Lucas acknowledged that he does "lay-ups" at Helmore Farm for various horses, including "Military Mike." When asked whether he

would want "Military Mike" near the helicopter when it was landing or taking off, Mr. Lucas responded: "Well, probably not. Probably not." (Transcript at 85).

Protestants' other expert horse witness, Dennis Potts, concurred. Mr. Potts testified that he first spoke to Mr. Carroll about the possibility of setting up a horse operation at his farm approximately five or six years ago. (*Id.* at pp. 136-137). Mr. Potts expressed the opinion that Mr. Carroll could create a viable, self-sustaining horse operation at his farm in several ways. First, he could set up a lay-up boarding facility for injured thoroughbred or show horses. (*Id.* at 137-138). Second, "there is a real need in this area for those horse spaces that have rings and stalls and turn-out for show horse type people, dressage show horse type people. Just from talking to people and selling horses and being in the area, there's just a real shortage of that." (*Id.* at 138). Third, Mr. Carroll's farm could be a facility for horseback riding instruction. (*Id.* at 139). Each of these operations would be profitable. (*Id.* at 140).

Mr. Potts expressed the opinion that the daily use of a helicopter and airplane right next door would adversely affect the ability of Mr. Carroll to run such a horse operation. (*Id.* at 141). The horses are high-strung and are

easily spooked. (*Id.* at 141). Mr. Potts would not advise a client to send a horse to the Carroll farm if there was a helicopter landing next door:

> It's absurd. I wouldn't put a horse in that environment. **** These are horses that are very high-strung, often times accident prone. *** [W]hen you look for a place to put an animal like that, you look for a farm that's got a very [quiet] rural setting and has good [quiet] gentle people to handle horses.

(*Id.* at 142). He expressed the same opinion with respect to the riding school. One cannot operate such a riding school in close proximity to a helicopter operation. (*Id.* at 145).

The presence of a helicopter operation next to Mr. Carroll's farm would have an adverse impact on Mr. Carroll's ability to make a profit with his horse operation. (*Id.* at 143-144).

Wally Lippincott, Jr., of the Baltimore County Department of Environmental Protection and Resource Management, reached the same result with respect to Martin Grass' application for a Special Exception at his own farm. Mr. Lippincott wrote:

> Recommend denial of this request. The proposed use has the potential to conflict with certain agricultural operations such as livestock. This property is in close proximity to two farms that the County has purchased development rights (Maryland Agricultural Land Preservation Foundation) from in order to preserve for agricultural use. Both farms have livestock,

> however, one farm, Helmore Farm, is [a] major thoroughbred horse operation with significant capital improvements devoted solely to maintaining a thoroughbred operation.

(Protestants' Exhibit 9).

The Board should deny the Petition for Special Exception because the proposed use is inconsistent with the purposes of RC2 zoning and with the spirit and intent of the regulations.

CONCLUSION

Protestants respectfully request that the Board of Appeals deny the Petition for Special Exception for the reasons set forth above.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 1999, a copy of the foregoing Protestants' Memorandum in Opposition to Petition for Special Exception was mailed first-class, postage prepaid, to:

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G. Macy Nelson

9/2/99

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
EDGAR LUCAS Petitioner	*	BALTIMORE COUNTY Case Number: ~~99-294- SPHX~~ 98

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

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PEOPLE'S COUNSEL'S MEMORANDUM

I. Introduction

In a prehearing memorandum, this office addressed whether the proposed helicopter operation on land zoned R.C.2 is eligible for a special exception as an "airport". We found that it does not qualify.

This memorandum focuses on special exception standards. It comes into play only if the Board finds that the proposal does qualify for consideration.

II. BCZR 502.1

The basic Baltimore County law, BCZR 502.1, is typical of Maryland special exception legislation. It enumerates eight standards (a-h), each of which must be satisfied. It must appear that a proposed use will not, *inter alia*,:

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

These are the broadest of the enumerated standards. They are the foundation for principles developed by in the Maryland cases. They are relevant here.

III. The R.C.2 Zone

The County Council adopted a legislative statement of findings to protect agricultural areas zoned R.C.2. BCZR 1A01.1.A. These include:

> "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 development occurs but is incompatible with the agricultural use of the surrounding area."

The legislative purpose stated in BCZR 1A01.1B is as follows:

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

To this end, the BCZR 1A01.2 use regulations begin:

> "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 R.C.2 Zones."

Moreover, BCZR 1A01.2C, as to special exceptions, declares:

> "The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority... finds that the use would not be detrimental to the primary agricultural uses in the vicinity..."

Separately, BCZR 1A01.4 refers to the Maryland Agricultural Land Preservation Program and provides that agricultural district land use:

> "...shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to Section 2-513 if that [Agricultural] Article in the case of any conflict between those provisions and these regulations."

It is elementary that the purpose of the R.C.2 zone must be taken into account in special exception proceedings. In this context, BCZR 502.1g merely restates the necessity to apply the basic law of the zone.

IV. Special Exceptions in the Court of Appeals

Judge Hall Hammond, later Chief Judge for many years, validated and explained the law of special exceptions in Montgomery County v. Merlands Club, Inc., 202 Md. 279 (1953). That case remains the beacon for an understanding of modern special exception law in Maryland. The more recent decisions, which are naturally referred to more often and with greater emphasis, are actually little more than restatements or reformations of Judge Hammond's analysis and language. So, twenty years later, in Turner v. Hammond, 270 Md. 41 (1973), Judge McWilliams said:

> "Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, 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. *Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 187 (1970). The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit prima facie, absent any fact or circumstance negating the presumption. *Rockville, supra*. In *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953), we said:
>
> > '... The duties given the Board are to judge whether the neighboring properties and 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 zoning plan.'
>
> While 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 showing affirmatively that his proposed use accords with the general welfare. 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. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. *Rockville, supra.*" 270 Md. 41.

There were many Court of Appeals special exception decisions between 1953 and 1973, all of which followed the path between Merlands Club and Turner v. Hammond.

One of the most frequently cited is Chief Judge Hammond's opinion in 1970, Rockville Fuel and Feed.Co. v.. Citv.of Gaithersburg, 257 Md. 183 (1970). Another important case, Redden v. Montgomery County, 270 Md. 668 (1974), analyzed the peculiar problems of a proposal for a facility to house the elderly and handicapped. These cases show that special exceptions are neither routine nor automatic.

In 1981, the tradition carried forward. Schultz v. Pritts, 291 Md. 1 (1981). The continuity of the law of special exceptions showed in Board of County Comm'rs. v. Holbrook, 314 Md. 210 (1988). There, Judge Harry Cole quoted Judge Davidson's opinion in Schultz and referred to the earlier decisions:

"In *Schultz v. Pritts, supra*, this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed:

'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. 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 plan.'

* * *

'The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no 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 use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55 (1973); *Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953); *Anderson v. Sawyer*, 23 Md.App. 612, 617 (1974). These standards dictate that if requested special exception use is properly determined to have an adverse effect upon neighbors properties in the general area, it must be denied.' 291 Md. at 11-13, 432 A.2d 1319 [emphasis in original.]

We then defined the specific nature of the requisite adverse impact required to warrant denial of a special exception application:

'[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. Thus, these cases establish 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 that show that the particular use proposed at the particular location 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 15 [emphasis supplied]. 314 Md. at 216, 217.

The bottom line is that the Maryland Court of Appeals has been clear and consistent on the law of special exceptions in Maryland since mid-century.

Both Schultz and Holbrook respect the function of the administrative agency to deny a special exception based on traffic safety or visual intrusion and detriment to the character of the neighborhood.

V. Recent Court of Special Appeals Applications

Since Holbrook, there have been a number of special exception decisions issued by the Court of Special Appeals which apply the above standards and are helpful here.

In People's Counsel v. Mangione, 85 Md.App. 738 (1991), the Court sustained this Board's denial of a convalescent home in a residential zone based on particular problems site problems judged to be above the norm for residentially zoned properties. It was off the main road. It had poor access on narrow and winding streets where children might play. It would block out light from the west. It would also exacerbate both drainage and erosion problems.

There is here revealed an important corollary of special exception law which affects the present case. Mangione shows that the proposed use need not give rise to a

worst case scenario to warrant denial. There were many other residential zones in Baltimore County which also would pose particular and unusual problems.

It is not a valid argument to approve a special exception because there could be a worse location, a worse use, or both. The issue is whether the particular problems are **above and beyond the ordinary for the type of use proposed: above the average.**

The Court likewise sustained a denial of a special exception for a rubble fill. Moseman v. Prince George's County, 99 Md.App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values.

There was no indication that the Moseman site was the worst site in Prince George's County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse case or worst case scenarios did not require approval at this location.

In Mossburg v. Montgomery County, 107 Md.App. 1 (1995), the Court reversed the denial of a special exception for a solid waste transfer station in a heavy industrial zone. In contrast to Mangione, the Southlawn Lane industrial corridor of Rockville at issue was one of only four I-2 heavy industrial zones in the entire county in which such a use could be located.

The evidence plainly showed that potential problems associated with this transfer station site were no worse than in any of the other three I-2 zones. The site was on a

main road. It drained into the same general watershed as these other industrial zones. It also adjoined heavier industrial uses which drained into the same creek. Mossburg is the classic case of a proposal which did not pose problems uncommon to the use in the zone generally.

In Hayfields, Inc. v. Valleys Planning Council, 122 Md.App. 616 (1998), the Court remanded, on environmental grounds, the Board's approval of a country club/golf course special exception. It rejected the Board's reasoning that the proposal should be approved merely because there were other properties underlain by the Cockeysville Marble aquifer which also could be vulnerable. 122 Md.App., at 649-55.

The Board had granted the special exception because it thought there were other locations in the zone which plausibly could suffer adverse environmental effects equal to or worse than the subject site. But this is not the standard. The standard is simply whether the subject site poses problems over and above the norm for the entire zone.

VI. The Relevant Impacts

Special exception cases traditionally focus essentially on adverse effects offsite, to nearby properties and to the neighborhood. This focus corresponds to the nature and intensity of objections voiced by neighbors and to the nature of the uses at issue. The language of Schultz and other appellate opinions is replete, therefore, with references to offsite impacts.

But there is nothing in the Court of Appeals decisions which explicitly excludes consideration of onsite impacts. In fact, onsite impacts are usually intertwined with offsite impacts. Traffic access, pollution, and drainage issues are clear examples.

But the Court of Special Appeals held in Hayfields, Inc. that onsite impacts are not relevant to a special exception. The opinion states:

> "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." 122 Md.App., at 647.

People's Counsel submits that the Hayfields opinion's analysis of the case law misreads the scope and purpose of Court of Appeals decisions. We also submit and argue in Section VIII below, that both BCZR 502.1 and 1AO1 in their entirety do show a purpose to consider onsite impacts in appropriate situations.

Until the Court of Appeals resolves the issue, it is an open question as to whether onsite impacts may be considered. For the sake of caution and clarity, the argument here will begin with a distinct discussion of offsite issues. There will follow a separate analysis of the reasons for inclusion of onsite impacts, and their application here.

VII. Offsite Impacts

a. Particular Features of the Site and Location

There are about 129,000 acres in Baltimore County's agricultural zone. They mostly occupy the vast northern and western rural areas of the County. The areas farthest from the metropolitan area -- toward Carroll County to the west, Harford County to the

east, and Pennsylvania to the north -- have large farms with hundreds of acres and sparse populations.

The Helmore Farm, site of the proposed helicopter operation, is a substantial property, but more modest in size. It occupies about 87 acres. It is rectangular, with great depth from Greenspring Valley Road, but little width.

Because of this size and shape, the proposed helicopter operation necessarily occurs in closer proximity to neighboring properties than would ordinarily be the case in the agricultural zone.

In addition, the property is located in the Greenspring Valley, which has many small farms, residences, and historic properties. This beautiful historic valley has a relatively low population density, but is more settled than more distant remote areas.

The Greenspring Valley is an elliptical valley at the fringe of the metropolitan district. Greenspring Valley Road crosses the valley floor from east to west. The zoning is mostly R.C.2. The valley's land area of 4,800 acres is a tiny fraction of the county-wide agricultural zone. It is unique unto itself. Even if combined with other nearby historic valleys of limestone soils -- the Caves and Belfast-Western Run Valleys -- this exclusive group of national register historic districts covers 16,275 acres, a small fraction of the agricultural zone. People's Counsel's Exhibits 4 and 9 identify the historic valley locations and land areas.

The Greenspring Valley is blessed with highly productive soils. It is particularly known for horse breeding and farming. Indeed, there were horses seen in the videotape taken of the site.

There were also produced testimony, documents, and maps to show the locations and sizes of all the County's historic districts. These confirm the particularity of the historic valleys. A map of the Greenspring Valley also showed the location of the many historic properties. People's Counsel's Exhibit 10.

b. Noise Impact Generally

Offsite noise impact affects the public safety, health, and welfare in the locality. In this case, it also presents issues of consistency with the purpose of the agricultural zone, and detriment to primary agricultural uses in the vicinity.

It appears, even with most conservative assumptions, that the noise generated by the helicopter on takeoffs and landings adversely affects adjoining property and exceeds acceptable decibel levels for a discernible period of time. The Protestants have shown in detail the noise levels at various distances.

The noise will affect enjoyment of property. It will disturb residents at home. It will hinder and discourage animal husbandry, especially horse farming for which the Greenspring Valley is noted. (Testimony, P. Solomon).

It is also uncontradicted that the adverse impact here will be above and beyond the impact at a site in the vast and sparsely settled outlying areas of the agricultural zone. There, properties are larger, spaces wider, and disturbances necessarily lesser.

Therefore, the offsite noise impact issue is serious. The Board must determine whether this itself is a disqualifying factor.

These serious problems exist even though Petitioner has outlined takeoff and landing approaches and procedures designed to minimize noise impact. Moreover, the implementation of such a "best-case" scenario is doubtful.

Even with the best intentions, enforcement would be problematic. There is the further problem that federal law preempts conditions directly affecting flight times, approaches, and procedures.

c. Impact on Present and Future Agricultural Uses

This impact relates directly to the consistency of the proposal with the intent and purpose of the agricultural zone, and detriment to agricultural uses in the vicinity. It also involves the broad public safety, health, and welfare standard for the locality.

It is to be remembered that the proposed helicopter operation is a commuter operation. It is an urban land use which serves no agricultural purpose. The Council has made a legislative finding that urban intrusions are destructive of agricultural areas.

There was strong testimony, moreover, which shows that there will be a particular adverse noise effect here on any nearby farm animals. Paul Solomon discussed in particular the jeopardy to horse breeding and farming, such as for sensitive thoroughbreds.

There may not be a horse farm currently adjoining the Helmore Farm yet. But, there might be one in the future. The intent of the agricultural zone is to protect the land

and foster conditions favorable to farming. It does not set up a race to allow incompatible uses in so long as they get there first.

The noise impact is again important here. But there is more. There is the factor of visual incompatibility of a commuter helicopter in a farm area.

Once again, because of the size, shape, and location of Helmore Farm, the operation poses problems above and beyond those to be expected in the outlying areas of the County, where farms are larger and crop farming more prevalent.

d. Impact on Historic Districts and Properties

The impact on historic preservation is another public safety, health, and welfare issue. The Court of Appeals has embraced historic zoning of an area, district, or section. See Faulkner v. City of Chestertown, 290 Md. 214 (1981). In Annapolis, it applies to the entire historic district. In New Orleans, the French Quarter enjoys zoning protection. City of New Orleans v. Pergament, 5 So.2d 129 (La. 1941).

Here, the Greenspring Valley is a unique National Register Historic District. It is one of three beautiful historic limestone valleys in northern Baltimore County. It has a unique ambiance. It has many historic structures, several close to Helmore Farm. It is noted for horse farming. It is one of the jewels of Baltimore County.

There is a serious question, therefore, of the adverse impact of an urban commuter helicopter operation which intrudes on this special environment.

In the Holbrook case, the Court of Appeals sustained the denial of a special exception because of the impact of a mobile home on one single-family residence. Here, the proposed helicopter operation degrades a historic valley.

e. Impact on Property Values

The cumulative offsite impacts give rise to reasonable concerns about depreciation of property values. The Holbrook case identified it as a key factor to justify denial of the special exception there. The Moseman case also called it a relevant factor.

This is yet another public safety, health, and welfare issue which the Board must address.

f. Short-Term and Long-Term Impacts

Zoning does not occur in isolation. A zoning case comes about with the background of a comprehensive zoning ordinance and map for the area or "locality." In protecting the public safety, health, and welfare generally, the Board should factor in the impact both short-term and long-term. In implementing the purpose, spirit and intent of the agriculture zone, and the legislative findings are its foundation, the Board again must have a view to the future.

The question is not limited to the short-term physical impact of this single helicopter operation. Its approval would send a message to the community that government decisionmakers are going in the direction away from agricultural protection. It would tend to discourage efforts to maintain and promote agricultural uses. It would

signal that there will follow in the future other commuter helicopters and incompatible urban land uses.

VIII. Onsite Impacts

BCZR 502.1a directs attention to the "locality." BCZR 502.1g directs attention to the purpose, spirit, and intent of the zone. BCZR 1A01.2C directs attention to the "vicinity." These plainly include onsite as well as offsite impacts.

The Supreme Court of the United States discussed the word "locality" in Connally v. General Construction Co., 269 U.S. 385, 394-95 (1926):

> "But all the court did there was to define the word 'locality' as meaning 'place,' 'near the place,' 'vicinity,' or "neighborhood.' Accepting this as 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 satisfied by areas measured as rods or miles."

See, e.g. Conley v. Motor Transit Co., 139 F.2d 692, 693 (6th Cir. 1943).

Similarly, in Ruark v. Engineers Union, 157 Md. 577, 584-86 (1929), the Court of Appeals said:

> "While 'locality' is a word of relative meaning, its context commonly determines its meaning, and it has been held to mean neighborhood, vicinity, or the whole or part of a political unit."
>
> "Thus, it appears that the word 'locality' has a place in important and enforced legislation; and whatever may be the scope of its varying significance, its meaning in a particular statue is susceptible of being determined from the context, since the words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature had in view... **When so read it is quite evident that, in the statute before the court, 'locality' imports the area which embraces not only the actual site where the public work is to be performed but also such adjoining territory** within

> which there then prevails a current rate of daily wage for the particular work to be done. **In other words, 'locality' defines a region, with the public undertaking as an axis or focal point..."**

Subsequently, the Court defined "locality" as "the area within City limits as well as nearby City-owned property at the reservoirs outside the limits." Roland Electrical Co. v. Mayor & City Council, 210 Md. 396 (1956). See, e.g. Anne Arundel County v. Moushabek, 269 Md. 419 (1973).

The legislative findings of the agricultural zone reinforce the elastic meaning of "locality" and "vicinity." They take an ecological approach to save productive soils, protect the industry, and preserve both "the area upon which the development occurs" as well as the "surrounding area." BCZR 1A01.1.A.

To be sure, BCZR 1A01.2C adds an explicit requirement for agricultural support use special exceptions to show affirmatively their support for the use onsite. But this in no way means or intends to approve or foster other special exception uses which degrade agricultural use onsite.

The Court of Special Appeals in its Hayfields decision failed to make this legal analysis. It quoted the language of Schultz v. Pritts mechanically, and out of context. Its approach to special exception law was cramped. It failed to consider the essential purpose of the agricultural zone. It then distorted the BCZR 1A01.2C "agricultural support use" clause in a way which undermines the agricultural zone.

Here, it is significant that the Helmore Farm is historic, valuable, and enjoys an easement under the Maryland Agricultural Preservation program. The Board itself

inquired about the significance of the easement. Under this State program, the County purchases development rights. This helps to assure preservation of agriculture.

Maryland law establishes the program in Md. Ann. Code Agriculture Article, Sec. 2-501, *et seq.* There is nothing in the statute or any applicable regulations, so far as we have found, which states or implies that urban helicopter use is consistent with the purpose of agricultural preservation law. BCZR 1A01.4 recognizes the Maryland program.

There is nothing in the record to suggest that the proposed helicopter use at Helmore Farm functions to enhance horse breeding operations. Clearly, the proposed use is for commuter purposes.

Whether or not the State Board which oversees the program believes that urban helicopter use is acceptable, there does not appear to be any legal justification for any such finding.

Unless such justification clearly appears, the Board should find that the proposed operation's onsite impact also has a particular adverse impact on the locality and vicinity and is inconsistent with the purpose of the zone. In light of the Hayfields decision, however, this should be a separate and independent finding. Therefore, if that case's rule against the consideration of onsite impact remains, the Board's decision will not otherwise be affected.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel For Baltimore County

Carole S. Demilio

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September, 1999, a copy of the foregoing People's Counsel's Memorandum was mailed to G. Scott Barhight, Esq. and David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorneys for Petitioner, and to G. Macy Nelson, Esq., 401 Washington Avenue, Suite 803, Towson, MD 21204, Attorney for Protestants.

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People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 2, 1999

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Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204
Hand-delivered

Re: Petitions for Special Hearing and Special Exception
Edgar Lucas, Petitioner
Case No.: 98-294-SPHX

Dear Chairman Stahl:

Enclosed is the posthearing Memorandum of People's Counsel for Baltimore County.

We also enclose a copy of the Board's 1987 decision in Meadowcliff, Case No. 85-132-X There, contrary to Hayfields, the Board found that onsite impacts should be considered (along with offsite impacts) in an RC-2 special exception case. This supports our separate argument in Section VIII of the Memorandum as to onsite impacts.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/caf
Enclosure

cc: G. Scott Barhight, Esq. and
David K. Gildea, Esq.
G. Macy Nelson, Esq.

IN THE MATTER OF : BEFORE
THE APPLICATION OF
MEADOWCLIFF, A NEW COVENANT CHURCH : COUNTY BOARD OF APPEALS
FOR A SPECIAL EXCEPTION TO PERMIT
A CHURCH AND ACCESSORY PARSONAGE : OF
N/s OF BELFAST ROAD, 340' EAST OF
OLD BELFAST ROAD : BALTIMORE COUNTY
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT : CASE NO. 85-132-X

: : : :

4/26/99

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
EDGAR LUCAS	*	BALTIMORE COUNTY
Petitioner	*	Case Number: ~~99~~-294- SPHX 98

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PEOPLE'S COUNSEL'S HEARING MEMORANDUM

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HEARING MEMORANDUM

People's Counsel for Baltimore County filed an appearance before the Zoning Commissioner and is interested in these appeal proceedings. There are important issues bearing on legality of helicopter and airplane operations in the agricultural zone countywide, and on federal law concerning use of airspace and noise control.

The parties will probably present facts comparable to those described by the Deputy Zoning Commissioner in his August 5, 1998 Opinion. These are sufficient for our present purpose. If there are any factual surprises, we will address them in a subsequent memorandum.

Petitioner requests a special exception for an airport on 87 acres in an agricultural (RC-2) zone at 901 Greenspring Valley Road. The main request is for a 150' x 150' paddock with a 20' x 20' helicopter touchdown pad. This shall service the A-109 helicopter of Hillside Realty, LLC (for Martin Grass), who has been using the landing area regularly for a daily commute to Harrisburg, Pennsylvania.

Separately, Petitioner proposes to use an airstrip capable of handling fixed-wing aircraft. The owner refers to occasional past use of the airstrip, but it seems to have fallen into disuse. He now sees a need to fly in investors to market and pursue his horse breeding business, and to use a Maule aircraft. One investor visited from New York by helicopter. The nature, extent and scope of proposed airstrip use -- past, present, and future – should be reviewed at the hearing.

If this were a normal special exception case, there would mainly come into play the test of BCZR 502.1. For the RC-2 zone, there would also be the question of

detriment to primary agricultural uses in the vicinity. BCZR 1A01.2C. These issues require factual evaluation and legal judgment, within parameters set by the legislative standards and explained in cases such as Schultz v. Pritts, 291 Md. 1 (1981) and Board of County Commissioners v. Holbrook, 314 Md. 210 (1986).

But there are legal issues here peculiar to zoning of airplane and helicopter uses. The first involves the different definitions and classifications for heliports, helistops, airstrips, and airports, and the disallowance of helicopter uses in the RC-2 zone. The second involves scope and extent of federal preemption of local law governing airplane and helicopter flight operations.

I. Heliports, Helistops, Airstrips, and Airports

The Problem: Differentiation of Helicopter Uses from Airport Use

The RC-2 zone does not permit "heliports", "helistops", or "airstrips." It does allow an airport by special exception. The question arises as to the relationship of these uses, and their application to uses proposed here.

If helicopter uses were not separately defined, a special exception airport use might imply helicopter operations. In that event, we might not argue against an interpretation that "airport" includes "heliport" or "helistop."

But the Baltimore County Council has specifically addressed zoning of helicopter operations, in depth. BCZR 101 defines and differentiates two types of heliports, and helistops. They are enumerated as permitted uses, either by right or special exception, and assigned to various classifications. They also are provided for in Section 420, which

describes and permits certain additional operations. There is yet an additional distinction made for "airstrip" use, as opposed to "airport" use.

The structure and history of County zoning law reveal legislative intent to distinguish helicopter uses from airports and other land uses involving fixed-wing aircraft. To these, we now turn.

The Structure of the Baltimore County Zoning Regulations

We have prepared and attached a zoning chart to give a picture of the main zoning classifications and the respective allocation of permitted uses relevant to this case. The chart will assist the Board in understanding the descriptive text which follows.

The Resource Conservation and Density Residential Zones

Unlike R.C. 2, the R.C. 3 (Deferral of Planning and Development) zone permits both "Helistops" and "Airports" by special exception. BCZR 1A02.2B1, 14. Meanwhile, in all D.R. zones, helistops are allowed by special exception. But airports are so allowed only in D.R. 1. 1BO1.1.C9, 1B02.1. R.C. 4 and R.C 5 do not permit any helicopter or airplane uses.

The Core Business Zones

"Helistops" are allowed by right in all the core business zones: B.L., B.M., and B.R. BCZR 230.9, 233.1, 236.1. "Heliports, Type II" are allowed by special exception in each of these zones. BCZR 230.13, 233.4, 236.4, while "Heliports, Type I" are allowed in the B.M. and B.R. zones only. *Ibid.* On the other hand, "Airports" are allowed by special exception only in the B.R. zone. BCZR 236.4.

The Manufacturing Zones

The M.R. zone allows "Helistops" and "Heliports, Type II, if located at least 200 feet from a residential zone," subject to site plan approval. BCZR 241.1. The M.L.R. zone allows helistops by right, but designates Heliports, Type II as special exceptions. BCZR 248.1. M.L.R. also allows "Airstrips" by special exception. BCZR 248.4A.

The M.L. zone allows "Heliports, Type I and Type II" and "Helistops" by right. BCZR 253.1B, 10-12. On the other hand, it allows by special exception "Airstrips or airports, where it is shown that such use will serve primarily the industrial uses in the same area." BCZR 253.2A1. Separately, it allows "Airports, general aviation, in accordance with the master plan." BCZR 253.2A2.

The M.H. zone allows uses permitted in the M.R. zone, Helistops and Heliports, Type II, and arguably Heliport, Type I, but does not include airstrips or airports. BCZR 256.1 and BCZR Footnote 69. The separate definition and assignment of various airplane and helicopter uses to different zones reinforces the point that they do not merge.

BCZR 420: Helicopter Operations

In addition to the "Euclidean" assignment of helicopter uses to various zoning classifications, the BCZR includes a specific section, §420, to authorize temporary use, construction site use, public utility use, defined rural use in R.6 and R.40 (D.R. 5.5 and D.R. 1) zones; and emergency use. The presence of BCZR 420 is more proof of particular legislative attention paid to zoning of helicopter uses.

Summary

An "airport" is allowed by special exception in the R.C.2, D.R. 1, M.L., and B.R. zones. An "airstrip" is allowed by special exception in the M.L.R. as well as M.L. zone. BCZR 101 includes a definition for "airport", but not for "airstrip." It leaves the latter to dictionary definition, which we quote and discuss on Page 16 below.

On the other hand, BCZR 101 defines and divides helicopter operations three ways: Heliports, Type I (scheduled operations, with substantial support services), Heliports, Type II, (non-scheduled but regular operations, with more limited support services), and Helistop (landing areas, subject to setbacks and operational limits). They are allowed, respectively, by right or special exception, in various zones identified above.

Legislative History

Background: 1955-69; 1955 Regulations; Bill 56, 1961; Bill 85, 1967

The 1955 comprehensive revision of zoning regulations provided for airports as special exceptions in the R.40 (predecessor to D.R. 1) zone and in the B.R. zone. BCZR 200.15, 236.4. The BCZR 101 definition, which still survives, stated:

> "Airport: Any area of land or water designed and set aside for landing or taking off of aircraft."

There was as yet no specific provision for helicopter uses.

In 1961, Bill 56 created the M.L.R. zone and included "airstrip" and "heliport" as special exception uses. BCZR 248.4A. The September 30, 1960 Planning Board Report, "Concerning Manufacturing Zones," explained the purpose of M.L.R. as a transitional zone to control impact on residential and institutional areas. It noted that: "Some R-40

uses are permitted, and all M.R. zone uses are allowed." Page 1. There was no specific discussion of the reason for choosing "airstrip" over "airport," or for adding "heliport."

Five years later, upon review by the planning staff, consultant Malcolm Dill (a former planning director), and a special committee, the Planning Board issued a Final Report August 11, 1966 on five subjects, the third being "Helicopter Landing Facilities." Exhibit 1. The Report included a discussion on page 2, followed by recommended definitions on page 4, and allocation of uses in the residential, manufacturing, and business zones.

This led to Bill 85, 1967, which revised the recommendations, enacted definitions for heliports and helistops, assigned them to zoning classifications, and added new Section 420. Exhibit 2. Bill 85 is the source for current BCZR provisions on helicopter operations in the residential, business, and manufacturing zones. It did not, however, cover rural zones because these were yet to be created.

Bill 100, 1970; The D.R., R.D.P., and R.S.C. Zones

In 1970, the County Council enacted Bill 100. Exhibit 3 (excerpt). This ordinance transformed residential zoning by creating "Density Residential" zones. It brought helicopter (as well as airport) uses forward intact from the repealed "R zones" to the new D.R. zones. These provisions are still in the current law, described above.

Significantly, Bill 100 created the first rural zones, R.D.P. (Rural Deferred Planning) and R.S.C. (Rural Suburban Conservation). In each of these zones, the Council permitted both airports and helistops by special exception. BCZR 1A00.2B1, 12 and

1A01.2B1, 11. The Council also amended BCZR 253 to allow, among other things, for airstrips or airports by special exception in the M.L. zone.

The Resource Conservation Zones; Bill 98-75, The *Berg* Case; and Bill 178-79

This brings us to Bill 98-75, Exhibit 4 (excerpt), which replaced R.D.P. and R.S.C. with R.C. (Resource Conservation) zones. The R.C. 2 and R.C. 3 zones kept airports and helistops as special exception uses. The R.C. 4 and R.C. 5 zones did not. In those days, there were a few small airports in then outlying rural areas. See, *e.g.*, Cres-well v. Baltimore Aviation Service, Inc., 257 Md. 712 (1970), involving BAS's request for R.40 zoning and a special exception to expand an old "cowfield" airport in Perry Hall, between Belair Road and I-95. The Essex Skypark is another example. But we have found no examples of rural principal helicopter uses. See also O'Donnell v. Bassler, 289 Md. 501 (1981) for review of a rural airfield in an R.40 zone in Howard County.

There later arose, however, a controversy over helicopter operations by Gerald Berg on land zoned R.C. 2 in the Greenspring Valley. This led to a petition for special exception for a helistop in Case 78-193-X, approved by the Deputy Zoning Commissioner on April 25, 1978 (Exhibit 5A), and ultimately by the Board of Appeals on October 7, 1980. Exhibit 5B.

With the Berg case pending, the Council engaged in growth management, including amendments to R.C. zones. On August 14, 1979, the Planning Board submitted a Final Report, Exhibit 6 (excerpt), which said on page 2:

> "Agricultural and environmental protection. The amendments to regulations of the Resource Conservation classifications contained in this report would significantly strengthen those classifications to more fully

> achieve their intended purposes. The R.C. 2 (agricultural) zone regulations would be revised to allow uses that would enhance the economic viability of agriculture, to prevent continued usurpation of productive farmland by residential development or other uses not supportive of agriculture, and generally to encourage the preservation of agricultural land."

The proposed amendments included a revised list of R.C. 2 uses, which repealed both the airport and helistop special exception uses. Report, pages 4-5. This led, in turn, to Bill 178-79, the source of the current law. The Council agreed to delete "helistop" as a special exception use, but it chose to allow continuation of the "airport" use. It left the R.C. 3 zone special exceptions for airport and helistop intact. Exhibit 7 (excerpt).

There have been several amendments to the R.C. 2 zone since 1979, and significant amendments to other R.C. zones. But there have been no further amendments to the provisions concerning airports, airstrips, and helicopter uses.

The legislative history corroborates that helicopter uses and airports are distinct and subject to different regulation in different zones. It also shows the deliberate exclusion of helicopter uses from the R.C. 2 zone.

The *Smith* Decision

On August 3, 1989, in Robert J. Smith, 90-1-SPHX, Deputy Zoning Commissioner Ann Nastarowicz decided that heliports or helistops are not airports. Exhibit 8. They are not permitted in the R.C. 2 zone. Her opinion aptly refers to the structure of the BCZR, the differentiation of the uses, and their assignment to different zones. After the 1989 Smith case, there apparently were no further requests for approval of helicopter operations in the R.C. 2 zone until Hillside Realty came forward.

During the 1990s, moreover, the County Council left R.C. zone provisions for airports and helicopter operations intact, while enacting numerous changes to other R.C. 2 use provisions.

The Council has amended BCZR 1A01.2 in the following enactments:

1. Bill 57-1990, Commercial film production
2. Bill 91-1990, Transit facilities
3. Bill 41-1992, Farm markets, horticultural nurseries, landscape operations
4. Bill 151-1992, Firewood operations
5. Bill 51-1993, Agricultural support uses
6. Bill 110-1993, Restaurants
7. Bill 89-1997, Signs
8. Bill 30-1998, Wireless telecommunications towers

This shows that despite repeated legislative consideration and action affecting other R.C. 2 zone use regulations, the Council has chosen to maintain the exclusion of helicopter uses. It has not overruled Smith.

In the last two years, as Hillside Realty, LLC sought approval for helicopter use at 10714 Greenspring Avenue (Case 98-37-SPHX, filed July 31, 1997, still pending) and then here, the Council has still declined to add heliports or helistops as permitted uses in the R.C. 2 zone. Helistops are allowed by special exception only in the R.C. 3 zone.

Proposed Uses at 901 Greenspring Valley Road

Fairly stated, and as described in the Deputy Zoning Commissioner's Opinion, this zoning petition involves a combination of principal uses.

The first, for Hillside Realty (Grass) is a helistop, or, depending on size and level of support services, a heliport, type II. Here, we should comment on the part of the

helistop definition which refers to authorization from the Director of Public Safety, an office which no longer exists. The Board of Appeals in the 1980 Berg case addressed this point. It answered People's Counsel's argument at the time that elimination of this directorship in 1968 (Bill 72-68) also eliminated eligibility for helistop use. The Board held simply that the clause referring to the Director of Public Safety was no longer operable, and that permitted helistops now effectively embrace all helicopter operations not rising to the level of a heliport. To this, it may be added that BCZR Sec. 601 provides that if any clause of a law is adjudged invalid, the remainder of the law shall be deemed valid and effective. The County Council, both before and after, has enacted ordinances which provide for helistops as uses permitted by right or by special exception. (Bill 100, 1970; Bill 98-75). The Berg and Smith cases both recognize helistop use as a viable use where it is permitted. The BCZR continue to provide for the particular use.

The proposed Hillside Realty use is by no stretch of the imagination an airport. The Deputy Zoning Commissioner simply disregarded the structure and history of the zoning regulations in order to call it an airport. He isolated the words "airport" and "aircraft", and lifted them out of all context.

The second proposed use, for EDGAR LUCAS, fits the description of an airstrip. The Deputy Zoning Commissioner so named it. If an airstrip, then it is not a permitted use. Petitioner may argue it is a small "airport." Such a description seems doubtful. But even if assumed to be true, it does not serve as cover for the separate helistop use.

It is also legitimate to inquire if the proposed airstrip use is hypothetical or real. The helicopter use is occurring, even as the case proceeds. The fixed-wing aircraft use seems less developed. In either event, whether imaginary or genuine, the proposed airplane use is not an excuse for helicopter operations.

Fundamentals of Permitted Uses under the Baltimore County Zoning Regulations

BCZR 102.1 states:

> "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations."

In Kowalski v. Lamar, 25 Md.App. 493 (1975), Judge Rita Davidson reviewed the structure of uses under BCZR zoning classifications. She wrote:

> "Any use other than those permitted and being carried on as of right or by special exception is prohibited." 25 Md.App., at 498.

There, the property owner claimed that part-time use of a pier for commercial fishing, with sales transacted elsewhere, was a proper use in the R.D.P. (Rural, Deferred Planning) zone. The Board of Appeals found the use to be neither marina, boatyard, commercial business or trade use, and therefore not in violation. But the Board failed to analyze on what basis the use was permitted. The appellate court saw the fishing operation as a main use of the property, neither permitted by right nor conducted pursuant to an approved special exception. The CSA reversed the Board.

Relevant Principles of Statutory Construction

This case on Greenspring Valley Road presents another variation of the question on permitted use. Petitioner attempts to merge into a more general type of permitted use

(airport) a more specific prohibited use (helicopter operations – helistop, heliport). Petitioner argues that "airport" is defined broadly as, "Any area of land or water designed and set aside for landing or taking off of aircraft" and that a helicopter is a type of aircraft. To Petitioner, this conveniently ends the story.

But this disregards statutory context and the need to read different, but related, provisions so as to give function and meaning to each and every one.

The Court discussed statutory construction in depth in Section III of Kaczorowski v. Baltimore, 309 Md. 505, 513-16 (1987). Legislation "... usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end." 309 Md., at 513. Judge Adkins wrote:

> "Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The 'meaning of the plainest language' is controlled by the context in which it appears." 309 Md., at 514.

He referred to Justice Holmes for the concept that "the general purpose is a more important aid than any rule which grammar or formal logic may lay down." *Ibid.* He gave examples of cases in which legislative history was critical to proper interpretation.

> "The purpose, in short, determined in light of the statute's context, is the key. And that purpose becomes the context within which we apply the plain-meaning rule. Thus 'results that are unreasonable, illogical or inconsistent with common sense should be avoided... with the real legislative intention prevailing over the intention indicated by the literal meaning.'" 309 Md., at 516.

In Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990), the Court wrote:

> "Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

Similarly, in Comptroller v. Jameson, 332 Md. 723, 733 (1993), the Court said:

> "In addition, we look to the context surrounding the enactment of a statute to determine the intention of the legislature. For example, we recently said:
>
> > 'When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may and often must consider other "external manifestations" or "persuasive evidence," including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.'"

As the Court stated concisely in Stanford v. Maryland Police Training, 346 Md. 374, 380 (1997):

> "The statutory language is not read in isolation, but 'in light of the full context in which [it] appear[s], and in light of external manifestations of intent or general purpose available through other evidence.'"

For a recent example of this principle, see Porter v. Bayliner, 349 Md. 609, 617 (1998).

In assessing context, moreover, a court "... will not read any part of a statute to be superfluous." Polomski v. Baltimore, 344 Md. 70, 83 (1996). In Montgomery County v. Buckman, 333 Md. 516, 523-4 (1994), the Court employed this rule to differentiate between two types of service-connected disability retirements and refused to fold one into the other. In County Commissioners v. Bell Atlantic, 346 Md. 160 (1997), the rule applied to determine the rights of public utilities under the Miss Utility Act.

One of the best discussions is found in the familiar zoning case, Hope v. Baltimore County, 288 Md. 656, 666-67 (1980). There, the Court reiterated:

> "We have said many times that where two statutes deal with the same subject matter they must be construed together if they are not inconsistent with one another; that, to the extent possible, full effect should be given to each; that this is true notwithstanding the fact that the statutes may have been enacted at different times with no reference to each other, because in that case the rule is that the statutes must be harmonized to the extent possible; and that absent a clear indication to the contrary, a statute, if reasonably possible, is to be read so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory."

Maryland Zoning Cases Applying These Principles

The Court of Appeals faced a question comparable to the present in Smith v. Miller, 249 Md. 390 (1968). Miller, the property owner, operated a sawmill, a permitted use on M-2 (general industrial) zoned land in Harford County. He sought, however, to move to land zoned A-1 (agricultural) and sought a conditional use, equivalent to a special exception. The Board of Appeals allowed the petition, on the basis that the proposal fit under the broad definition of "Processing of dairy products and farm

products, riding stables, kennels, ***." Judge Singley described the reasoning, which parallels the argument here, at 249 Md. 393:

> "The logic adopted by the Board is simple; timber is a farm product; a sawmill processes it; therefore, Mr. Miller is entitled to build a sawmill in an agricultural district."

The Court of Appeals reversed. It found that the Board's interpretation "... would open the county's agricultural district to any industrial development remotely connected with the processing of dairy and farm products without limitation..." *Ibid.* Significantly, Judge Singley continued (249 Md., 393-94), it:

> "... would make meaningless the provision of the Ordinance which attempts to confine sawmills, flour and grain mills, grain drying and poultry feed manufacturing, meat packing, pickle, sauerkraut or sausage manufacturing, poultry slaughterhouses and vinegar manufacturing to a general industrial district."

The Court then discussed St. Clair v. Colonial Pipeline, 235 Md. 578 (1964), where the pipeline company sought conditional use approval of above-ground storage facilities for petroleum products in an agricultural district. The Board accepted the contention that this was a permitted conditional use under the rubric of "public utility structures and properties." In reversing, the Court underlined that above-ground storage of petroleum products was allowed as a conditional use only in the M-2 zone, and not in any other zone. The petitioner could not avoid or circumvent this specific intent by going to the more generally permitted "public utility" use. Judge Horney went on:

> "The zoning ordinance does not specify the type of buildings classifiable as 'public utility structures,' but whatever the term was intended to embrace, it clearly does not include above ground petroleum storage facilities, and we so hold." 249 Md., at 394.

Analysis

Our careful scrutiny of the structure of the Baltimore County Zoning Regulations reveals clearly the differential treatment of airplane and helicopter uses. The legislative history and interplay of the Berg and Smith decisions are in accord.

In context, notwithstanding its literal definition, an "airport" is a substantial facility serving a substantial number of aircraft and ordinarily providing support services. It may include helicopters in that setting. But it does not equate to the principal helicopter uses which are separately defined, or even to airstrip. It is allowed by special exception in the R.C.2, D.R. 1, M.L., and B.R. zones. Its nature is such that it occurs infrequently.

An "airstrip" is a smaller facility, allowed in the M.L.R. as well as M.L. zone. It is not separately defined in the BCZR. Our dictionaries at hand are the Merriam-Webster Collegiate Dictionary, Tenth Edition (1994) and Webster's II New Riverside University Dictionary (1984, 1988). The first definition, at page 26, states:

"A runway without normal air base or airport facilities."

The second, at page 89, states:

"A cleared area serving a landing strip."

On the other hand, BCZR 101 defines helicopter operations of varying intensity as Heliports, Type I (scheduled operations, with substantial support services), Heliports, Type II, (non-scheduled but regular operations, with more limited support services), and

Helistops (landing areas, subject to setbacks and operational limits). They are allowed, respectively, in the zones identified earlier.

There is no escape for Petitioner from the specific prohibition of helicopter uses to the more convenient authority for "airport" use. A literal construction of "airport" to include heliports and helistops as included "aircraft" uses negates, and makes meaningless and superfluous, the careful definitional distinctions and provisions for these helicopter uses.

It defies the fact that in some zones, airports and helistops or heliports are specifically allowed, while in some zones, one but not the other. It defies the fact that by virtue of Bill 98-75, the RC-2 zone included airports and helistops as special exceptions from 1975 to 1979, but that Bill 178-79 deleted the provision for helistops and so it remains, deleted to the present day. It defies, moreover, the fact that after the Smith decision, the Council made numerous changes to the R.C. 2 zone use regulations, but left the exclusion for helicopters and the Smith ruling intact. See Liss v. Goodman, 224 Md. 173 (1961).

If Petitioner's interpretation prevails, it applies whether or not there is any accompanying airplane use. It effectively overrules Berg and Smith, the Council's response to the former, and acceptance of the latter. It effectively destroys the separate function of helicopter use provisions in the BCZR.

We have in mind Judge Horney's observation on public utility uses in the St. Clair case. Similarly, whatever types of aircraft landing areas the BCZR 101 "airport"

definition is intended to embrace, it does not include helicopter uses specifically defined and provided for in other zoning classifications.

To implement properly the distinctive meaning assigned by law to helicopter use, the Board should maintain the integrity of specifically defined heliports and helistops. It would be wrong to fold them automatically into "airport" use. If the Council intended to allow heliports or helistops in the RC-2 zone, it would have said so. There is a rational basis for such differentiation. In agricultural zones, there may be large land areas suitable for substantial airports. By their nature, their use will arise infrequently. Commuter use of fixed-wing aircraft from homesites or farms also seems rare, at best, and anyway involves "airstrip" rather than "airport" use, as noted below.

In contrast, heliports and helistops are problematic for local land use. If allowed by right or special exception, they could occur on numerous rural homesites and dot the countryside. Helicopters circle, hover and tend to fly at lower altitudes and speeds than fixed-wing aircraft. They cause particularly disturbing light and noise impacts. They frighten animals. The R.C.2 exclusion is consistent with Bill 178-79's intent to give more protection to agricultural zones.

The additional issue, given the distinction between "airports" and "airstrips", is whether the proposed use of a single airplane on one runway is an "airstrip" and so excluded. So far, this is the way it has been described. It appears, moreover, to fit the dictionary definition of "airstrip" quite well.

To be sure, the County Council has the authority to broaden the meaning of airport, if it so chooses. There may be other zoning laws around the country which utilize "airport" alone as a catchall for all airplane and helicopter operations. But the BCZR, as presently constructed, sharply define and allocate the various types of aircraft uses.

In conclusion, to be eligible to use R.C. 2 land for its proposed helicopter and airstrip operations, the Petitioner's remedy is for the Council to amend the BCZR. Until then, existing law must apply.

II. The Relationship of Federal Law

If the Board decides nevertheless that Petitioner qualifies for "airport" status, then we must consider parameters set by federal law. In a nutshell, local zoning law clearly applies. But there are questions pertaining to control of flight operations, such as landing and takeoff paths, curfews, time limits, and frequency of flights.

It should be underlined that basic land use decisions such as which zones allow airplane or helicopter uses by right or special exception, minimum setbacks, and regulations on surrounding areas are left to local zoning. See Guillot v. Brooks, 651 So.2d 345 (La.App. 1995), zoning prohibition of airfield for ultralight aircraft; Gustafson v. City of Lake Angelus, 76 F.3d 778 (6th Cir. 1996), prohibition of operation of seaplanes on city lake; Riggs v. Burson, 941 S.W.2d 24 (Tenn. 1997), state prohibition of heliport within 9 miles of national park boundary. These cases distinguish regulation of land use from that of aircraft flight and use of airspace, to which we now turn.

The Supreme Court, in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973), invalidated a city ordinance which forbid a regularly scheduled airline from taking off between 11 P.M. and 7A.M. the next morning at the Hollywood-Burbank Airport. In a 6-1 decision, the Maryland Court of Appeals interpreted Burbank broadly to invalidate curfews and limits on the frequency of glider-towing aircraft at a privately owned Carroll County airport serving a skydiving club. Harrison v. Schwartz, 319 Md. 360 (1990). On the other hand, in Faux-Burhans v. County Comm'rs. of Frederick County, 674 F.Supp. 1172 (D.Md. 1987), aff'd 859 F.2d 149 (4th Cir. 1988), the federal district court sustained a local zoning ordinance which, in connection with a special exception, regulates intensity of aircraft use (by number of aircraft), the type of aircraft used (by takeoff distance), the clear zone at the runway end (by prohibiting building thereon), the locale of operation (by setback requirements) and the type of aircraft operations (by prohibiting instructional flights).

Remarkably, in Garden State Farms, Inc. v. Bay, 390 A.2d 1177 (N.J. 1978), the New Jersey Supreme Court found that local zoning of helicopter uses, not licensed under federal law, was not preempted either explicitly or implicitly under Burbank. The Harrison case discussed Garden State Farms, but did not comment on this aspect of the decision. Without a Maryland decision on point, however, we assume conservatively that Harrison's limits on local zoning of flight operations and airspace apply to helicopters as well as fixed-wing aircraft.

Comment on O'Donnell v. Bassler: The Consequences of Illegal Conditions

In O'Donnell v. Bassler, 289 Md. 501 (1981), the Court of Appeals had to determine the validity of a 1976 special exception use permit for a commercial aircraft landing field granted by the Howard County Board of Appeals. This determination, in turn, would resolve whether or not the petitioner had vested rights prior to a 1977 county ordinance which deleted the airfields and airports as special exceptions.

The problem with the use permit was that the 1976 Board approval included conditions as to maximum number of airplanes, as to use only by owners of planes stored at the airfield, and as to frequency of flights. All parties appealed.

The Circuit Court found these conditions invalid, and simply deleted them. It validated the use permit without such conditions. The Court of Special Appeals affirmed.

But the Court of Appeals reversed. At the high court, the parties agreed, and the Court assumed, that the conditions were invalid. There was no discussion of Burbank, or the Faux-Burhans decision, which approved a condition as to number of aircraft. However, the implied premise appears to be a broad interpretation of Burbank. (In fact, the later Harrison decision gave such an interpretation, although it did not deal with the number of aircraft.)

The invalidity of the conditions, however, did not lead the high Court to validate the Board of Appeals' grant of the use permit. Judge Rita Davidson explained that the

Circuit Court should not have entered an Order sustaining the special exception without the offending conditions. Rather, the case should ordinarily have been:

> "remanded in order to permit the Board to decide whether the special exception use permit should be granted without the additional conditions." 289 Md. at 512-13

Accordingly, the Board's 1976 use permit approval was invalid, and there were no vested rights. In O'Donnell, the 1977 amendment to the zoning law deprived the Board of any further authority to approve the airfield. Judge Davidson wrote that a remand "... at this time would be futile." 289 Md., at 515.

The O'Donnell case should be carefully studied. It reflects the nature and limits of the Board's choices. It also shows that any invalidity of conditions in the Deputy Zoning Commissioner's opinion here does not logically lead to unconditional approval comparable to that of the Circuit Court in O'Donnell. Indeed, if the Deputy Zoning Commissioner felt that such unconditional approval was inappropriate, his course should have been to deny the petition.

The Deputy Zoning Commissioner's Decision Here

The Deputy Zoning Commissioner's approval, conditioned as to frequency and time of flights (3, 4), landing and takeoff direction (5), and curfew (6) is in direct conflict with Harrison. The limitation as to number and type of aircraft is debatable. Condition 2, which limits approval to the current owners and operators and makes it nontransferable, is also doubtful because zoning depends on the property's suitability for the land use, not ownership.

The Function of the Board of Appeals

Consequently, the Board of Appeals, should it reach the special exception on the merits, must decide whether it can be approved unconditionally as to frequency and time of flights, flight patterns, curfew, ownership, and transfer. In this connection, it must consider the R.C.2 zone here in light of the R.C.2 zone generally, which occurs on over 125,000 acres in Baltimore County. Preliminarily, it should weigh the significance of Greenspring Valley as a National Register Historic District, and of any nearby historic structures, residential or farm activities which may be particularly vulnerable to adverse effects from the proposal.

In conclusion, even if the Board finds the proposed use to be an "airport," the Board may not achieve the type of compromise fashioned by the Deputy Zoning Commissioner. It should be repeated that federal preemption of the several conditions imposed does not mean that they should merely be removed and the special exception granted unconditionally. It means that the Board must make the harder decision to approve or disapprove suitability of the site, understanding that a compromise decision is not possible on significant operational aspects.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel For Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of April, 1999, a copy of the foregoing People's Counsel's Memorandum was mailed to G. Scott Barhight, Esq. and David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorneys for Petitioner, and to G. Macy Nelson, Esq., 401 Washington Avenue, Suite 803, Towson, MD 21204, Attorney for Protestants.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

B.C.Z.R. ZONING CHART

	RC-2	RC-3	RC-4	RC-5	DR-1	OTHER DR	BL	BM	BR	MR	MLR	ML	MH
AIRPORT	SE	SE			SE				SE			SE	
AIRSTRIP											SE	SE	
HELIPORT, Type I								SE	SE			P	P
HELIPORT, Type II							SE	SE	SE	P	SE	P	P
HELISTOP		SE			SE	SE	P	P	P	P	P	P	P

SE - ALLOWED BY SPECIAL EXCEPTION

P - PERMITTED BY RIGHT

NOTE: BCZR § 420 also permits temporary, construction, public utility, emergency, and rural D.R.-1 / D.R.-5 zone uses.

App. 1

DONALD W. JOHNSON

PH-65102-0210

EXHIBIT 1

Final Report of the
BALTIMORE COUNTY PLANNING BOARD

PROPOSED AMENDMENTS TO THE
BALTIMORE COUNTY ZONING REGULATIONS
RELATIVE TO:

1. Animal Facilities
2. Antique Shops and Residential Art Salons
3. Helicopter Landing Facilities
4. Setbacks and Permitted Uses in Industrial Zones
5. Time Limits on Special-Exception Uses

OFFICE OF PLANNING AND ZONING
BALTIMORE COUNTY, MARYLAND
TOWSON, 21204

August 11, 1966

1.1

 EXHIBIT 2

WHEREAS, the county health officer and the director of public works have found it necessary, for the protection of the public health, that the sanitary sewer system of Baltimore County be extended in Bishops and Charlee Lanes in the Vicinity of Catonsville, First Election District, to serve existing housing units in the area; and

WHEREAS, pursuant to the authority contained in section 32-22.1 of the 1966 Cumulative Supplement to the Baltimore County Code, 1958, the county is authorized to construct such extensions of said system without meeting the requirement that such project be self-supporting, provided the County Council of Baltimore County, Maryland, approve said extension by Resolution duly adopted; and

WHEREAS, the County Council deems it necessary, for the protection of the public health that said sewer extension be constructed as aforesaid; now, therefore

SECTION 1. *Be it resolved by the County Council of Baltimore County, Maryland,* That it hereby approves the extension of the sanitary sewer system of Baltimore County, Maryland, in Bishops and Charlee Lanes in the vicinity of Catonsville, First Election District.

SECTION 2. *And be it further resolved,* That this Resolution is hereby declared to be an emergency measure affecting the public health, safety or welfare, and, having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.

Enacted: October 2, 1967.

BILL No. 85

AN ACT, to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for animal facilities, agricultural uses, antique shops, residential art salons, helicopter landing facilities, setbacks and permitted uses in industrial zones, and time limits on special-exception uses, by: amendment Section 101, entitled "Definitions"; repealing Subsection 200.12 and enacting in lieu thereof new Subsections 200.12a and 200.12b; repealing and re-enacting, with amendments, Subsection 200.15, Sections 203 and 206, Subsections 209.1, 209.3, 212.1, 212.3, 215.1, 215.5, 230.1, and 230.9, Para-

2.1

County Council of Baltimore County Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman

(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications; to provide for the deletion and addition of terms and definitions; to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing automotive service stations; in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100. 1. A. 2; by adding new Subsection 100.3A; by deleting and adding certain definitions to Section 101, entitled "Definitions"; by amending Subsection 103.1; by adding new Articles 1A and 1B; by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.40 Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

EXHIBIT 3

3.1

EXHIBIT 4

County Council of Baltimore County Maryland

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Introduced by Mr. Huddles, Councilman

By the County Council, October 6, 1975.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof; by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A04, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED *PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION*, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLIC HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY THE STAFF OF THE OFFICE OF PLANNING AND ZONING OF BALTIMORE COUNTY; AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE COMPREHENSIVE PLAN FOR BALTIMORE COUNTY APPROVED BY THE PLANNING BOARD OCTOBER 13, 1975.

4.1

EXHIBIT 5A

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Gerald W. Berg legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an ---------- zone to an ---------- zone; for the following reasons:

See attached description

1A01.2B (11)

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for helistop pursuant to Section ~~1A01.2C (3)~~ 2 as accessory to existing dwelling

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

I, or we, agree to pay expenses of above re-classification and/or 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.

Gerald W. Berg

Contract purchaser — Legal Owner

Address ---------- Address Stevenson, Maryland 21153

Warren Mix
Petitioner's Attorney — Protestant's Attorney

Address 202 Loyola Federal Building
Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 19th day of January, 1978, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the ~~11th~~ day of March, 1978 at 10:00 o'clock A. M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
DATE April 25, 1978
BY

GERALD W. BERG
SE/cor. of Greenspring Valley Rd. & Old Valley Rd. 3rd

78-193-X
#130

5A.1

EXHIBIT 5B

RE: PETITION FOR SPECIAL EXCEPTION for Helistop SE corner Greenspring Valley Road and Old Valley Road 3rd District	:	BEFORE COUNTY BOARD OF APPEALS OF
Gerald W. Berg, Petitioner	:	BALTIMORE COUNTY
	:	No. 78-193-X

: : : :

EXHIBIT 6

FINAL Report of the
Baltimore County Planning Board
Adopted July 26, 1979 and August 2, 1979

GROWTH-MANAGEMENT LEGISLATION: PHASE I

Baltimore County Office of Planning and Zoning
Towson, Maryland

EXHIBIT 7

County Council of Baltimore County Maryland

Legislative Session 1979, Legislative Day No. 20

BILL NO. 178-79

Mr. Norman W. Lauenstein, Councilman

By the County Council, October 15, 1979

A BILL

ENTITLED

AN ACT to implement various elements of the County's ~~Comprehensive~~ Master Plan, and more specifically those objectives, policies and standards relating to the assimilation, location, quantity, quality and timing of growth and development in Baltimore County, the provision of adequate public facilities to support development and the protection of agricultural and environmentally-sensitive land in the resource conservation zoning classifications, ~~and to provide for the establishment of overlay district areas and regulations and requirements pertaining thereto; to provide for a master plan consistency determination~~ AND TO ADOPT BASIC SERVICES MAPS AND REGULATIONS AND REQUIREMENTS PERTAINING THERETO; and to provide for monitoring of development activity; by adding new Article 4A — GROWTH MANAGEMENT; by repealing Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. of said regulations and enacting new Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. in lieu thereof; by adding Subsections 1A01.4, 1A02.4, ~~259.3~~ and new definitions ~~"Facilities impact use, Class A"; "Facilities impact use, Class B";~~ "Housing for the elderly"; "Industrial, quasi-industrial, or industry-related use"; and "Nonindustrial use" to Section 101, all of the Baltimore County Zoning Regulations; ~~by repealing and re-enacting with amendments Subsections 100.1.B.2,~~

7.1

EXHIBIT 8

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-1-SPHX

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve ----- the interpretation that the landing and taking off of a helicopter is allowed under the special exception for an airport (private grass landing strip) in an RC2 zone.

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

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

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

MAP NE 4 I
E. D. 11
DATE 7-2
200 B
1000 X
DP I

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	Robert J. Smith (Type or Print Name)
Signature	Signature
Address	(Type or Print Name)
City and State	Signature 3/22/89 4110
Attorney for Petitioner:	
(Type or Print Name)	13035 Long Green Pike 366-6769 Address Phone No.
Signature	Balto. MD 21082 City and State
Address	Name, address and phone number of legal owner, contract purchaser or representative to be contacted
City and State	Name
Attorney's Telephone No.: -----	Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 26 day of April, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 18 day of July, 1989, at 9:30 o'clock

8.1

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
EDGAR LUCAS Petitioner	*	Case Number: 98-294-SPHX

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

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 of 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
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of April, 1999, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq. and David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

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 26, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 APR 26 PM 3:00

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Special Exception
901 Greenspring Valley Road,
EDGAR LUCAS , Petitioner
Case No.: 98-294-SPHX

Dear Chairman Marks:

Enclosed for filing please find People's Counsel for Baltimore County's Entry of Appearance and Hearing Memorandum for filing in the Board proceedings and to express our interest as a party in land use issues of great public interest.

We do not anticipate calling or questioning any witnesses at the trial beginning April 27. In effect, we will submit on brief. We request the opportunity, however, to supplement our initial Memorandum, as necessary and appropriate, in the event that the Board accepts Post-Hearing Memoranda.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure

cc: G. Scott Barhight , Esq. and David K. Gildea, Esq., Attorneys for Petitioners
G. Macy Nelson, Esq., Attorney for Protestants

8/31/98

IN RE: Petition For Special Hearing and For Special Exception	:	Before the Hearing Officer/Deputy Zoning Commissioner of Baltimore County
Edgar Lucas, Petitioner	:	Case #98-294-SPHX

PROTESTANTS' OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION

Protestants, Deirdre Smith, Douglas Carroll, M.D., William Brewster, Susan C. Immelt, Steven J. Immelt, Laura J. Robertson, David B. Gorzsas, and The Valleys Planning Council, Inc., by their attorney, G. Macy Nelson, oppose Petitioner's Motion For Reconsideration. The Deputy Zoning Commissioner's decision was premised on his conclusion that the helicopter would have limited effect on the Protestants if the helicopter followed certain flight restrictions. If Petitioners refuse to accept those restrictions, the entire premise of the decision is eliminated. Therefore, if the Deputy Zoning Commissioner concludes that the restrictions are invalid, he should reconsider his decision to grant the Special Exception and deny the Petition For Special Exception.

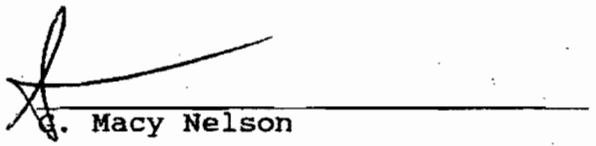
Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 31st day of August 1998, a

copy of the foregoing was mailed to: **G. SCOTT BARHIGHT, ESQUIRE, Whiteford, Taylor & Preston, L.L.P.**, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515.



G. Macy Nelson

8/26/98

In re:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	DEPUTY ZONING
	*	COMMISSIONER
Edgar Lucas Petitioner	*	OF BALTIMORE COUNTY
	*	Case No.: 98-294-SPHX

* * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., files this Motion for Reconsideration of the Order dated August 5, 1998 and the Amended Order dated August 6, 1998 and requests that the Deputy Zoning Commissioner reconsider restrictions number 3, 4, 5, and 13.

I. THE RESTRICTIONS PLACED BY THE DEPUTY ZONING COMMISSIONER ON AIRCRAFT FLIGHT OPERATIONS AT THE AIRPORT ARE CLEARLY PRE-EMPTED BY FEDERAL STATUTE.

Restrictions numbers 3, 4, 5 and 13 limit the flight operations of aircraft at the approved Helmore Farm airport. The Court of Appeals of Maryland in *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528 (1990) directly addressed the issue of conditions placed by Zoning Appeals Board limiting the frequency of take-off and landing of aircraft. The Court of Appeals ruled that conditions limiting the frequency of take-offs and landings of aircraft were pre-empted by Federal law.

The *Harrison* court stated:

> "When the Carroll County Board of Zoning Appeals granted a conditional use for a privately owned airport in 1982, it attached to the granting several conditions. One of them limited the frequency of take-offs of glider towing aircraft; another established a curfew for the operation of those aircraft. Both conditions were designed to reduce effective aircraft engine noise on residential properties near the airport. ***Both are invalid***. They trespass upon a field that has been impliedly

preempted by Federal Law." City of Burbank v. Lockhead Air Terminal, Inc., 411 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973).

After discussing the facts and extensively discussing the preemption issue, the Harrison court concluded that:

> "Both the Board's condition 3 -- the curfew -- falls directly in the preemption rules of City of Burbank as well as that of other cases we have cited. It is plainly an attempt to limit aircraft noise by regulating the operation of aircraft in applicable airspace over which the FAA has control. Condition 2 is a less direct effort to control noise by controlling aircraft operations, but it is one, nevertheless... We hold that both conditions are preempted under City of Burbank and, therefore, ***unconstitutional.***"

The Harrison court addressed and ruled on the very issue raised in conditions 3, 4, 5 and 13. The court clearly held that zoning authorities may not attempt to regulate the operation of aircraft in navigable space over which the FAA has control. More plainly, zoning authorities do not have the authority to regulate aircraft flight operations, whether it be fixed wing or rotary, at airports. The Court of Appeals of Maryland has spoken directly on this issue and has found that limitations of flight operations by a zoning authority would be unconstitutional. The court also makes clear that the regulation of operation of aircraft in navigable space is an FAA issue and zoning authorities are preempted from attempting to regulate flight operations. The Harrison court recognized that it is not within the purview of a land use decision maker to regulate the use of navigable airspace. The conditions regarding flight paths are a clear attempt to regulate airspace, an area which the FAA exclusively regulates, and are clearly improper restrictions. The operations of the aircraft need the flexibility of several alternate flight paths to ensure the safety of the aircraft and its passengers. It is also customary for helicopters to have unlimited flight paths as long as they are at altitudes in excess of 500 feet. The Petitioner is willing to direct all helicopter flight

paths eastward from the site in order to avoid the more sensitive areas of Greenspring Valley. But in order to provide a safe flight path to the east, the pilot needs the flexibility to vary his path. Perhaps an appropriate restriction would be to require the Petitioner to (1) have an easterly flight path for helicopter operations, (2) obtain a height of 500 feet before reaching the residential communities east of the commercial developments at Greenspring Station, and (3) to avoid flying over the dense residential communities to the east as much as possible. The basic interest is to follow the road system as a flight path guide, but some flexibility will need to be incorporated into actual flight operations.

Petitioner initially voluntarily restricted the airport to eight events a day for both fixed wing and rotary aircraft operations. Petitioner would agree to sixty (60) helicopter events a month and sixty (60) fixed wing operations a month. The present restrictions do not provide enough flexibility to adequately use the airport to promote the thoroughbred horse operation. There may be circumstances where a number of potential purchasers may fly in the same day to view a horse. There may be a concern that a monthly measurement would be too difficult to monitor. However, all proposed helicopter operations will be recorded via FAA flight logs. The Director of Permits and Development Management can request a particular log for a particular month and count the flights to ensure compliance. It is suggested that your Order be modified to permit the monthly operation described above and provide a mechanism for the Director of Permits and Development Management to obtain the logs from time to time, in his discretion, to confirm compliance.

Petitioner is concerned that the current restrictions on the flight paths does not give the operator of aircraft the flexibility to operate according to the FAA guidelines. Petitioner understands the neighbors concerns and will make every effort to avoid flying over their

property; however, the operators of the aircraft must abide by the FAA guidelines. Instead of placing Petitioner in that position of choosing between two contrary laws, Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider his conditions that limit the flight paths.

Therefore, the Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider its decision in light of *Harrison v. Schwartz*, 319 Md. 364, 572 A.2d 528 (1990) as there is direct controlling authority from the Court of Appeals on the placement of restrictions on flight operations as was done in restrictions numbers 3, 4, 5 and 13.

WHEREFORE, for the aforegoing reasons, the Deputy Zoning Commissioner should reconsider restrictions numbers 3, 4, 5 and 13 in his Order of August 5, 1998 and Amended Order of August 6, 1998.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 1998, a copy of the Petitioner's Motion for Reconsideration and Memorandum in Support Thereof was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

/s/ David K. Gildea
David K. Gildea

145359

8 20/98

RECEIVED
JUN 26 3
ZONING COMMISSIONER

In re:	* BEFORE THE
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	DEPUTY ZONING COMMISSIONER
Edgar Lucas Petitioner	OF BALTIMORE COUNTY
	Case No.: 98-294-SPHX

* * * * * * * * * * *

RESPONSE TO PROTESTANTS' MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., responds to Protestants' Motion for Reconsideration. The Protestants request that the Deputy Zoning Commissioner reconsider three points; namely,

(1) whether the Deputy Zoning Commissioner should apply BCZR Section 101;

(2) whether the Deputy Zoning Commissioner should require the Petitioner to purchase an appropriate fixed wing aircraft to be based at Helmore Farm before any helicopter be allowed to land or take off there;

(3) whether the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

All of Protestants' requests for reconsideration should be denied.

1. THE DEPUTY ZONING COMMISSIONER GRANTED SPECIAL EXCEPTION APPROVAL FOR AN AIRPORT, NOT FOR A HELISTOP.

Protestants assert that the Deputy Zoning Commissioner granted approval for a helistop at Helmore Farm. The clear language of the Deputy Zoning Commissioner's Order is that a Special Exception for an airport was granted. The Deputy Zoning Commissioner correctly found that a Special Exception for an airport should be granted for the site pursuant to BCZR Section 502.1 and BCZR Section 1A01.2C.1, which permits airports as a Special Exception use in the RC-2 zone. BCZR Section 1A01.2C.1 does not have any conditions attached to it regarding the operation of the airport use.

Protestants are attempting to reassert their argument that the proposed use for the property is a helistop as opposed to an airport. Clearly, the Deputy Zoning Commissioner correctly held that the proposed use, which was granted, was for a Special Exception for an airport. The Deputy Zoning Commissioner did not grant approval specifically for a helistop and the helistop conditions need not be met. Protestants are simply attempting to reargue a point which the Deputy Zoning Commissioner ruled contrary to their position in the original Order. Therefore, the Protestants' Motion for Reconsideration on point (1) should be denied.

2. THE LUCAS FAMILY ALWAYS HAS INTENDED TO USE THEIR PROPERTY FOR AN AIRPORT AND WILL CONTINUE TO USE THEIR PROPERTY AS AN AIRPORT.

The Protestants suggest that the Lucas family has never used their property for an airport and if they do not purchase a fixed wing aircraft to be based at Helmore

Farm, the Lucas family will never use the property for an airport. The Protestants assertion is contrary to the clear evidence and the findings of the Deputy Zoning Commissioner. The Deputy Zoning Commissioner found that:

> "Mr. Lucas testified that as far back as 1955 and 1956, capital improvements were made to Helmore Farm in order to facilitate the landing and take off of aircraft from the subject site. These improvements involved the installation of underground piping to eliminate a swale that ran through the property, which interfered with the smooth take off and landing of airplanes. Mr. Lucas testified that he personally landed airplanes on the property from 1972 to 1978 when he was a student at the University of Maryland at College Park. Furthermore, Mr. Lucas indicated that in addition to himself, several other individuals have landed fixed wing aircraft on the property over the years." *Opinion at Page 3.*

The Deputy Zoning Commissioner further found that Mr. Lucas testified:

> "That it is common for horse breeders, trainers, and owners to visit racetracks in New York, New Jersey, Kentucky and other states to observe horses to compete in races. The most efficient means of travel to those racetracks in these mid-Atlantic states is by way of aircraft, be it fixed wing airplane or helicopter. Furthermore, Mr. Lucas indicated that the thoroughbred racing industry and the syndication of horses now involves out-of-state investors who, from time to time, come to Helmore Farm, by way of airplane and/or helicopter. ... Mr. Lucas envisions, given the complexity of investing thoroughbred horses and the syndication of same, that investors coming to Helmore Farm by way of aircraft will increase over the years. Mr. Lucas believes that the number of investors in the Baltimore area is limited and, therefore, must expand the marketing of Helmore Farm into other financial markets, such as New York City. He therefore believes that the airport operation at Helmore Farm to be an integral part of the horse breeding operation." *Opinion at Pages 4-5.*

The Deputy Zoning Commissioner further found that:

> "In the instant case, there does exist a viable airstrip on Helmore Farm. Not only did I personally observe a fixed wing airplane land and take off from the property, testimony established that Mr. Lucas, himself, is a pilot and has landed airplanes on the property many times. Furthermore, others have landed airplanes on this airstrip on this property." *Opinion at Page 11*.

Finally, the Deputy Zoning Commissioner found that:

> "The testimony and evidence clearly show that the property has been used for over forty years, although very sporadically, for the landing and taking off of aircraft. No one ever complained over the fact that an airport has existed on this property for the past forty years." *Opinion at Page 14.*

The Deputy Zoning Commissioner correctly found that an airport has existed on the property for the past forty years and that there had been capital improvements made to accommodate such an airport. Further, the Deputy Zoning Commissioner found that the continued agricultural use of Helmore Farm is dependent upon the clients' ability to fly in and out by aircraft, whether it be fixed wing aircraft or helicopter use.

The granting of a Special Exception for an airport at Helmore Farm should not be conditioned upon the purchase of a fixed wing aircraft. Clearly, the Lucas family needs the airport for its operation of its business, as is evidenced by the capital improvements invested in the property over forty years ago to permit the use of an airport at the property. The Lucas family has always used their property as an airport and intend to continue the use of their property as an airport, whether they purchase a

fixed wing aircraft for themselves or not. The findings in the Deputy Zoning Commissioner's Opinion rightly find that the use of the airport is paramount for the continued viability of the agricultural use at Helmore Farm. Therefore, the Petitioners respectfully request that the Deputy Zoning Commissioner deny Protestants' Motion for Reconsideration on point 2.

3. THE DEPUTY ZONING COMMISSIONER'S CONDITION AND RESTRICTION NUMBER 11 IS CORRECT AND SHOULD NOT BE DISTURBED.

The Protestants assert that the Deputy Zoning Commissioner erred in not permitting Avery Harden, the County landscape architect, to determine what type of tree would create the most effective buffer. Respectfully, the Deputy Zoning Commissioner has the expertise to determine the type of tree which would provide an adequate buffer. The Deputy Zoning Commissioner in condition number 11 states, "Along these lines, Petitioners shall submit for review and approval by Mr. Avery Harden, the landscape architect for Baltimore County, a landscape plan depicting this double row of pine trees along the western property line of the subject property in the area described above."

Petitioners assert that the Deputy Zoning Commissioner correctly ruled in providing for a certain type of buffer. However, if Protestants' argument is taken to its logical conclusion, since there was no evidence in the record regarding the type of buffer, the Deputy Zoning Commissioner does not have the ability to rule on an issue before him. Regardless, the Petitioners assert that the Deputy Zoning Commissioner's condition

number 11 should be disturbed and that the Protestants' Motion for Reconsideration on point 3 should be denied.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 1998, a copy of the foregoing Response to Protestants' Motion for Reconsideration was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

David K. Gildea

145132

8/13/98

In re:	*	**BEFORE THE**
PETITIONS FOR SPECIAL HEARING	*	**DEPUTY ZONING**
AND SPECIAL EXCEPTION	*	**COMMISSIONER**
Edgar Lucas	*	**OF BALTIMORE COUNTY**
Petitioner	*	**Case No.: 98-294-SPHX**

* * * * * * *

MEMORANDUM IN SUPPORT MOTION FOR RECONSIDERATION

Protestants, by their attorney, G. Macy Nelson, submit this Memorandum in Support of their Motion for Reconsideration of the Order dated August 5, 1998. Protestants seek reconsideration of three points: (1) the Deputy Zoning Commissioner should apply B.C.Z.R. § 101; (2) the Deputy Zoning Commissioner should require Petitioner to purchase an appropriate fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there; and (3) the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

(1) The Deputy Zoning Commissioner should apply B.C.Z.R. § 101.

The Order permits "no more than two helicopter events" per day in certain circumstances. The edge of the enclosed area where the helicopter will land and take off is approximately ten to twenty feet from the nearest property line. (Testimony of Kevin Miller). In their Memorandum in Opposition to Petition for Special Hearing and Petition for Special Exception, filed April 30, 1998, Petitioners argued that the proposed use would violate B.C.Z.R. § 101. The Order is silent, however, with respect to that section.

Protestants request that the Deputy Zoning Commissioner reconsider his Order because the proposed use of the helicopter violates B.C.Z.R. § 101 in two major ways. That section prohibits the use of a helicopter at a location less than five hundred feet from any property line unless the use is authorized by the Director of Public Safety and unless there are no more than 50

helicopter operations per month. In this case, the proposed "airport and/or helicopter operation" is approximately ten to twenty feet from the nearest property line. (Testimony of Kevin Miller). First, the Petitioner presented no evidence that the Director of Public Safety has authorized any helicopter events at Helmore Farms. Second, the Deputy Zoning Commissioner has permitted two helicopter operations per day which exceeds the B.C.Z.R. § 101 limit of fifty per month. Thus, the proposed helistop is illegal because it has not been authorized by the Director of Public Safety and the number of flights per month exceeds fifty.

Protestants respectfully request that the Deputy Zoning Commissioner reconsider the applicability of B.C.Z.R. § 101

(2) The Deputy Zoning Commissioner should require Petitioner to purchase a fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there.

The Deputy Zoning Commissioner ruled that an airport is for the "landing or taking off of aircraft" and that an "aircraft" includes a helicopter. The Deputy Zoning Commissioner also recognized that the relevant zoning regulation prohibit a helistop if there is no airport for fixed-wing aircraft. In reaching his decision, the Deputy Zoning Commissioner relied on Dale Lucas' testimony that he intended to purchase a fixed-wing aircraft, such as a Maule, which would be based at Helmore Farms. (Opinion at 4). Therefore, the Deputy Zoning Commissioner should impose a condition that the Petitioner purchase such an airplane **before** the Petitioner has the right to allow any helicopter to land at or take off from Helmore Farms.

Protestants suggest that the Petitioner will not purchase any airplane now that the Deputy Zoning Commissioner has issued this opinion. If the Petitioner fails to purchase an airplane to be based at Helmore Farms, the premise for the ruling is absent: there will be no airport for a fixed-

wing aircraft. If there is no airport for a fixed-wing aircraft, this case will be like the *Robert J. Smith* case, and the use of the helicopter will be illegal.

Protestants respectfully request that the Deputy Zoning Commissioner reconsider his decision and add a condition that no helicopter may land or take off at the proposed airstrip until the Petitioner purchases an appropriate fixed-wing aircraft which will be based at Helmore Farms.

(3) The Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

The Deputy Zoning Commissioner has ordered Petitioner to "install a double row of white pine trees" in certain locations. Protestants' counsel has no memory of any evidence with respect to the type of trees that should be planted as a buffer. Protestants respectfully suggest that the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer. Protestants request that the Deputy Zoning Commissioner reconsider his ruling that the trees must be white pines.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of August, 1998, a copy of Protestants' Motion for Reconsideration and supporting Memorandum was mailed by first-class mail, postage pre-paid, to G. Scott Barhight, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515.

G. Macy Nelson

2/1/02

AUG 17
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SIONER

In re:	*	**BEFORE THE**
PETITIONS FOR SPECIAL HEARING	*	**DEPUTY ZONING**
AND SPECIAL EXCEPTION	*	**COMMISSIONER**
Edgar Lucas	*	**OF BALTIMORE COUNTY**
Petitioner	*	**Case No.: 98-294-SPHX**

* * * * * * *

MOTION FOR RECONSIDERATION

Protestants, ~~by their~~ attorney, G. ~~Macy Nelson~~, file this ~~Motion~~ for Reconsideration of the Order dated August 5, 1998 with supporting memorandum and request that the Deputy Zoning Commissioner reconsider three points:

(1) the Deputy Zoning Commissioner should apply B.C.Z.R. § 101;

(2) the Deputy Zoning Commissioner should require Petitioner to purchase an appropriate fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there; and

(3) the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

Wherefore, Protestants respectfully request that the Deputy Zoning Commissioner reconsider his Order of August 5, 1998.

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

8/26/98

RECEIVED
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COMMISSIONER

In re:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	DEPUTY ZONING
	*	COMMISSIONER
Edgar Lucas Petitioner	*	OF BALTIMORE COUNTY
	*	Case No.: 98-294-SPHX

* * * * * * * * * * *

PETITIONER'S MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., files this Motion for Reconsideration of the Order dated August 5, 1998 and the Amended Order dated August 6, 1998 and requests that the Deputy Zoning Commissioner reconsider restrictions number 3, 4, 5, and 13.

WHEREFORE, Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider his Order of August 5, 1998 and Amended Order of August 6, 1998.

Respectfully submitted,

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

8/6/98

IN RE:	PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 98-294-SPHX
	Edgar Lucas Petitioner	*	

* * * * * * * * * * *

AMENDED ORDER

WHEREAS, this matter came before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire, seeking approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requested a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.).

A public hearing was held on April 6th and 7th, 1998, during which testimony and evidence was presented both in support of and in opposition to the Petitioners' request. By Order issued August 5, 1998, I denied the Petitioners' special hearing request, but granted the special exception for an airport, subject to certain terms and restrictions.

Subsequent to the issuance of said opinion, I felt it necessary to add an additional restriction to limit the flight path of the helicopters using the subject airport.

THEREFORE, IT IS ORDERED by this Deputy Zoning Commissioner for Baltimore County this 6th day of August, 1998 that the Order issued August 5, 1998 in the above-captioned matter, be and the same shall hereby be AMENDED to add the following restriction:

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"13) All helicopters coming and going from the subject property shall be required to fly over I-83 and Falls Road when arriving/departing the airport. No helicopters shall be permitted to fly over Greenspring Station and the adjacent community of Heatherfield at any time. Multiple violations of this provision shall result in a revocation of the special exception granted herein."

All other terms and restrictions of the Order issued August 5, 1998 shall remain in full force and effect.

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: G. Scott Barhight, Esquire and David K. Gildea, Esquire
WT&P, 210 W. Pennsylvania Ave., 4th Flr., Towson, Md. 21204

Messrs. Edgar and Dale Lucas
901 Greenspring Valley Road, Brooklandville, Md. 21022

G. Macy Nelson, Esquire, 401 Washington Ave., Suite 803, Towson, 21204
Ms. Susan Immelt, P.O. Box 714, Brooklandville, Md. 21022
Mr. Stephen Howard, P.O. Box 48, Stevenson, Md. 21153
Ms. Deirdre Smith, P.O. Box 945, Brooklandville, Md. 21022
Ms. Lynne Ellis, 11044 Greenspring Avenue, Lutherville, Md. 21093
Mr. Jorgen Jensen, 8216 Tally Ho Road, Lutherville, Md. 21093
Mr. Douglas Carroll, 1117 Greenspring Valley Rd, Lutherville, 21093
Mr. Jack Dillon, Valleys Planning Council
212 Washington Avenue, Towson, Md. 21285-5402
People's Counsel; Case Files

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8/5/98

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District * BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 98-294-SPHX

Edgar Lucas
Petitioner

*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire. The Petitioner seeks approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requests a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plans submitted which were accepted and marked into evidence as Petitioner's Exhibit 1, 2A and 2B.

Appearing at the hearing on behalf of the Petitions were Dale Lucas, a representative of Helmore Farms, James Matis, Professional Engineer with Matis Warfield, Inc., the consulting firm which prepared the site plan for this property, Charles Lamb with Delta Airport Consultants, an expert in airport design and engineering, Kevin Miller with Miller Henning Associates, consultants in acoustical engineering, and Counsel for the Petitioners, G. Scott Barhight, Esquire and David K. Gildea, Esquire. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Susan Immelt, Stephen Howard, Deirdre Smith, Lynne Ellis, Harold Burns, Jorgen Jensen, Douglas Carroll,

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and Jack Dillon, Director of the Valleys Planning Council. The Protestants were represented by G. Macy Nelson, Esquire.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel consisting of a gross area of approximately 87 acres, more or less, zoned R.C.2. The property has frontage on Greenspring Valley Road and abuts Hillside Road to the rear, and is located just west of the intersection of Falls Road and Greenspring Valley Road in Brooklandville. The property is a horse breeding farm, known as Helmore Farms, and is improved with a principal residence, several tenant dwellings, stables and outbuildings. Midway towards the rear of the property along its western boundary is a 150' x 150' paddock which is proposed to be improved with a 20' x 20' helicopter touchdown pad. In addition, the Jones Falls waterway runs through the property, just south of the proposed helicopter pad. It is the rear half of this property which is the subject of the special hearing/special exception requests. This area is approximately 1270' x 1426' in dimension.

This portion of the property consists of approximately 45-acres in area and is improved with only a farm outbuilding, 40' x 23' in dimension, in the northwest corner. Mr. Lucas uses this portion of his property as a grazing area for the thoroughbred horses which are boarded on his property. Also in this area, as noted above, is the paddock area used by Mr. Lucas as a helicopter touchdown area. The subject paddock area is enclosed with a wire mesh and wood fence. In addition, an area has been set aside as an airstrip for the take-off and landing of fixed-wing aircraft.

Testimony and evidence was offered by Dale Lucas, who operates Helmore Farms. Mr. Lucas testified that he has lived on Helmore Farms since 1969. Helmore Farms, and particularly, the Lucas family, have been

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in the business of raising, training and racing thoroughbred horses since 1958. In fact, the business was started by Edgar Lucas in 1958. Over the years, the operation included a 129-acre farm in Howard County and a 600-acre horse farm in Paris, Kentucky. Testimony indicated that as a result of tax law changes in 1986, the Maryland horse farm became their central operation. Dale Lucas testified that at the time of the hearing, he had 37 thoroughbred horses at Helmore Farms.

As to the request for approval of an existing airport as a legal, nonconforming use, Mr. Lucas testified concerning the airport operation at Helmore Farms. Mr. Lucas testified that as far back as 1955 and 1956, capital improvements were made to Helmore Farms in order facilitates the landing and take-off of aircraft from the subject site. These improvements involved the installation of underground piping to eliminate a swale that ran through the property which interfered with the smooth take-off and landing of airplanes. Mr. Lucas testified that he personally landed airplanes on the property from 1972 to 1978 when he was a student at the University of Maryland at College Park. Furthermore, Mr. Lucas indicated that in addition to himself, several other individuals have landed fixed-wing aircraft on the property over the years. Mr. Lucas testified that helicopters were also landed at Helmore Farms from time to time.

Mr. Lucas was the only witness called by the Petitioners to testify concerning the historical use of the subject property for airport operations. His testimony was insufficient to satisfy the burden imposed upon the Petitioners to establish the existence of an airport or helicopter operation as a nonconforming use. Therefore, I am compelled to deny the special hearing request.

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As alternative relief, the Petitioner requested a special exception for an airport. Along those lines, Mr. Lucas testified as to the airport operations that currently take place on the property. Mr. Lucas specifically testified regarding Mr. Martin Grass' use of the airport, which precipitated the Petitions filed in this case. Mr. Grass owns and operates an Augusta A-109 helicopter and has utilized the helicopter landing area on the subject site for approximately the past year. In addition, there are fixed-wing aircraft which have occasionally used the airstrip on the property for landing and taking off. Moreover, Mr. Lucas indicated that Helmore Farms intends to purchase its own fixed-wing aircraft in the near future for use in connection with its horse farm operation. In particular, they are considering a Maule aircraft, a brochure of which was submitted into evidence as Petitioner's Exhibit 6. Mr. Lucas testified that the survivability of Helmore Farms as a thoroughbred horse farm is dependent upon their ability to bring investors to the property. In addition, it is necessary to travel to various racetracks along the east coast. Mr. Lucas testified that it is common for horse breeders, trainers, and owners to visit racetracks in New York, New Jersey, Kentucky and other states to observe horses compete in races. The most efficient means of travel to those racetracks in these mid-Atlantic states is by way of aircraft, be it a fixed-wing airplane or helicopter. Furthermore, Mr. Lucas indicated that the thoroughbred racing industry and the syndication of horses now involves out-of-state investors who, from time to time, come to Helmore Farms, by way of airplane and/or helicopter. Mr. Lucas specifically identified a New York investor who travels to Helmore Farms by way of a helicopter. This investor takes off from the helipad atop the Pan Am building in Manhattan and lands at the helicopter landing area at Helmore

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Farms. Mr. Lucas envisions, given the complexity of investing in thoroughbred horses and the syndication of same, that investors coming to Helmore Farms by way of aircraft will increase over the years. Mr. Lucas believes that the number of investors in the Baltimore area is limited and therefore, he must expand the marketing of Helmore Farms into other financial markets, such as New York City. He therefore believes the airport operation at Helmore Farms to be an integral part of his horse breeding operation.

Along those same lines, Mr. Lucas testified that Mr. Grass, who commutes to his business in Harrisburg, Pennsylvania by way of his helicopter, is an investor in eight horses on Helmore Farms. Mr. Lucas believes that this constitutes a sufficient nexus between Mr. Grass' use of the airstrip and Helmore Farms, given his investment in those eight horses. Furthermore, he believes that this distinguishes Mr. Grass' use of the airport from that of a mere commuter coming and going to work.

Also testifying as to the airport operation was Mr. Charles Lamb, who is an expert in designing and engineering airports. Mr. Lamb is employed by Delta Airport Consultants and was hired by the Petitioner to offer his opinion as to the airport in this particular case. Mr. Lamb testified that an airport runway with a length of 1200 feet, which is the length of the airstrip in this case, is sufficient to accommodate several types of aircraft. Mr. Lamb indicated that a 2,000-foot length would be a safer design; however, the 2,000-foot length would allow additional types of aircraft to land over and above that which can safely land on a 1200-foot strip. Therefore, he opined the length of the strip merely dictates the type of aircraft that can land safely on that particular airstrip and identified several types which could safely land at this location. In

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addition, he offered the opinion that the Maule fixed-wing aircraft, which is proposed to be purchased by Mr. Lucas in the future, is one category of aircraft which can safely land on a 1200-foot length airstrip. Furthermore, Mr. Lamb testified that the helicopter landing area at the subject airport can safely accommodate the landing and taking off of helicopters.

Mr. Kevin Miller from Miller Henning Associates, also appeared and testified on behalf of the Petitioner. Mr. Miller was accepted as an expert in acoustics. Mr. Miller performed a study concerning the noise generated by a typical fixed-wing aircraft as well as a helicopter when it utilizes the airport and airstrip at the subject site. Mr. Miller measured the decibel levels from various locations around the subject property. In addition, he offered testimony regarding the decibel levels of other more familiar types of mechanical equipment, such as tractors, combines, automobiles, and heavy trucks. Mr. Miller concluded that the amount of noise generated by the fixed-wing aircraft and helicopters utilizing the subject airport are below the national sound levels applicable to this type of use. It was his opinion that the sound generated by these aircraft would not adversely affect the surrounding community.

Mr. James Matis, the Professional Engineer who prepared the site plan of this property, also appeared and testified on behalf of the Petitioner. Mr. Matis testified relative to the exhibits prepared by his office and introduced those exhibits into evidence. Mr. Matis testified that in his opinion the proposed use of the subject property as an airport would not have any adverse effects above and beyond those normally associated with this type of use anywhere else within the R.C.2 zone.

As noted above, several residents from the surrounding community appeared and testified in opposition to the Petitioner's request, includ-

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ing among them, Mr. Jack Dillon, Director of the Valleys Planning Council. Mr. Dillon, who was formerly associated with the Office of Planning, testified that based on his expertise and experience in zoning, helistops and heliports are not a permitted use in the R.C.2 zone. He testified regarding his experience when employed with the Office of Planning and the controversial zoning case in 1979 involving Mr. Buzz Berg and his landing of a helicopter on his property in the Greenspring Valley. As a result of the battle that ensued with Mr. Berg, helistop/heliport operations were deleted from the R.C.2 zones. Therefore, Mr. Dillon does not believe that such a use is now permitted in the R.C.2 zone, and that the Petitioner's special exception request should be denied.

Ms. Susan Immelt, an adjacent property owner, also appeared and testified in opposition to the Petitioner's request. Ms. Immelt grew up on her property in the home in which she presently resides. She testified that in addition to her present home, she is permitted to build another dwelling on her property and indicated on the site plan where that future house might be located. Ms. Immelt testified that while road noise from Greenspring Valley Road is loud on the front portion of her property, it is quite quiet in the lower portion of her property near the Jones Falls waterway. Ms. Immelt testified that she originally noticed the landing of a helicopter at Helmore Farms in October, 1997. She approached Mr. Dale Lucas to inquire as to what was taking place on the property at that time. Ms. Immelt testified that she indicated to Mr. Lucas that she would not object to a helicopter landing on his property if it was sporadic; however, she told him that she would strongly object to such landings if they were an everyday occurrence. She testified that at the present time, a helicopter is landing on the property every day at 8:00 AM and returning between

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5:00 PM and 7:30 PM each evening. On weekends, this helicopter will arrive later in the morning and return at various times in the evening. Ms. Immelt stated that the take-off and landing of this helicopter does not take place every weekend. She described the noise of the helicopter as sounding like a chain saw in her back yard, even with the windows in her house closed. She indicated that the helicopter has awakened her at different times when it has landed. She further testified that at dinner time when the helicopter lands, she and her family will have to raise their voices at the dinner table in order to hear one another in the normal course of conversation.

Mr. William Brewster, who resides on Hillside Road on the south side of the property, also appeared and testified in opposition to the Petitioner's request. Mr. Brewster overlooks the Greenspring Valley from his property. Although he is unable to see the helicopter where it sits on the ground, he is able to see it as it rises into the air. Mr. Brewster testified as to his knowledge of the history of the use of Helmore Farms, given that he has lived on his property since 1961. He indicated that he has never seen any aircraft land on the subject property until recently and that he finds the landing of a helicopter at this site very offensive. Thus, he is opposed to the granting of a special exception.

Mr. Harold Burns appeared in his individual capacity and also as a representative of the Falls Road Community Association and the Greenwood Community Association wherein he lives. He indicated that he enjoys sleeping in the evening with the windows open and that from his house he is able to hear road noise from the surrounding road systems. He testified that he is bothered by the noise generated by this helicopter and that any noise generated in this area, be it automobiles or aircraft, is magnified,

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given the configuration of the valley itself and the quiet nature of the surrounding community. Thus, he, too, is opposed to the granting of a special exception to allow the subject airport.

Mr. Douglas Carroll, who owns land adjacent to the subject property, also appeared and testified in opposition to the request. Mr. Carroll offered similar testimony as to the history and frequency of aircraft landing at Helmore Farms. However, given that I have already denied the special hearing request, it is not necessary to recount that testimony at this point. Mr. Carroll did object to the continued landing of aircraft at Helmore Farms and stated that the noise generated by this particular helicopter is very offensive to him and his family. He compared the noise generated by this helicopter to be second only to thunder. Mr. Carroll asked that the special exception request be denied.

Also appearing and testifying in opposition to the Petitioner's request were Stephen Howard, Jorgen Jensen, Dierdre Smith and Lynne Ellis. The cumulative testimony of all of these Protestants was that they are strongly opposed to the special exception request for an airport. These individuals object to the noise generated by the helicopter itself as well as the effect that such an operation would have on the rural character of the surrounding community.

At the conclusion of the hearing, I arranged a site visit to the property to observe the arrival/departure of a helicopter as well as a fixed-wing aircraft. The demonstration was provided by the Petitioners on the subject property in the location proposed as the special exception area. In attendance was Mr. Lucas, along with his attorney, David Gildea. Mr. Carroll and his attorney, Macy Nelson, also attended. The demonstration consisted of the arrival/departure of both a fixed-wing aircraft and the

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Augusta A-109 helicopter, which is the helicopter that uses the airport on a daily basis. The fixed-wing aircraft was able to safely land and take off from the subject property. In addition, the Augusta A-109 helicopter landed and took off at six different times, affording me the opportunity to witness the effects of its arrival/departure from six different vantage points. I observed such landings from as far away as the Douglas Carroll home and as close as immediately adjacent to the helicopter landing area. This demonstration provided me with a greater understanding of the effects of this helicopter on the surrounding community. On my own, I attempted on several occasions, to observe the helicopter prior to this demonstration. However, I was unsuccessful in capturing the event, given the brevity of the occurrence.

The Protestants argue by way of the Memorandum submitted by their attorney, G. Macy Nelson, that the landing of helicopters in the R.C.2 zone is strictly prohibited by the B.C.Z.R. They argue that as a result of the matter involving Mr. Buzz Berg operating a helicopter in Greenspring Valley the zoning regulations were modified to prohibit heliports in the R.C.2 zones. I agree with the position of the Protestants that the operation of a heliport and/or helistop in an R.C.2 zone is not a permitted use, either as of right or by special exception. In addition, the Protestants reminded this Deputy Zoning Commissioner of a similar case involving Mr. Robert J. Smith who was landing a helicopter in the Long Green Valley. I am very familiar with the Smith helicopter case in that as an Assistant County Attorney with the Baltimore County Law Office, I prosecuted Mr. Smith in both the District Court and Circuit Court of Baltimore County for landing a helicopter on his property. Mr. Smith came before the then Deputy Zoning Commissioner, Ann M. Nastarowicz, on Petitions for Special Hearing and

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Special Exception to obtain permission to land his helicopter on his property. Deputy Commissioner Nastarowicz denied Mr. Smith's Petitions, finding that a heliport/helistop is not a permitted use in the R.C.2 zones. She further found that Mr. Smith did not in any manner have an airstrip on his property to support his request for an airport. Furthermore, Mr. Smith testified that he never owned an air- plane, had no airplane flying experience, nor had any knowledge as to air- craft weight and the length of runway necessary to land a plane. Deputy Commissioner Nastarowicz quickly saw through Mr. Smith's attempt to disguise what basically was a heliport/helistop operation on his property as that of an airport. She then denied the special exception and special hearing requested by Mr. Smith. Having been closely involved in the Smith case, I agreed entirely with Ms. Nastarowicz' findings and rulings. How- ever, the case before me poses a different scenario.

In the instant case, there does exist a viable airstrip on Helmore Farms. Not only did I personally observe a fixed-wing airplane land and take off from the property, testimony established that Mr. Lucas, himself, is a pilot and has landed airplanes on this property many times. Furthermore, others have landed airplanes on the airstrip on this property. What sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the Smith case is not directly applicable to the special exception request before me.

As to the subject case before me, prior to ruling upon the special exception request for an airport, it must first be determined what an actual airport use entails. The B.C.Z.R., specifically, Section 101 thereof, defines an airport as follows: "Any area of land or water designated and set aside for landing or taking off of aircraft." The key

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word contained within that definition is, of course, "aircraft". The zoning regulations do not specifically define "aircraft". Therefore, it is necessary to review Webster's Third New International Dictionary, Unabridged for a definition. Webster's defines aircraft as follows: "A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces - used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats."

As to the special exception request, an airport is specifically listed as a use permitted by special exception in the R.C.2 zones, which includes the landing and taking off of aircraft. The definition as found in Webster's includes helicopters in its category of aircraft. Having reviewed the applicable language contained within Webster's and the B.C.Z.R., I find that helicopters would, in fact, be included within the special exception request for an airport operation. Having so ruled, it must now be determined whether the Petitioner has met the burdens imposed upon him to justify the granting of the special exception request.

In order to fully understand the nature of this proceeding, it is imperative that the decision-maker personally observe the arrival/departure of aircraft from the subject property. When this case is heard by the Board of Appeals, I would strongly urge that panel to have the same demonstration performed for them, as was performed for me. It is the only way to be able to accurately rule on this issue.

The effects of an airport at this location are very limited in duration. The arrival of an airplane takes only seconds. The sound of an airplane arriving was not offensive, even when standing on the edge of the

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runway. The departure of an airplane takes longer. The Pilot must accelerate the engine in order to build enough thrust to generate sufficient take-off speed. The noise of the engine at its peak RPM was offensive; however, even considering this, I found that given the brevity of the event (10 - 15 seconds), it was not sufficient enough to deny the special exception request.

The same application holds true for the arrival/departure of a helicopter. Standing directly aside the landing area, I found the noise from the helicopter to be offensive, but only for about 10 - 15 seconds, when the helicopter was preparing to touch down. When departing, the noise was louder and more offensive, apparently due to the fact that more power is necessary to generate lift than to descend. From one vantage point (the Carroll home), I was unable to hear the helicopter land, but could hear it when it departed. I will say that the wind conditions on the day of my observations helped to mitigate the noise. In addition, the foliage on the trees also helped to mitigate the noise. However, with appropriate restrictions, I believe a limited airport operation can exist at this location without detriment to the surrounding neighborhood. If arrival and departure were constantly occurring, then my feelings would be different. For the great majority of the day, Helmore Farms will remain quiet and peaceful, the only noise being that emanating from nearby I-83 and the Baltimore Beltway and other metropolitan noises.

I believe longer periods of noise will be generated by the development of the Elder tract, located adjacent to this site, into recreation fields by Baltimore County; the low drone of traffic on I-695 and I-83; the newly acquired traffic and news helicopters put into service by Channels 11 and 13, which frequently fly over this traffic hot spot; the heavy

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farm equipment that is used in the farming of adjacent properties; and traffic in general on Greenspring Valley Road, then the limited operation of this airport at this location.

After reviewing all of the testimony and evidence presented, I am persuaded to grant the special exception with certain restrictions as more fully described below. These restrictions will insure that the use of the property as an airport does not become too excessive or burdensome on the surrounding community. The testimony and evidence clearly showed that the property has been used for over 40 years, although very sporadically, for the landing and taking off of aircraft. No one ever complained over the fact that an airport has existed on this property for the past 40 years. What has precipitated most of the concern of the surrounding community is the intensification of the use of this airport a this time, given its daily use. Therefore, appropriate restrictions and conditions shall be imposed upon the granting of this special exception to insure that no further intensification of this airport use takes place. In addition, restrictions shall be imposed in an attempt to mitigate the use that is currently taking place.

The Petitioner in his Memorandum indicated that this Deputy Zoning Commissioner is without authority to impose conditions and restrictions on the use of the subject property as an airport. I disagree with the argument contained in Counsel's Memorandum and would suggest that an appeal be filed in the event the Petitioner disagrees with the conditions and restrictions imposed.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner

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has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing shall be denied and the special exception shall be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 5th day of August, 1998 that the Petition for Special Hearing to approve that an airport and/or helicopter operation on the subject property is a legal, nonconforming use, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception seeking alternative relief to permit an airport on the subject property, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibits 1, 2A and 2B, be and is hereby GRANTED, subject to the following terms and restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The special exception granted herein is limited to the current owners and operators of Helmore Farms, specifically, the Lucas family. It shall not be transferable to any third party. In the event that this property is sold or the Helmore Farms thoroughbred horse farm operation ceases to do business at this

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location, then the special exception granted herein shall cease and terminate.

3) The airport operation shall be limited to one (1) landing and take-off of a fixed wing aircraft per week. This restriction shall not apply to Mr. Lucas' personal aircraft, such as the proposed Maule fixed-wing aircraft, the brochure of which was submitted into evidence as Petitioner's Exhibit 6. In the event Mr. Lucas purchases this private fixed-wing aircraft, he may come and go from his property as is necessary. However, this restriction pertains to the landing of aircraft by those other than the Petitioner. Furthermore, this restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness and Belmont Stakes. The Petitioner shall be permitted to have multiple fixed-wing landings and take-offs on those weekends, only.

4) There shall be no more than two helicopter events on any given day. A helicopter event consists of an arrival and a departure. Said landings and take-offs shall occur between the hours of 7:00 AM and 10:00 PM as stated heretofore. There shall be no helicopters permitted to land at this airport that exceed the decibel level generated by the Augusta A-109. This restriction is imposed upon the Petitioner in order to limit the size and type of helicopters which will be permitted to utilize this airport. The noise level of the Augusta A-109 helicopter was acceptable to this Deputy Zoning Commissioner; however, there are many other helicopters whose noise levels may not be acceptable. Therefore, it is necessary to restrict to the extent possible the type of helicopter permitted to land on the subject property. This restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness, and Belmont Stakes. The Petitioner shall be permitted to have multiple helicopter landings during those weekends.

5) All helicopters shall be prohibited from landing and taking off in a direction that would carry the helicopter in a westerly direction over the lands owned by the Immelt or Carroll families. All landings and take-offs of helicopters shall proceed in the direction of Falls Road, thereby flying over the Meadowwood, Inc. property, currently owned by Baltimore County for use by its Department of Recreation and Parks.

6) There shall be no landing or taking off of aircraft from the subject property prior to 7:00 AM on any given day, or after 10:00 PM on any given evening.

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7) There shall be no fueling of any type of aircraft on the subject property.

8) The storage of aircraft not owned by the Petitioner shall not be permitted on the subject property for any more than 14 consecutive days.

9) There shall be no aircraft repair of any kind taking place on the subject property, except for emergency repairs.

10) There shall be no sale of aircraft from the subject property.

11) The Petitioner shall be required to install a double row of white pine trees along the western boundary of his property from the northern boundary of the special exception area, south along the western property line and terminating at the existing tree line which buffers the Jones Falls waterway from the subject property. This double row of white pine trees is an attempt to further mitigate the noise levels generated by the aircraft that come and go from the subject site. Along these lines, the Petitioner shall submit for review and approval by Mr. Avery Harden, the Landscape Architect for Baltimore County, a landscape plan depicting this double row of pine trees along the western property line of the subject property in the area described above. The existing tree line in this area is mostly deciduous, wherein the ability of those trees to buffer the sound generated from this airport would be significantly reduced during the winter months. Therefore, it is necessary to supplement this existing vegetation by way of these additional plantings.

12) When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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4/30/98

IN RE: Petition For Special Hearing and For Special Exception	:	Before the Hearing Officer/Deputy Zoning Commissioner of Baltimore County
	:	
	:	Case #98-294-SPHX

PROTESTANTS' MEMORANDUM IN OPPOSITION TO PETITION FOR SPECIAL HEARING AND PETITION FOR SPECIAL EXCEPTION

Protestants, Deirdre Smith, Douglas Carroll, M.D., William Brewster, Susan C. Immelt, Steven J. Immelt, Laura J. Robertson, David B. Gorzsas, and The Valleys Planning Council, Inc., by their attorney, G. Macy Nelson, file this Memorandum in Opposition to the Petition for Special Hearing and Petition For Special Exception.

I. INTRODUCTION

The Petitioner has constructed a helicopter landing pad in the southwestern portion of Helmore Farm ("Helmore"). Helmore is a commercial horse farm and is zoned RC2. Helmore is in the Maryland Agricultural Land Preservation Easements Program. The distance between the edge of the helicopter pad and the nearest property line is ten to twenty feet. (Testimony of Kevin Miller).

Petitioner now seeks a "special hearing to approve a legal non-conforming use for an airport and/or helicopter operation. Special exception for an airport." Petitioner has proposed to use such an airport for "no more than eight (8) fixed-wing

aircraft events per day and eight (8) helicopter events per day. An event consists of landing, idling, takeoff and fly-by." This is the first time an owner of Helmore has sought official approval to land airplanes or helicopters at Helmore. (Tr. at 59-60, attached as **Exhibit 1**).

Petitioner is seeking permission to operate what amounts to a commercial "helistop" for a helicopter operated on behalf of Martin Grass. The price for Mr. Grass' daily use of the helistop is a substantial financial investment in Helmore. Mr. Grass will only invest in Petitioner's horse farm if he can commute to work by helicopter from Helmore. (Tr. at 494-497, attached as **Exhibit 2**). In October, 1997, Mr. Grass invested in eight horses owned by Dale Lucas' father. (Tr. at 70-71, attached as **Exhibit 1**).[1] Petitioner's representative, Dale Lucas wants access to Mr. Grass twice a day to persuade him to continue to invest in Helmore.

Mr. Grass is seeking to use his commuting activity from Helmore for tax purposes. Mr. Lucas explained, "There are constraints beyond [Mr. Grass'] control that would not allow him to take ordinary losses against ordinary income if he doesn't have access to the operation of a certain number of hours." (Tr. at 498, attached as **Exhibit 2**).

The ability of Mr. Grass to commute by helicopter from Helmore is inextricably linked to this Petition. Mr. Lucas would not agree to any condition on any special exception which would

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[1] Baltimore County first cited the Petitioner for violating the zoning regulations on October 17, 1997.

prohibit Mr. Grass from commuting to work by helicopter from Helmore. (Tr. at 493-495, attached as **Exhibit 2**).

The Petitioner failed to meet its burden that it has a legal non-conforming use or that it is entitled to a special exception for an airport.

II. ARGUMENT

A. THE ZONING COMMISSIONER SHOULD GIVE NO WEIGHT TO THE TESTIMONY OF DALE LUCAS BECAUSE HE CONTRADICTED HIS EARLIER SWORN TESTIMONY ON IMPORTANT FACTUAL ISSUES AFTER HE REALIZED THE CONSEQUENCES OF THAT TESTIMONY.

Mr. Lucas' testimony on April 7, 1998 in his rebuttal case about the use of airplanes at Helmore flatly contradicts his prior sworn testimony on the same issue on both February 20, 1998 and on April 6, 1998. The Zoning Commissioner should give no weight to Mr. Lucas' testimony on any subject because he contradicted himself on important factual issues when it was in his economic interest to do so.

Prior to the hearing before the Deputy Zoning Commissioner, Protestants sought to enjoin the illegal use of the helicopter at Helmore. The Honorable Lawrence R. Daniels conducted a hearing on the request for an injunction on February 20, 1998. At that hearing, Dale Lucas testified under oath as follows:

> Q. Can you tell this Court, please, each year that an <u>airplane</u> landed at Helmore Farm since 1972?
>
> A. I don't have a list of when planes or helicopters landed, no, just on an as-needed basis.
>
> Q. So you agree, sir, will you not, that you cannot testify under oath

that a fixed-wing airplane landed each year between 1972 and the present?

A. Not with certainty, no.

(Emphasis added). (Tr. at 108-109, attached as **Exhibit 3**).

* * *

Q. Would you please tell this court under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present?

A. 1972, 1978. From approximately '78 until I don't know when, until approximately '89. There were some years we landed in there, but there are some gaps in there. Now I know in approximately '89 up to the current, that it's been every year except that I can't — I don't know about '93, if we landed in there in approximately '93.

(Emphasis added). (Tr. at 110, attached as **Exhibit 3**).

Mr. Lucas' testimony on the first day of the zoning hearing, April 6, 1998, was consistent with his testimony at the injunction hearing in January 1998. On April 6, 1998, he testified as follows:

Q. ... [Y]ou will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at Helmore Farm?

A. No.

Q. With respect to the helicopter, it's true, is it not, that you can't say under oath that a helicopter landed there every year since 1989?

A. Every year, except '93 I'm not sure. And I have contacted Jim

Platt to fly in and out of there for fifteen years to pick people up, and he doesn't have records that would let him know one way or the other.

Q. So I understand you to say, sir, that you cannot say that a helicopter has landed there every year since 1989; is that right?

A. That's correct.

(Emphasis added). (Tr. at 63-64, attached as **Exhibit 1**).

Counsel for the Petitioner recalled Mr. Lucas to the witness stand in Petitioner's rebuttal case on April 7, 1998. Mr. Lucas had apparently realized that he had presented insufficient evidence during the hearing on the injunction and during his primary case on the non-conforming use issue because he had been unable to say that an airplane landed each year at Helmore. Counsel for the Petitioner asked Mr. Lucas: "Have there been aircraft operations at Helmore Farm during the decades of the '70's, the '80's and the '90's?" (Tr. at 467-468, attached as **Exhibit 2**). Counsel for the Protestants then objected and articulated the basis for his objection as follows:

> MR. NELSON: ... We went through this very carefully. He testified to this. I cross-examined the man. There is no new matter that we produced in our defense. He's seeking to repeat what he said, perhaps change what he said, because at the conclusion of the evidence, I'm going to move for judgment today on the non-conforming use because they haven't made out a *prima facie* case. And you cannot just repeat your case and fill in the holes that you left in your primary case. There is nothing new about our defense that they didn't know about. It's not proper rebuttal. (Emphasis added).

(Tr. at 468, attached on **Exhibit 2**).

After the Commissioner overruled the objection, Mr. Lucas testified that there were aircraft operations at Helmore during the 1970's, the 1980's and the 1990's. (Tr. 470-471, attached as **Exhibit 2**). He also dramatically changed his testimony.

> Q. We can agree, can we not, that since 1971, through 1997, you cannot state under oath that an airplane landed every year at Helmore Farm?
>
> A. Well, an aircraft has....
>
> ***

(Tr. at 502, attached as **Exhibit 2**).

> Q. So, would you list for me, under oath, the years, every year, year-by-year, that a plane landed there?
>
> A. You want me to state the year, every year?
>
> Q. Yes, sir. Tell me every year.
>
> A. '71, '72, '73, '74, '75, '76, '77, '78, '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90, '91, '92, '93, '94, '95, '96, and the Scout last week, '98.
>
> Q. (Mr. Kotroco) You skipped '97? Did you include that?
>
> A. I said '97.

(Tr. at 505, attached as **Exhibit 2**).

Counsel for the Protestants then cross-examined Mr. Lucas about his inconsistent statements concerning his ability to list the years in which an airplane landed at Helmore. Mr. Lucas tried to reconcile his absolutely inconsistent statements by

stating:

> A. ...[I]t also states in here in my answer to the questions about that, that from '89 to the current as I was going up to that point, the only year I don't know about is '93. And we checked, and I can say that now because Dave Good did come down in '93.
>
> Q. Oh, I see, so your explanation now is that you told me two pages later that the only year you didn't know about was 1993, therefore you checked with Mr. Good so you can say that you've flown an aircraft every year since 1972, fixed wings; is that right?
>
> A. Yes.

(Tr. at 508, attached as **Exhibit 2**).

When counsel for Petitioners pointed out to Mr. Lucas that the reference to 1993 was about helicopters, not about fixed-wing aircraft, Mr. Lucas refused to accept that self-evident fact. He stated: "No, '93 we're talking about fixed-wing." (Tr. at 508, attached as **Exhibit 2**). At no point prior to his rebuttal testimony did Mr. Lucas refer to 1993 as being the year he did not know whether a fixed-wing aircraft landed at Helmore. In contrast, he unequivocally stated that he did not know if a helicopter landed in 1993. (Tr. at 63-64, Tr. at 508, attached as **Exhibit 3**).

Furthermore, Mr. Lucas testified in rebuttal that he researched whether a fixed-wing airplane landed in 1993 before the start of the zoning hearing on April 6, 1998. (Tr. at 510, attached as **Exhibit 2**). The results of that research allowed

him, he claimed, to state under oath that an airplane landed at Helmore every year since 1971. In fact, Mr. Lucas had testified on April 6, 1998, allegedly after he completed his investigation, that he could not testify that an aircraft had landed every year on the strip at Helmore since 1979. (Tr. at 511, attached as **Exhibit 3**). When confronted with that inconsistency, he attempted to explain:

> Well, also at that point we're in 1998. Aircraft, Fix-winged aircraft had not landed there at that point. We hadn't done the sound test for '98.

(Tr. at 512. attached as **Exhibit 2**).

Counsel for the Petitioners then cross-examined Mr. Lucas on that point and established that that testimony was also incorrect.

> Q. You said that you were unable to say that an aircraft had landed at Helmore Farm every year since '79 because you hadn't yet done the test in '98. Is that right?
>
> A. Yeah. We just did that test.
>
> Q. When did you do that test?
>
> A. Just did the test a couple of weeks ago.
>
> Q. ... What month, what year?
>
> A. I think it was in March '98.
>
> Q. Well, isn't it true that the testimony we read from the transcript was yesterday, not six weeks ago. But yesterday you told this court under oath that fixed-wing aircraft had not landed there every year since '79, and that was after this so-called test you did

in March of 1998? Do you want me to read that transcript again?

(Tr. at 515, attached as **Exhibit 2**).

Mr. Lucas then claimed that he had not understood the question.

Protestants suggest that the dramatic inconsistencies in Mr. Lucas' testimony require the Zoning Commissioner to disregard all of his testimony because Mr. Lucas simply was not credible. Mr. Lucas' testimony deserves no weight.

B. PETITIONER IS NOT ENTITLED TO A NON-CONFORMING USE BECAUSE THE PETITIONER FAILED TO PRESENT ANY EVIDENCE THAT THE ALLEGED PRIVATE AIRSTRIP WAS USED AT HELMORE AT LEAST ONCE A YEAR EVERY YEAR SINCE 1944.

1. Non-conforming Use.

A non-conforming use is "[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such use." B.C.Z.R. § 101. A legal non-conforming use is a use that predates any prohibition to that particular use. County Council Prince George's County v. E.O. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982). "A non-conforming use ... may continue ... provided that upon... discontinuance of such non-conforming use for a period of one year or more, ... the right to continue or resume such non-conforming use shall terminate...." B.C.Z.R. § 104.1.

2. Zoning History of Helmore.

Jack Dillon described the history of the zoning at Helmore. Baltimore County's first zoning regulations were adopted pursuant to an enabling act of the General Assembly of Maryland, Session

of 1941, Chapter 247. The effective date of the Zoning Regulations and Restrictions for Baltimore County was January 2, 1945.

The zoning regulations divided Baltimore County into seven (7) zones:

"A" Residence Zone----------Cottage

"B" Residence Zone----------Semi-detached

"C" Residence Zone----------Apartment

"D" Residence Zone----------Group

"E" Commercial Zone

"F" Light Industrial Zone

"G" Heavy Industrial Zone

Any areas not zoned "B", "C", or "D" Residence Zones were considered "A" Residence Zones. The "A" zone contained all of the land that is now referred to as "RC" zoned land, including Helmore. (See, Section II - Zones). Under Section XIII — Powers Relative To Special Exceptions and Special Permits A.#3, airports were listed as one of the land uses permitted by special exception. There was no reference to heliports or helistops in the 1945 regulations. These regulations remained in effect until the zoning code was amended in accordance with Title 30, Section 532(c) of the code of Public Local Laws of Baltimore County (1955 Edition). These regulations were adopted March 30, 1955.

With the adoption of these new regulations, an entire new set of regulations was developed. The residential zones were changed from the "A", "B", "C" & D" Residence Zones to a minimum

lot size classification system. The new residential zones were identified in the following manner — R.40 Zone - Residence, One - Family; R.20 Zone - Residence, One Family; R.10 or R.6. The number following the "R" described the size of the lot. For example, the R.40 zone contained 40,000 square feet lots and the R.20 zone contained 20,0000 square feet lots.

As with the earlier classifications, there were no special zones for land outside of the Urban Rural Demarcation Line ("URDL"). Because new zoning maps had not been adopted for all parts of the county, particularly in the rural areas, the 1945 zoning maps continued in use and areas formerly classified as the "A: Residence zone" were now considered the "Residual R.6" zone. Helmore fell into this category until the area was rezoned to R.40 on January 16, 1957. The property was described as 3-R40-20 in the description books in the Zoning Office.

The 1955 Zoning regulations allowed an airport by special exception in the R.40 zone and specifically restricted it from the R.20 zone. An airport was not listed in the R.10 or R.6 zone special exception list. There was no reference to helicopters or a helistop in any of these zones until a 1963 amendment when "Helistop" was added to the R.40 and R.10 special exception list. These regulations remained in effect until 1970 when Bill 100, 1970 was adopted.

Bill 100, 1970 again changed the zoning classifications. The "DR" (Density Rural) zones inside the URDL replaced the "R" zones. Two new rural zones were developed: The "RDP" (Rural

Deferred Planning) and "RSC" (Rural Suburban Conservation) zones. The majority of the rural land outside of the URDL was RDP. Land adjacent to the reservoirs and major streams flowing to the reservoirs was RSC. Both the RDP and RSC zones permitted an airport and helistop by special exception. Helmore was zoned RDP.

In 1975, the County Council approved Bill 98-78, which established the "RC" zones. These four new rural zoning classifications divided the rural part of Baltimore into preferred land-use categories. The RC2 (Agriculture) Zone was placed on 119,000 acres with the intended purpose of protecting and promoting the continuation of agriculture. The RC3 (Deferral of Planning) Zone was intended to discourage development until a future time when more specific zoning classifications would be applied. The RC4 (Watershed Protection) Zone was established to provide some basic protection to the reservoirs and their tributaries. The RC5 (Rural Residential) Zone was designed to accommodate residential development in a rural setting. Airports were permitted in the RC2 and RC3 zones by special exception; helistops were also permitted in these zones by special exception. Helmore was zoned RC2.

In 1979, Bill 178-79 modified the RC2 Zone in two fundamental respects. First, it significantly lowered the density of RC2 land. Secondly, in direct response to the Zoning Commissioner's decision in the Gerald Berg case, the bill removed the special exception use for a "helistop" from the RC2

classification.

Today, the RC2 and RC3 zones permit a special exception for an airport and the RC3 zone permits a special exception for a helistop. RC2, which includes Helmore, does not permit a special exception for a helistop.

3. Petitioner's evidence of alleged non-conforming use was insufficient to approve non-conforming use.

The Baltimore County Zoning Regulations have not permitted the use of an airplane or a helicopter at the site of Helmore as a matter of right at any time. Thus, the Petitioner has the burden to prove that it used Helmore as an airport or for a helicopter at least once every year going back to 1944.

Dale Lucas admitted that he had no personal knowledge about a plane landing at Helmore prior to 1971.

> Q. Now, we can agree, sir, can we not, that you have no personal knowledge, meaning you didn't witness with your own eyes, a plane landing at Helmore Farm prior to 1972?
>
> A. In '71, the one that came in with Jan flying the plane yes that was just one time.
>
> Q. Prior to that?
>
> A. Prior to that, no.

(Tr. at 63, attached as **Exhibit 1**).

Mr. Lucas confirmed this fact during his rebuttal testimony. There, he testified as follows:

> Q. *** We can agree, can we not, that prior to '71, you, with your own

eyes, never saw any aircraft or any helicopter land at Helmore Farm?

A. Prior to '71, no.

(Tr. at 502, attached as **Exhibit 2**).

Petitioner presented no evidence that a helicopter landed at Helmore prior to 1989. (Tr. at 63-64, attached as **Exhibit 1**). This evidence requires the Zoning Commissioner to deny the request for a legal non-conforming use. Even if the Zoning Commissioner were to ignore the contradictions inherent in Mr. Lucas' testimony, and were to ignore the economic motivation in Mr. Lucas' variable testimony, the Petitioner has presented inadequate evidence as a matter of law to permit the grant of a non-conforming use. At most, Mr. Lucas has testified that Helmore was used for an airplane at least once a year only going back to 1971.

Protestants respectfully request that the Zoning Commissioner rule that the Petitioner does not have a legal non-conforming use at Helmore.

C. THE TEST FOR A SPECIAL EXCEPTION.

The Petitioner has the burden of proving that the proposed private airport will be (1) consistent with the purposes of the property's zoning classification, (2) 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. B.C.Z.R. § 502.1. The Petitioner must also 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 failed to meet this burden.

1. The Zoning Commissioner should reject Petitioner's Petition For a Special Exception because the proposed use is inconsistent with the purposes of the property's zoning classification.

The spirit and intent of the RC zones in general and the RC2 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 "the 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." B.C.Z.R. 1A01.1A. "It is the purpose of the Resource Conservation Zones to ... protect both natural and man-made resources from the comprising effects of specific forms and densities of development." B.C.Z.R. 1A00.2C. The purpose of the RC2 zone specifically is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County." B.C.Z.R. 1A01.1B.

The primary use of the proposed use is a commercial helistop. The overwhelming evidence is that the Petitioner seeks

permission to allow Mr. Grass to commute to work by helicopter on a daily basis from Helmore. There can be no debate that it is Mr. Grass' use of Helmore which is driving this petition. Dale Lucas admitted that he was not prepared to restrict the use to a helistop in such a way that Mr. Grass would not be permitted to commute to work from Helmore:

> Q. Mr. Lucas ... one of the things we're here on is a special exception, and the Zoning Commissioner has the authority and discretion to impose certain conditions on the special exception, in the event that he grants it.
>
> You've shared with us, sir, the fact that you are considering buying an airplane, a Maule, which is one of these light, slow, single engine airplanes that can take off, according to Mr. Lamb, on this purported airstrip. Now, if you buy this aircraft, and if you get the special exception, would you be willing to accept the condition from Commissioner Kotroco that you not fly helicopters there?
>
> A. No, because, as I've told you, there are certain weather conditions that — when the horse is going to run, the horse is going to run and we've got to be able to get there. If we can't safely fly the Maule, then we need to take the helicopter to accomplish what we're trying to do. And also, there are clients of ours in New York who would be coming down to us. They have their own helicopters. They have helicopter service that operates from the center of the city right at the PanAm building, several other locations, where they can just go there from Wall Street,

come down here, see what they've got to do, come down here, land at our place, and we'll take them down to Pimlico, and then they can go back on their own helicopter to New York.

Q. So, as I understand your testimony, the reason you cannot agree to that condition is that there are certain weather conditions in which you need a helicopter to fly to a racetrack, or you need one of your important clients to fly to you?

A. That's correct.

***

Q. Now, would you agree to the following condition? And I'm not suggesting to Commissioner Kotroco that he do this, but this is just purely hypothetical. If Commissioner Kotroco would grant you this extraordinary special exception, would you agree to these conditions: You can fly your Maule there in safe weather conditions, and if the weather conditions are dangerous, you can use a helicopter, but only you and only when you are flying to a racetrack, or if one of your customers is flying to you. And not to put too fine a point on it, a special condition that says no neighbor may use this helistop to commute to his or her place of business. Would you agree to that condition?

A. No, because I think it also knocks out one of my primary friends who has been flying a Maule in here, David Good from Michigan; knocks out Bobby Kirchner, one of our partners who has been doing touch and goes here since back in the '70's. I mean, it's too much.

Q. (Mr. Kotroco) The $64,000

question, I think, is would you be willing to live with the condition that excludes Mr. Grass from flying his helicopter in there?

Q. (Mr. Nelson) That's precisely the question.

A. Well, Mr. Grass has, since we started all of this, become a client, and there's reason for him to fly in and out of here on business of the horse industry.

Q. May I rephrase the question?

A. That's the problem.

Q. All right. Would you agree to a condition, Mr. Lucas, that prohibits Mr. Martin Grass from commuting to work in Harrisburg, Pennsylvania, or wherever else he moves his enterprise, from your property? Would you agree to that special condition?

Q. (Mr. Nelson) And I'm not suggesting you [Mr. Kotroco] grant the exception. It's purely hypothetical to explore this man's motives.

Q. Would you agree to that, sir?

A. The problem we find, I find with that is that at Mr. Grass's current level of involvement with our horse operation, it's just in on partnership on eight horses we currently have. I've already currently laid out to him a major program for becoming involved in the breeding operation of the farm. To implement that major program, I need almost daily access to him, because it's going to become a major Maryland horse operation. To do that, to exclude me from having access to him on a daily basis would really throw a major, major

> monkey wrench in that. I wouldn't have the access to him to go over, be able to review our plans and stuff. It basically bars him from being there to do what we're trying to do. *** Maybe Mr. Grass becomes our major customer as far as the horse operation. Well, to be able to run that type of operation, the number of dollars we're talking about possibly having involved in the operation at that point, to say that I can't have access to him on a daily basis would just kill us.

(Tr. at 491-495, attached as **Exhibit 2**).

The bottom line is that Mr. Lucas wants access to Mr. Grass twice a day: "Twice a day, that means I know where he is twice a day and I can get to him. Our operation can get to him twice a day." (Tr. at 497, attached as **Exhibit 2**). Mr. Lucas has attempted to meet his burden of proving that Mr. Grass' commuting activities to the Rite-Aid corporate offices are consistent with the agricultural purposes of the land by testifying that Mr. Grass will only meet with him if he can fly from Helmore. By that reasoning, any condition that Mr. Grass places on his investment, even conditions benefitting a non-agricultural business, such as Rite-Aid, would be deemed agricultural. Such an interpretation does not comport with the zoning regulations.

The Protestants request that the Zoning Commissioner reject the Petition for Special Exception because the proposed use is for Mr. Grass' commuting convenience and is inconsistent with the purpose of an RC2 zone.

2. The Petitioner has failed to meet its burden that an airport 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 RC2 zone.

The Petitioner must prove that the proposed airport will not have any adverse effects on property in the neighborhood which are uniquely different from those inherently associated with such a use irrespective of the airport's location within the zone. The evidence was uncontradicted that there are many other potential sites in the RC2 zone for a private airstrip which are better and safer than the proposed site at Helmore. Petitioner's expert witness, Charles Lamb, testified that a longer airstrip is always preferable to a shorter airstrip. Petitioner's engineer, Carl Mettes, testified that there are many sites in RC2 zones which are big enough to have an airstrip that is at least 2000 to 3000 feet long. Mr. Lamb was not aware of any private airstrip in the nine states in which his company has worked that had an airstrip that was 1200 feet or less. The proposed airstrip is approximately 1200 feet long. Petitioner's only evidence on this issue was the submission of a list from the Maryland Aviation Administration which revealed that only two private airstrips in the State of Maryland are less than 1200 feet long. One of those airstrips has an approach over water. The other has an approach over a highway or over sparse trees. The Maryland Aviation Administration is not aware of any helicopter traffic either into or out of either airport. See, letter of Bruce F. Mundie dated April 13, 1998 attached as **Exhibit 4**.

Although the Protestants do not have the burden of proof, they proved that the use of an airport at Helmore would, because of the shortness of the proposed airstrip, adversely affect the neighborhood more than the construction of a private airstrip on other RC2 lands in the County where the airstrip could be longer. The use of an airstrip at Helmore would be detrimental to the health, safety or general welfare because the use of an airstrip at this farm will not be as safe as the use of a longer airstrip elsewhere in an RC2 zone.

Protestants respectfully request that the Zoning Commissioner deny the request for special exception because the Petitioner has failed to meet its burden.

D. THE PETITIONER IS NOT ENTITLED TO A SPECIAL EXCEPTION FOR AN AIRPORT. EVEN IF THE PETITIONER IS ENTITLED TO A SPECIAL EXCEPTION FOR AN AIRPORT, THAT SPECIAL EXCEPTION WILL NOT ALLOW THE USE OF THAT AIRPORT FOR A HELICOPTER.

The Zoning Commissioner was presented with an identical case in 1989, Petition for Special Hearing and Special Exception, Robert J. Smith, Petitioner, Case No. 990-1-SPHK. (opinion attached as **Exhibit 5**). In the Smith case, the petitioner requested "a special hearing for a finding that the landing and taking off of a helicopter is permitted under the special exception requirements for an airport in an RC2 zone, and a special exception to approve the use of the subject property as an airport ..., to include the landing of a helicopter...." **(Exhibit 5 at 1)**. The Deputy Zoning Commissioner rejected the petition, and stated:

The threshold issue regarding the requested special hearing is whether the term "airport," as that term is defined in the Baltimore County Zoning Regulation (B.C.Z.R.), is sufficiently broad enough in scope to provide, by special exception, the landing and taking off of a helicopter in a R.C. 2 zone. Section 101 of B.C.Z.R. defines separately the following: airport; helicopter, helicopter operation; heliport, Type I, heliport, Type II and helistop. While an airport is permitted by special exception in the R.C. 2 zone, pursuant to Section 1A01.1c of the B.C.Z.R., neither a heliport, Types I and II, nor a helistop are permitted, either as right or by special exception.

****

Petitioner's argument fails since the B.C.Z.R. specifically defines helicopter operation and the use of same in its definition of helicopter/helistop. A cursory examination of the B.C.Z.R. will glean the drafters' clear intent regarding the specific placement of airports, heliports and helistops within the various zones of Baltimore County. For example, in the D.R. zone, helistops are permitted as a special exception and airports excluded. In the B.L. zone, a helistop is permitted as of right; a heliport, Type II, by special exception; and airports are excluded. The C.T. zone permits only a heliport, Type I and II by special exception. In the M.R. zone, a heliport, Type II is permitted if located at least 200 feet from a residential area; a helistop is permitted without such restriction. The R.C. regulations contain like specificity regarding the placement of airports, helistops and heliports within the R.C. zones. The R.C. 4 and R.C. 5 zones prohibit the subject uses either as of right or by special exception where the R.C. 3 zone permits airports and helistops by special exception. **The subject zone, R.C.2, permits an airport by special exception, but excludes both helistops and heliports both as of right and by special exception.** (Emphasis added).

The Deputy Zoning Commissioner denied the petition and

ordered that the petitioner "shall cease permitting the landing and taking-off of helicopters from the subject property...." **(Exhibit 5 at 5-6)**. The B.C.Z.R.'s prohibition of the use of a helicopter in the RC2 zone takes precedence over any definition in any dictionary.

The Office of Planning for Baltimore County submitted two comments with respect to the use of Mr. Grass' helicopter in an RC2 zone. The first comment was with respect to property located at 10714 Greenspring Avenue owned by Hillside Realty L.L.C. Mr. Martin Grass had originally petitioned for a Special Exception at that property. With respect to that petition, the Office of Planning stated:

> Section 101 of the B.C.Z.R. establishes definitions of three different types of Helicopter operations. They are, Heliport, Type I, Heliport, Type II, and Helistop. They seem to vary according to the intensity of the proposed use.
>
> The DR zones and the RC3 zone list helistop as a use permitted by special exception. It appears that a deliberate legislature decision was made to include helistop as a permitted use in those zones. Therefore, the absence of helistops, as a listed permitted use in the RC2, RC4 and RC5 zones indicates a similar, deliberate decision to exclude helicopter operations from these zones.
>
> In addition, please find a copy of Case No. 90-1SPHX, which addressed issues common to the instant case. [Case No. 90-1SPHX is the Robert J. Smith decision].

The second comment from the Office of Planning pertains to the subject property. In those comments, the Office of Planning deferred to the requirements of the zoning regulations.

Protestants respectfully request that the Zoning Commissioner rule that the Petitioner may not obtain the special exception for the use of a helicopter.

E. EVEN IF PETITIONER OBTAINS A SPECIAL EXCEPTION FOR AN AIRPORT, AND EVEN IF THAT SPECIAL EXCEPTION INCLUDES THE THEORETICAL RIGHT TO OPERATE A HELICOPTER, THE B.C.Z.R. PROHIBIT THE USE OF A HELISTOP AT THIS SITE BECAUSE THE PROPOSED HELICOPTER PAD IS LESS THAN 500 FEET FROM THE NEAREST PROPERTY LINE.

Petitioners' proposed use is a helistop. A helistop, when permitted, must be:

> Any area of land, water, or structural surface which is located at least 500 feet from any property line, which has been authorized by the Director of Public Safety to be used for helicopter operations, which is not a heliport, and which does not serve for major support operations (see, definition for "heliport, Type II"); OR, any area of land, water or structural surface which is located closer than 500 feet to a property line, which has been authorized by the Director of Public Safety D.P.S. to be used by not more than 50 helicopter operations per month, which is not a heliport, and which does not serve for major support operations.

B.C.Z.R. § 101. Here, the proposed helistop is illegal because it is less than 500 feet from the nearest property line and the number of flights per month exceeds fifty.

Protestants respectfully request that the Zoning Commissioner deny the Petition for Special Exception because the proposed helistop, even if theoretically permitted in an RC2 zone under certain circumstances, is not permitted at the proposed site because it is less than 500 feet from the nearest property line and because the number of proposed flights per month exceeds

fifty.

III. CONCLUSION

For all of the reasons set forth above, Protestants respectfully request that this Court deny Petitioner's Petition For Special Hearing to Approve a Legal Non-conforming Use For An Airport and/or Helicopter Operation and Petition For a Special Exception For An Airport.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 30th day of April 1998, a copy of the foregoing was mailed to: **G. SCOTT BARHIGHT, ESQUIRE, Whiteford, Taylor & Preston, L.L.P.**, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515.

G. Macy Nelson

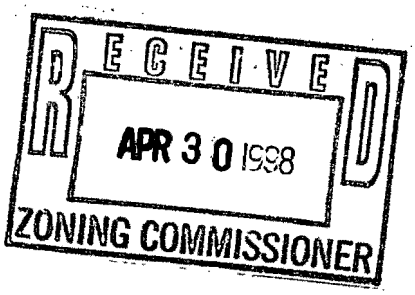
G. MACY NELSON
ATTORNEY AT LAW
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

April 30, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204



Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I am enclosing a copy of Protestants' Memorandum In Opposition to Petition For Special Hearing and Petition For Special Exception.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosure

cc G. Scott Barhight (with encl.)

294

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned 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

Legal non-conforming use for an airport and/or helicopter operation.

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/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:
Whiteford, Taylor & Preston, L.L.P.
G. Scott Barhight, Esquire
(Type or Print Name)

Signature

210 W. Pennsylvania Ave, 4th Floor
Address Phone No.

Towson, MD 21204
City State Zipcode

Legal Owner(s):

(Type or Print Name) Edgar Lucas

x Edgar Lucas
Signature

(Type or Print Name)

Signature

901 Greenspring Valley Road
Address ~~Brooklandville, MD 21022~~ Phone No.

City State Zipcode
Name, Address and phone number of representative to be contacted.

G. Scott Baright, Esquire
Name
210 W. Pennsylvania Ave., 4th Floor
Address Phone No.
Towson, MD 21204 (410)832-2000

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 DAY

unavailable for Hearing
the following dates _____ Next Two Months

ALL OTHER

REVIEWED BY: _____ DATE _____

Zoning Administration & Development Management

98-294-SPHX

SET FOR MAR. 5, 98 PER AJ

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned RC-2

This Petition shall be filed with the Department of Permits & 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 herein described property for

an airport.

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

Legal Owner(s):
Edgar Lucas

(Type or Print Name)

Edgar M Lucas
Signature

(Type or Print Name)

Signature

901 Greenspring Valley Rd 410-821-5125
Address Phone No.

Brooklandville, MD 21022
City State Zipcode

Name, Address and phone number of representative to be contacted.

Attorney for Petitioner:
G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
(Type or Print Name)

Signature

210 W. Pennsylvania Ave. 832-2000
Address Phone No.

Towson, MD 21204
City State Zipcode

G. Scott Barhight, Esquire
Name

210 W. Pennsylvania Ave. 410-832-2000
Address Phone No.

DROP-OFF
NO REVIEW
2/11/98 ajc

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

98-294-SPHX

Revised 9/5/95

MATIS WARFIELD
CONSULTING ENGINEERS

Description to Accompany Zoning
Petition for Special Hearing
901 Greenspring Valley Road
3rd Election District
RC-2 Zoning

February 3, 1998

Beginning for the same at a point distant South 53° 21'West 1835 feet +/- from the intersection of the centerlines of Greenspring Valley Road and Falls Road, running thence:

1. South 02° 45' East 1426 feet +/-
2. North 86° 30' West 290.4 feet +/-
3. South 90° West 742.5 feet +/-
4. South 85° West 186.45 feet +/-
5. South 80° West 102.3 feet +/-
6. North 83° West 143.55 feet +/-
7. North 05° East 1459 feet +/- and
8. North 90° East 1270 feet to the place of beginning.

Containing 45 acres +/-



This description is intended for zoning purposes only. The metes and bounds referred to herein are not based on a boundary survey of the property and are approximate only.

98-294-SPHX

MATIS WARFIELD, INC.
6600 York Road · Suite 209 · Baltimore, Maryland 21212
Tel: 410-377-7596 · Fax: 410-377-7657

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road,
2000' W of Falls Road
3rd Election District
3rd Councilmanic District
Legal Owner(s):
Edgar Lucas

Special Hearing: to approve a legal non-conforming use for an airport and/or helicopter operation. **Special Exception**: for an airport.

Hearing: Monday, April 6, 1998 AND Tuesday, April 7, 1998 AND Tuesday, April 14, 1998 AND Thursday, April 16, 1998, all beginning at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

3/260 March 19 C214534

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 19, 1998

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 19, 1998.

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case No. 98-294-SPHX
Petitioner/Developer:
(Edgar Lucas)
Date of Hearing/Closing:
(Apr. 6,7,14 & 16, 1998)

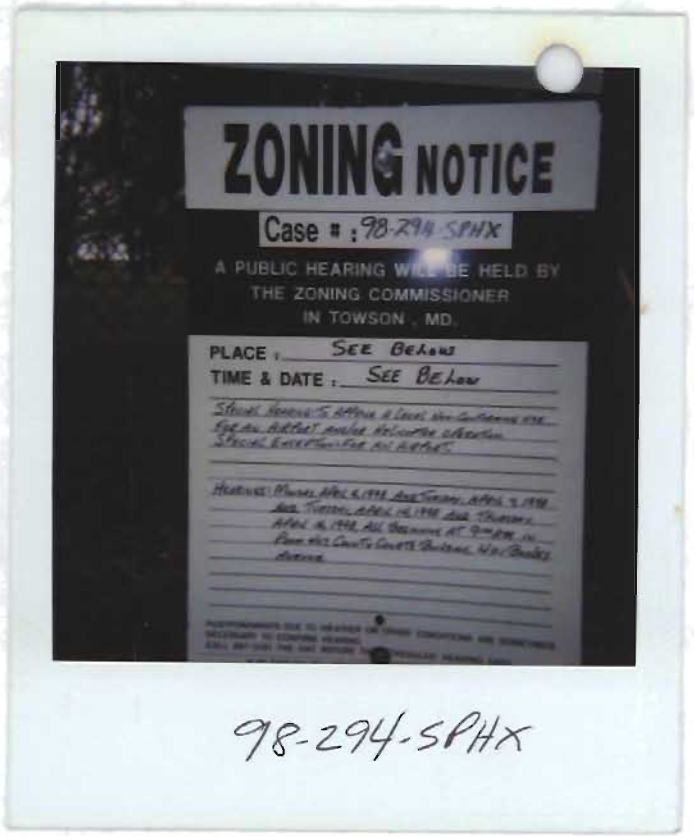
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 901 Greenspring Valley Road Baltimore, Maryland 21093

The sign(s) were posted on Mar. 20, 1998
(Month, Day, Year)



Sincerely,

3/20/98
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 98-294-SPHX

Petitioner/Developer: _____

EDGAR LUCUS

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

[redacted]

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____

901 GREENSPRING VALLEY RD.

The sign(s) were posted on 12/15/98
(Month, Day, Year)

Sincerely,

Gary C. Freund 12/15/98
(Signature of Sign Poster and Date)

GARY C. FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/96
cert.doc

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

December 28, 1998

NOTICE OF ASSIGNMENT

CASE #: 98-294-SPHX

IN THE MATTER OF: EDGAR LUCAS -Petitioner
901 Greenspring Valley Road
3rd Election District; 3rd Councilmanic

(Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner/Petitioner.

ASSIGNED FOR: THURSDAY, MARCH 11, 1999 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
Appellant /Petitioner : Helmore Farm /Edgar Lucas

Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Protestants : Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt
Laura J. Robertson
David Grozsas

Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink on Recycled Paper

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

February 1, 1999

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

Attention: Ms. Kathleen Bianco

Re: Case No. 98-294-SPHX
In the Matter of EDGAR LUCAS - Petitioner

Dear Ms. Bianco:

This letter confirms the telephone conversation that David Gildea and I had with you on January 29, 1999. During that conversation, I advised you that I had a conflict with the March 11, 1999 hearing date. We selected three new dates for the hearing of the above-captioned case. Those dates are: April 21, April 22, and April 27. You requested that I write a letter confirming my request for a postponement and the new dates.

Very truly yours,

G. Macy Nelson

GMN:pwc
cc: David K. Gildea, Esq.

99 FEB -2 PM 1:49
COUNTY BOARD OF APPEALS
RECEIVED

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 2, 1999

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-294-SPHX

IN THE MATTER OF: EDGAR LUCAS -Petitioner
901 Greenspring Valley Road
3rd Election District; 3rd Councilmanic

(Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner/Petitioner.

which was scheduled for hearing on March 11, 1999 has been **POSTPONED** at the request of Counsel for Appellants /Protestants, without objection by Counsel for Appellant /Petitioner; and has been

REASSIGNED FOR: **WEDNESDAY, APRIL 21, 1999 at 10:00 a.m. /Day #1;**
THURSDAY, APRIL 22, 1999 at 10:00 a.m. /Day #2; and
TUESDAY, APRIL 27, 1999 at 10:00 a.m. /Day #3

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

Reassigned to 4/27 (1) 5/04 (2) 5/14 (3) per joint request and per agreement

cc: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
: David Gildea, Esquire
Appellant /Petitioner : Helmore Farm /Edgar Lucas

Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Protestants : Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt

Laura J. Robertson

David Grozsas

Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

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

March 12, 1999

G. Scott Barhight, Esquire
David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, MD 21204

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

RE: In the Matter of Edgar Lucas /Petitioner
Case No. 98-294-SPHX

Dear Counsel:

At the request of Mr. Gildea and Mr. Nelson, and as agreed to in telephone conversations with said counsel, the hearing in the subject matter has been reassigned the following dates:

Tuesday, April 27, 1999 at 10:00 a.m. (Hearing Day #1)
Tuesday, May 4, 1999 at 10:00 a.m. (Hearing Day #2)
Tuesday, May 18, 1999 at 10:00 a.m. (Hearing Day #3)

In accordance with the above reassignment, the Board has amended its originally scheduled dates to accommodate this requested postponement and reassignment. Accordingly, no further postponements will be granted except in circumstances determined by the Board to be extraordinary.

Thank you for your cooperation in this reassignment. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

cc: Virginia W. Barnhart, County Attorney

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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 12, 1999

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-294-SPHX

IN THE MATTER OF: EDGAR LUCAS -Petitioner
901 Greenspring Valley Road
3rd Election District; 3rd Councilmanic
(Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner/Petitioner.

which was scheduled to begin on April 21, 1999 has been **POSTPONED** at the request of Counsel for both parties due to schedule conflict; and reassigned the following dates by agreement; and has been

REASSIGNED FOR: TUESDAY, APRIL 27, 1999 at 10:00 a.m. /Day #1;
TUESDAY, MAY 4, 1999 at 10:00 a.m. /Day #2; and
TUESDAY, MAY 18, 1999 at 10:00 a.m. /Day #3

NOTE: NO FURTHER POSTPONEMENTS OR REASSIGNMENTS WILL BE GRANTED.

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
: David Gildea, Esquire
Appellant /Petitioner : Helmore Farm /Edgar Lucas

Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Protestants : Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt

Laura J. Robertson
David Grozsas
Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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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

May 19, 1999

NOTICE OF ASSIGNMENT /Days #4 and #5

CASE #: 98-294-SPHX

IN THE MATTER OF: EDGAR LUCAS -Petitioner
901 Greenspring Valley Road
3rd Election District; 3rd Councilmanic

(Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner/Petitioner.

ASSIGNED FOR: **WEDNESDAY, JUNE 23, 1999 at 9:00 a.m. /Day #4 and THURSDAY, JULY 1, 1999 at 10:00 a.m. /Day #5 ***

***(Above dates assigned by agreement of parties as to availability.)**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
: David Gildea, Esquire
Appellant /Petitioner : Helmore Farm /Edgar Lucas

Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Protestants : Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt

Laura J. Robertson
David Grozsas
Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Rescheduled to 10/05/99 for deliberation Notice sent 8/31/99

July 1, 1999

NOTICE OF DELIBERATION

IN THE MATTER OF:
EDGAR LUCAS -PETITIONER
Case No. 98-294-SPHX

Having heard this matter on 4/27/99; 5/04/99; 5/18/99; 6/23/99; and 7/01/99, public deliberation has been scheduled as follows:

DATE AND TIME : THURSDAY, SEPTEMBER 16, 1999 at 10:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Closing Memorandums due from Counsel no later than 3:30 p.m. on Wednesday, September 1, 1999 (ORIGINAL AND THREE COPIES).

Kathleen C. Bianco
Administrator

C: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
: David Gildea, Esquire
Appellant /Petitioner : Helmore Farm /Edgar Lucas

Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Protestants : Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt

Laura J. Robertson
David Grozsas
Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

copies: C.L.M.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 31, 1999

NOTICE OF REASSIGNMENT - DELIBERATION

IN THE MATTER OF:
EDGAR LUCAS -PETITIONER
Case No. 98-294-SPHX

Public deliberation, previously scheduled for 9/16/99, has been **REASSIGNED** as follows:

DATE AND TIME : **TUESDAY, OCTOBER 5, 1999 at 9:30 a.m.**

LOCATION : **Room 48, Basement, Old Courthouse**

NOTE: Closing Memorandums due from Counsel on Friday, September 3, 1999. (ORIGINAL AND THREE [3] COPIES)

(Note: Heard on 4/27/99; 5/04/99; 5/18/99; 6/23/99; and 7/01/99)

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant /Petitioner : G. Scott Barhight, Esquire
: David Gildea, Esquire
Appellant /Petitioner : Helmore Farms /Edgar Lucas

Counsel for Appellants /Protestants: G. Macy Nelson, Esquire
Appellants /Protestants: Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. & Mrs. Stephen Immelt

Laura J. Robertson
David Grozsas
Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

copies: C.L.M.

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 25, 1998

G. Scott Barhight, Esq.
Whiteford, Taylor, & Preston, L.L.P.
210 W. Pennsylvania Avenue, 4th Floor
Towson, MD 21204

RE:

Item No.: 294
Case No.: 98-294-SPHX
Petitioner: Edgar Lucas
Location: 901 Greenspring Valley Rd

Dear Mr. Barhight:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on February 11, 1998.

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 (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 Gwendolyn Stephens in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR:ggs
Attachment(s)

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Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 2/13/98 JLL
Item No. 294

Dear Ms. Eubanks:

We have reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance(s) onto MD/~~US~~ 130 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions. Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: March 2, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for March 2, 1998
Item No. 294

The Bureau of Developer's Plans Review did not receive a plan for the subject zoning item.

RWB:HJO:jrb

cc: File

ZONE0302.294

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: February 24, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for February 23, 1998
Item Nos. 287, 289, 292, 293, 294, 296, 297, and 298

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE0223.NOC

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

FEBRUARY 23, 1998

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: EDGAR LUCAS

Location: DISTRIBUTION MEETING OF FEBRUARY 17, 1998

Item No.: 294 Zoning Agenda:

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.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

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on Recycled Paper

TERRENCE B. SHERIDAN
Chief of Police



Integrity . . . Fairness . . . Service

Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

To Mr. Carl Richards, Jr.
Department of Permits and
Development Management

February 19, 1998

Sir:

As per your departments request, I have inspected the property located at 901 Greenspring Valley Road. This property meets all the requirements as established by the Federal Aviation Advisory Circular for the type of aircraft being operated.

If you have any other questions, please feel free to call me at the Baltimore County Police Aviation Unit (410)887-0279.

Sincerely;

Officer Roy R. Taylor, Jr.
Chief Pilot

cc:
Sergeant Ron Wines
Captain Don Roby

98-294-SPHX

Nationally Accredited Since 1984

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

DATE: February 24, 1998

To: Arnold L. Jablon

From: Bruce Seeley BS/GP

Subject: Zoning Item #294

Lucas Property, 901 Greenspring Valley Road

Zoning Advisory Committee Meeting of February 17, 1998

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code.)

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code), if the property is being subdivided according to the Development Regulations.

_____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Also see attached comments from Wally Lippincott and Jerry Siewierski.

GP:sp

RECEIVED FEB 25 1998

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon DATE: February 24, 1998

FROM: Wally Lippincott

SUBJECT: Zoning Petition #294

This property is under a Maryland Agricultural Land Preservation Foundation easement. The easement precludes uses that are not agricultural in nature. There is no recognition in the easement document or other documents in the file of an existing airport or helicopter use. In conversation with Mr. Lucas on 10/10/97, he indicated there was an existing air strip that preceded the easement. I was unable to confirm this information. Although, improvements are not to be evaluated in determining the easement value, one of the appraisals listed improvements and did not reference an air strip, (attached). I have inquired of the Maryland Agricultural Foundation as to any documentation they may have on this issue.

WL:sp

ZonPet.doc

B A L T I M O R E C O U N T Y, M A R Y L A N D

Inter-Office Correspondence

TO: Board Members **DATE:** March 12, 1999

FROM: Kathi

SUBJECT: Revised Schedule Pages

As the result of the reassignment of hearing dates for Case No. 98-294-SPHX (Edgar Lucas), certain dates have been reassigned to the Board members scheduled to sit on that particular panel. Those changes are reflected on the attached.

Therefore, so that the schedule you have reflects these changes, I've prepared the attached revision for the period April 19, 1999 through the week of May 17, 1999. While there were no changes to the week of May 10th, I thought it simpler if you could just remove this five-week section and replace with the attached.

Should you have any questions, please call me.

Attachment

copies: L. Barranger
D. Felling
C. Marks /please note schedule changes for Lucas
T. Melvin /please note schedule changes for Lucas
L. Stahl /please note schedule changes for Lucas
L. Wescott /please note change in schedule for 4/21/99
M. Worrall

To: Bruce Seeley

From: J. Siewierski

Subj: Lucas Property
Helicopter

Date: Feb 20,1998

As per your request, please be advised that there are no local noise regulations in Baltimore County with the exception of those dealing with loud noise after dark, which are enforced by the Police Dept. There are state noise regulations, dealing primarily with industrial sources, which are enforced by the Maryland Dept of the Environment. The contact person with MDE is Mr. David Jarinko, who can be reached at 410 333-2950

Please let me know if you need additional information

cc Gayle Parker

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

September 14, 1998

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, MD 21204-4515

Dear Mr. Barhight:

RE: Petitions for Special Hearing and Special Exception, Case No.: 98-294-SPHX, 901 Greenspring Valley Road, District: 3c3, Edgar Lucas - Petitioner

Please be advised that an appeal of the above referenced case was filed in this office on September 4, 1998 by G. Macy Nelson, Esquire on behalf of The Valleys Planning Council, Inc., c/o Jack Dillon, Deirdre Smith and Douglas Carroll, William Brewster, Mr. and Mrs. Stephen Immelt, and Laura J. Robertson and David B. Gorzsas. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Ms. Lynne Ellis
Mr. Jorgen Jensen
People's Counsel

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COUNTY BOARD OF APPEALS
98 SEP 17 PM 2:49

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

September 14, 1998

G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, MD 21204

Dear Mr. Nelson:

RE: Petitions for Special Hearing and Special Exception, Case No.: 98-294-SPHX, 901 Greenspring Valley Road, District: 3c3, Edgar Lucas - Petitioner

Please be advised that an appeal of the above referenced case (special exception only) was filed in this office on September 8, 1998 by G. Scott Barhight, Esquire on behalf of Helmore Farm and Edgar Lucas. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Ms. Lynne Ellis
Mr. Jorgen Jensen
People's Counsel

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APPEAL

Petitions for Special Hearing and Special Exception
S/S of Greenspring Valley Road, N/S Hillside Road, W of Falls Road
(901 Greenspring Valley Road)
3rd Election District - 3rd Councilmanic District
Edgar Lucas - Petitioner
Case Number: 98-294-SPHX

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COUNTY BOARD OF APPEALS
98 SEP 17 PM 2:49

Petitions for Special Hearing and Special Exception

Description of Property

Certificate of Posting

Certification of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

Petitioners' Exhibits: 1A-B - Two Photographs
2A - Plat to Accompany Zoning Petition
2B - Plat to Accompany Zoning Petition
3A-B - Two Photographs
4 - No Exhibit Found
5 - Copy of Reporter's Official Transcript of Proceedings (Pages 1, 62 & 63) Before the Honorable Lawrence R. Daniels, Judge, dated February 20, 1998
6 - Original Reporter's Official Transcript of Proceedings (Pages 91-114) Before the Honorable Lawrence R. Daniels, Judge, dated February 20, 1998
6A-C - Three Photographs

Fourteen Photographs not Marked as Exhibits

Letter from Page Kimball, Assoc. Appraiser, E. T. Dolan & Assoc., Inc., to Edgar M. Lucas, dated October 28, 1989

Letter from G. Macy Nelson, Esq. to Arnold Jablon, Director of the Department of Permits & Development Management, dated March 2, 1998

Letter from Paul W. Scheidt, Executive Director of State of Maryland Department of Agriculture, to Lawrence E. Schmidt, Zoning Commissioner, dated March 2, 1998

Letter from G. Scott Barhight, Esq. to Timothy M. Kotroco, Deputy Zoning Commissioner dated April 17, 1998

Letter from G. Macy Nelson, Esq. to Timothy M. Kotroco, Deputy Zoning Commissioner, dated April 20, 1998

Protestants' Memorandum in Opposition to Petitions for Special Hearing & Special Exception dated April 30, 1998

Letter from David K. Gildea, Esquire to Deputy Zoning Commissioner Timothy M. Kotroco dated May 5, 1998

Letter from G. Macy Nelson, Esq. to Timothy M. Kotroco, Deputy Zoning Commissioner dated May 14, 1998

Five Letters in Opposition of Petitioner

Three Letters in Support of Petitioner

Deputy Zoning Commissioner's Order dated August 5, 1998 (Granted in Part, Denied in Part)

Deputy Zoning Commissioner's Amended Order dated August 6, 1998

Notice of Appeal of special exception only received on September 4, 1998 from G. Macy Nelson, Esquire on behalf of the Valleys Planning Council, Inc. c/o Jack Dillon, Deirdre Smith and Douglas Carroll, William Brewster, Mr. and Mrs. Stephen Immelt, and Laura J. Robertson and David B. Gorzsas

Notice of Appeal received on September 8, 1998 from G. Scott Barhight, Esquire on behalf of Helmore Farm and Edgar Lucas

c: G. Scott Barhight, Esq. & David Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Ave., 4th Flr., Towson, Maryland 21204
Messrs. Edgar and Dale Lucas, 901 Greenspring Valley Road, Brooklandville, Maryland 21022
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, MD 21204
Ms. Susan Immelt, P. O. Box 714, Brooklandville, MD 21022
Mr. Stephen Howard, P. O. Box 48, Stevenson, MD 21153
Ms. Deirdre Smith, P. O. Box 945, Brooklandville, MD 21022
Ms. Lynne Ellis, 11044 Greenspring Avenue, Lutherville, MD 21093
Mr. Jorgen Jensen, 8216 Tally Ho Road, Lutherville, MD 21093
Mr. Douglas Carroll, 1117 Greenspring Valley Road, Lutherville, MD 21093
Mr. Jack Dillon, Valleys Planning Council, 212 Washington Avenue, Towson, Maryland 21285-5402
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

Case No. 98-294-SPHX

SPHX -Approval of an airport and/or helicopter operation as a legal, nonconforming use; in the alternative -- special exception for airport.

8/05/98 -D.Z.C.'s Order in which Special Hearing was DENIED; and Special Exception was GRANTED with restrictions.
8/06/98 -Amended Order /additional restriction to limit flight path of helicopters using subject airport.

12/28/98 - Notice of Assignment for hearing scheduled for Thursday, March 11, 1999 at 10:00 a.m. sent to following:

G. Scott Barhight, Esquire
Helmore Farm /Edgar Lucas
G. Macy Nelson, Esquire
Valleys Planning Council c/o
Jack Dillon
Deirdre Smith
Douglas Carroll
William Brewster
Mr. and Mrs. Stephen Immelt
Laura J. Robertson
David Grozsas
Mr. Stephen Howard
Ms. Lynn Ellis
Mr. Jorgen Jensen
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

1/29/99 -Conference call with G. Macy Nelson and David Gildea regarding Mr. Nelson's conflict with 3/11/99 hearing date. Agreement reached for three new hearing dates, namely, 4/21, 4/22 and 4/27/99. Mr. Nelson to write letter requesting postponement. Notice will then be sent and case reassigned.

2/02/99 -Letter from G. Macy Nelson requesting postponement to dates as indicated above. Notice of PP and Reassignment sent to parties. Case reassigned to Wednesday, April 21; Thursday, April 22; and Tuesday, April 27, 1999, all beginning at 10:00 a.m.

3/02/99 -T/C from David Gildea -- both he and Macy Nelson have conflicts with starting dates of 4/21/99 and 4/22/99; requesting additional dates to work out days 2 and 3 (4/27/99 will then become hearing day #1 for this case). Advised him of dates available 4/28; 5/04; and 5/13 (to be confirmed with panel scheduled to sit for this case). He will work out dates with M. Nelson and get back to me.

- T/C to sitting panel. Conflict for Board with 4/28 and 5/13. L.M. for D. Gildea at his office -- that we could do 5/04 and 5/18 as days 2 and 3.

Case No. 98-294-SPHX SPHX -Approval of an airport and/or helicopter operation as a legal, nonconforming use; **in the alternative** -- special exception for airport.

In the Matter of:
Edgar Lucas -Petitioner
Page 2

3/05/99 -T/C to David Gildea regarding above dates. He returned by call and advised that M. Nelson has problem with 5/04/99, but he will contact himagain and get back to me.

3/10/99 -T/C from D. Gildea -- he is still working out dates with M. Nelson. Advised him that if no response from counsel by 3/15/99, Notice of PP as to days 1 and 2 would go out, indicating that 4/27/99 would not be day #1 with additional dates to be assigned (to allow interested persons to know that 4/21/ and 4/22 were no longer viable dates for this hearing; and that we would start the case on 4/27/99).

3/12/99 -T/C from M. Nelson -- he is good on dates offered; i.e., 4/27/99 as day #1; 5/04/99 as day #2; and 5/18/99 as day #3. Advised him that Notice would go today with these definite dates assigned for hearing.
- Notice of PP and Reassignment sent to parties; assigned to begin Tuesday, April 27, 1999 as day #1; Tuesday, May 4, 1999 for hearing day #2; and Tuesday, May 18, 1999 for hearing day #3, all dates to begin at 10:00 a.m. Copy of Notice of Assignment sent to panel members for calendaring purposes.

4/26/99 -Entry of Appearance and Memorandum filed by People's Counsel (original for file; three copies for panel members).

4/27/99 -Day #1 concluded; to convene 5/04/99 for Day #2. (C.L.M.)

5/04/99 -Concluded Day #2; to convene 5/18/99 for Day #3. (C.L.M.)
(Note: to schedule on-site visit for CLM; possible hold for Day #4 if needed -- calls, etc. to be made 5/05/99)

5/07/99 -Letter from P. Zimmerman -- transmitting Rule 8 materials for The North County Coalition, Inc., and the Maryland Line Association, Inc. to supplement the testimony of Dr. Richard McQuaid.

5/18/99 -Concluded day #3; upon confirmation of availability of parties, assigned Wednesday, June 23, 1999 for hearing day #4 and Thursday, July 1, 1999 for hearing day #5; Notice of Assignment sent to parties; assigned for Day #4 on Wednesday, June 23, 1999 at 9:00 a.m. and assigned for Day #5 on Thursday, July 1, 1999 at 10:00 a.m.
- Also confirmed Wednesday, June 2, 1999 at 7:30 a.m. for meeting at the Lucas property for purpose of on-site visit and observation as discussed with counsel and parties.

6/02/99 -On-site visit by Board conducted and concluded. Letter from Chairman Marks to Mr. Gildea, copies to Barhight, Nelson and Zimmerman -- requesting that helicopter pilot be present at hearing(s) in this matter to provide detailed analysis and answer any questions posed by the Board and by counsel.

6/23/99 -Hearing Day #4 concluded; continued to 7/01/99 for day #5.

Case No. 98-294-SPHX SPHX -Approval of an airport and/or helicopter operation as a legal, nonconforming use; in the alternative -- special exception for airport.

In the Matter of:
Edgar Lucas -Petitioner
Page 3

7/01/99 - Day #5 concluded; hearing concluded as to testimony and evidence; closing memorandums due from counsel by Wednesday, September 1, 1999 at 3:30 p.m. Notice of Deliberation sent to parties; scheduled for Thursday, September 16, 1999 at 10:30 a.m. (Marks, Stahl, Melvin)

8/23/99 -Letter from M. Nelson requesting two-day extension for filing of memos; indicates no objection by D. Gildea to two-day extension (prefers filing before Labor Day holiday); advised D. Gildea by telephone of granting of M. Nelson's request; also advised PMZ this date.
- Letter to M. Nelson in response to request; memos now due no later than Friday, September 3, 1999; copies to P. Zimmerman and D. Gildea.

8/31/99 -Notice of Reassignment /Deliberation sent to parties -- deliberation reassigned by the Board to Tuesday, October 5, 1999 at 9:30 a.m.

9/02/99 -Memorandum of People's Counsel for Baltimore County filed.

9/03/99 -Memorandum of Law in Lieu of Closing Argument filed by David Gildea, Esquire, on behalf of Petitioner.
-Filed by G. Macy Nelson, Esquire, on behalf of Protestants

9/09/99 -Copies of out-of-state and federal court decisions cited by People's Counsel in prehearing memo provided by letter from P. Zimmerman.

10/05/99 -Deliberation concluded; Determined that use is an airstrip and not an airport and therefore not permitted. In arguendo, even if it were found to be an airport, would fail under 502.1 as to spirit and intent and health, safety and general welfare. Stahl and Melvin in total agreement; Marks agreed as to airstrip determination and failure to meet 502.1. However, he did not believe that a helicopter landing is included as part of an airport (a point disputed by Melvin and Stahl), and that helicopters are not allowed in R.C. 2, even as part of airport.
- Written Opinion/order to be issued. Appellate period to run from date of written order.

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

10/22/09

Case Number: 03-C-00-002648 AE
Date Filed: 03/17/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : Target :

In The Matter of: Edgar Lucas

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-294-SPHX
Case Folder ID	C00002648V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Lucas, Edgar	Party ID: 0350643	BT DO 03/29/01	03/17/00
	Mail:	901 Greenspring Valley Rd Brooklandville, MD 21022	03/31/00	03/31/00 DR	03/31/00 DR
	Attorney:	0016859 Gildea, David K Gildea L L C 600 Washington Avenue Suite 200 Baltimore, MD 21204 (410)821-0070			03/17/00
		0016862 Barhight, G Scott Whiteford, Taylor & Preston L.L.P.			03/28/00

210 West Pennsylvania Ave
400 Court Towers
Towson, MD 21204-4515
(410)832-2000

0803639 Busse, Jennifer R 08/02/00
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Ave
Towson, MD 21204-4515
(410)832-2000

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
ITP	001	Baltimore County Board Of Appeals The		BT DO 03/29/01	03/17/00
			Party ID: 0350645		
Mail:		Room 49 Old Courthouse 400 Washington Avenue Towson, MD 21204	03/17/00	03/17/00 TT	03/17/00 TT
Attorney:		0005744 Demilio, Carole S The Jeferson Bldg, Rm 204 105 W. Chesapeake Ave Rm Towson, MD 21204 (410)887-2188			03/31/00
		0029075 Zimmerman, Peter M People's Counsel For Baltimore County 105 West Chesapeake Ave, Room 204 Towson, MD 21204 (410)887-2188			03/31/00
ITP	002	Smith, Deidre		BT DO 03/29/01	04/04/00
			Party ID: 0354316		
Attorney:		0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	003	Carroll, Douglas		BT DO 03/29/01	04/04/00
			Party ID: 0354317		
Attorney:		0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
ITP	004	Brewster, William	Party ID: 0354318	BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	005	Immelt, Susan C	Party ID: 0354319	BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	006	Immelt, Stephen J	Party ID: 0354320	BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	007	The Valleys Planning Council, Inc.	Party ID: 0354321	BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	008	Peoples Counsel For Baltimore County	Party ID: 0372110	BT DO 03/29/01	07/11/00
		Attorney: 0029075 Zimmerman, Peter M People's Counsel For Baltimore County 105 West Chesapeake Ave. Room 204 Towson, MD 21204 (410)887-2188			07/12/00

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
09/28/00	09:30A	CR09	Civil Non-Jury Trial	Y	JOH 01 /01		KLS
Held/Concluded			09/28/00 C J.Hennegan	Y			
Stenographer(s): Patricia M. Campbell							

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
03/29/01	DO	Decree or Order	BT	BEFORE TRIAL/HEARING		03/23/04
03/29/01	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	JA	10/21/09

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	03/17/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review	03/16/00	03/17/00	PET001	TBA	03/29/01	TT LG
0001001	*Answer	03/27/00	03/28/00	PET001	TBA	03/29/01	MI LG
0001002	Response to Petition for Judicial Review Filed by ITP001-Baltimore County Board Of Appeals The. , ITP007-The Valleys Planning Council, Inc., . ITP006-Immelt, Stephen J, ITP005-Immelt, Susan C, ITP004-Brewster, William, ITP003-Carroll, Douglas	03/31/00	04/04/00	ITP001	TBA	03/29/01	AR LG
0001003	Answer Filed by ITP007-The Valleys Planning Council, Inc., . ITP006-Immelt, Stephen J, ITP005-Immelt, Susan C, ITP004-Brewster, William, ITP003-Carroll, Douglas, ITP002-Smith, Deidre	04/17/00	04/19/00	ITP007	TBA	03/29/01	MI LG
0002000	Supplemental Petition for Judicial Review	03/24/00	03/28/00	PET001	TBA	03/29/01	DR LG

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0003000	Amended Certificate of Notice	03/29/00	03/31/00	ITP001	TBA	03/29/01	DR LG
0004000	*Transcript of Record from Adm Agency	05/17/00	05/19/00	ITP001	TBA	03/29/01	DR LG
0005000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP001	TBA	05/19/00	DR DR
0006000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP002	TBA	05/19/00	DR DR
0007000	Notice of Transcript of Record Sent	05/19/00	05/19/00	PET001	TBA	05/19/00	DR DR
0008000	*Memorandum of Law	06/16/00	06/20/00	PET001	TBA	06/20/00	DR DR
0008001	Protestants' Response to Petitioner's Memorandum of Law with exhibits Filed by ITP002-Smith, Deidre, ITP003-Carroll, Douglas, ITP004-Brewster, William, ITP005-Immelt, Susan C, ITP006-Immelt, Stephen J, ITP007-The Valleys Planning Council, Inc..	07/05/00	07/06/00	ITP002	TBA	03/29/01	AR LG
0009000	Scheduling Order	06/23/00	06/23/00	000	TBA	06/23/00	KLS KLS
0010000	Scheduling Order	06/27/00	06/27/00	000	TBA	06/27/00	CF CF
0011000	Memorandum	07/11/00	07/12/00	ITP008	TBA	07/12/00	PH PH
0012000	Petitioner's Reply Memorandum of Law	07/24/00	07/26/00	PET001	TBA	07/26/00	AR AR
0013000	Repply Memorandum	07/31/00	08/01/00	PET001	TBA	08/01/00	PH PH
0014000	Open Court Proceeding September 28, 2000, Hon, John O, Hennegan, Hearing had in re: Opinion to be filed.	09/28/00	09/28/00	000	JOH	03/29/01	NLR LG
0015000	Memorandum Opinion and Order affirming decision	03/20/01	03/20/01	000	JOH Granted	03/20/01	LG LG
0016000	Docket entries sent to Worker's Compensation Commission.	03/23/01	03/23/01	000	TBA	03/29/01	CVM LG
0017000	*Notice of Appeal to COSA (11/182)	03/28/01	03/28/01	PET001	TBA	03/29/01	PH LG
0018000	Pre Trial Hearing Letter Issued	03/28/01	03/28/01	000	TBA	03/28/01	AJ AJ
0019000	*Notice of Appeal to COSA 11/185 ENTERED IN ERROR	04/05/01	04/05/01	PET001	TBA	03/29/01	AR JA
0020000	Pre Trial Hearing Letter Issued	04/05/01	04/05/01	000	TBA	04/05/01	FG FG
0021000	Order to proceed w/out prehearing conf. * (James R, Eyler, Judge).	05/03/01	05/04/01	000	TBA	03/29/01	DFF JA
0022000	Original Record sent to COSA of Maryland	07/09/01	07/09/01	000	TBA	03/29/01	FG JA

by certified mail #7099-3220-0003-8139-7986. 1 volume, 1 transcript, and 1 box of exhibits.

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0023000	Mandate from the COSAA affirming judgment	12/03/02	12/03/02	000	TBA		03/29/01	PH JA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	03/27/00	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	03/16/01	365	no	no	DAAA	D	000	000
DEXH	Destroy Exhibits	CLOSED	02/10/03	33	no	no	U643	F	000	000
EXPU	Exhibit Pickup Notic	CLOSED	05/28/01	30	no	no			000	000
EXPU	Exhibit Pickup Notic	CLOSED	12/20/09	30	no	no			000	000
SLTR	Set List For Trial	DONE	03/27/00	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 Baltimore County Board Of App								
000		B	RETURNED TO CBA					

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 06/23/00 Order Date : 06/23/00
Start Date : 06/23/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		07/08/00	03/29/01	CLOSED
All Motions (excluding Motions in Limine		08/12/00	03/29/01	CLOSED
TRIAL DATE is	09/28/00	09/21/00	09/28/00	REACHED

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Oblig	Payment	Total	MOP	Balance
03/15/00	200000005144/JJ	1102	CF-Civil Fil	.00	80.00	-80.00	CK	-80.00
03/15/00	200000005144/JJ	1265	MLSC	.00	10.00	-10.00	CK	-90.00
03/15/00	200000005144/JJ	1500	Appearance F	.00	10.00	-10.00	CK	-100.00
04/05/01	200100006775/JJ	1101	CF-Civil Fil	.00	60.00	-60.00	CK	-160.00
04/05/01	200100006775/JJ	1999	CTSPAPP	.00	50.00	-50.00	CK	-210.00

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

NOTICE TO PICKUP EXHIBITS

To: David K Gildea Esq
Gildea L L C
301 North Charles St
Ste 800
Baltimore MD 21201

Case Number: 03-C-00-002648 AE
Administrative Agency: 98-294-SPHX

Case Title: In The Matter of: Edgar Lucas

This is to notify you to withdraw your exhibits and or transcripts that were introduced into evidence during the trial of the above entitled case. If no request is received within the 35 days of the date issued, the exhibits and or transcripts will be disposed of in accordance with Maryland Rule 16-306 d 2.

Sincerely,

John A. Almond
410-887-3494

When calling to inquire about your exhibits, ask for John. If he is not available please leave a message about the exhibits with the case number, your name, and a phone number to return your call.

Date Issued: 01/08/03

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

01/08/03

Case Number: 03-C-00-002648 AE
Date Filed: 03/17/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Edgar Lucas

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-294-SPHX
Case Folder ID	C00002648V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Lucas, Edgar	Party ID: 0350643	BT DO 03/29/01	03/17/00
		Mail: 901 Greenspring Valley Rd Brooklandville, MD 21022	03/31/00		
		Attorney: 0016859 Gildea, David K Gildea L L C 301 North Charles St Ste 800 Baltimore, MD 21201 (410)234-0070			03/17/00
		0016862 Barhight, G Scott Whiteford, Taylor & Preston L.L.P.			03/28/00

210 West Pennsylvania Ave
400 Court Towers
Towson, MD 21204-4515
(410)832-2000

0803639 Busse, Jennifer R 08/02/00
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Ave
Towson, MD 21204-4515
(410)832-2000

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition / Addr Update	Entered
ITP	001	Baltimore County Board Of Appeals The	Party ID: 0350645	BT DO 03/29/01	03/17/00
	Mail:	Room 49 Old Courthouse 400 Washington Avenue Towson, MD 21204	03/17/00		
	Attorney:	0005744 Demilio, Carole S 206 Washington Avenue Towson, MD 21204 (410)825-6963			03/31/00
		0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188			03/31/00
ITP	002	Smith, Deidre	Party ID: 0354316	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	003	Carroll, Douglas	Party ID: 0354317	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	004	Brewster, William	Party ID: 0354318	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	005	Immelt, Susan C	Party ID: 0354319	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	006	Immelt, Stephen J	Party ID: 0354320	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	007	The Valleys Planning Council, Inc.	Party ID: 0354321	BT DO 03/29/01	04/04/00
	Attorney:	0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166			04/04/00
ITP	008	Peoples Counsel For Baltimore County	Party ID: 0372110	BT DO 03/29/01	07/11/00
	Attorney:	0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188			07/12/00

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of Rslt	By	ResultDt	Jdg T	Notice	Rec	User ID
09/28/00	09:30A	01H	yes	CIVI	S		JOH	01 /01 CON	C	09/28/00	JOH P		Y	KLS

Stenographer(s): Patricia M. Campbell

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	03/17/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	03/16/00	03/17/00	PET001	TBA		03/29/01	TT LG
0001001	*Answer	03/27/00	03/28/00	PET001	TBA		03/29/01	MI LG
0001002	Response to Petition for Judicial Review Filed by ITP001-Baltimore County Board Of Appeals The, , ITP007-The Valleys Planning Council, Inc., , ITP006-Immelt, Stephen J, ITP005-Immelt, Susan C, ITP004-Brewster, William, ITP003-Carroll, Douglas	03/31/00	04/04/00	ITP001	TBA		03/29/01	AR LG
0001003	Answer Filed by ITP007-The Valleys Planning Council, Inc., , ITP006-Immelt, Stephen J, ITP005-Immelt, Susan C, ITP004-Brewster, William, ITP003-Carroll, Douglas, ITP002-Smith, Deidre	04/17/00	04/19/00	ITP007	TBA		03/29/01	MI LG
0002000	Supplemental Petition for Judicial Review	03/24/00	03/28/00	PET001	TBA		03/29/01	DR LG
0003000	Amended Certificate of Notice	03/29/00	03/31/00	ITP001	TBA		03/29/01	DR LG
0004000	*Transcript of Record from Adm Agency	05/17/00	05/19/00	ITP001	TBA		03/29/01	DR LG
0005000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP001	TBA		05/19/00	DR DR
0006000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP002	TBA		05/19/00	DR DR
0007000	Notice of Transcript of Record Sent	05/19/00	05/19/00	PET001	TBA		05/19/00	DR DR

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0008000	*Memorandum of Law	06/16/00	06/20/00	PET001	TBA		06/20/00	DR DR
0008001	Protestants' Response to Petitioner's Memorandum of Law with exhibits Filed by ITP002-Smith, Deidre, ITP003-Carroll, Douglas, ITP004-Brewster, William, ITP005-Immelt, Susan C, ITP006-Immelt, Stephen J, ITP007-The Valleys Planning Council, Inc.,	07/05/00	07/06/00	ITP002	TBA		03/29/01	AR LG
0009000	Scheduling Order	06/23/00	06/23/00	000	TBA		06/23/00	KLS KLS
0010000	Scheduling Order	06/27/00	06/27/00	000	TBA		06/27/00	CF CF
0011000	Memorandum	07/11/00	07/12/00	ITP008	TBA		07/12/00	PH PH
0012000	Petitioner's Reply Memorandum of Law	07/24/00	07/26/00	PET001	TBA		07/26/00	AR AR
0013000	Repply Memorandum	07/31/00	08/01/00	PET001	TBA		08/01/00	PH PH
0014000	Open Court Proceeding September 28, 2000. Hon. John O. Hennegan. Hearing had in re: Opinion to be filed.	09/28/00	09/28/00	000	JOH		03/29/01	NLR LG
0015000	Memorandum Opinion and Order affirming decision	03/20/01	03/20/01	000	JOH	Granted	03/20/01	LG LG
0016000	Docket entries sent to Worker's Compensation Commission	03/23/01	03/23/01	000	TBA		03/29/01	CVM LG
0017000	*Notice of Appeal to COSA (11/182)	03/28/01	03/28/01	PET001	TBA		03/29/01	PH LG
0018000	Pre Trial Hearing Letter Issued	03/28/01	03/28/01	000	TBA		03/28/01	AJ AJ
0019000	*Notice of Appeal to COSA 11/185 ENTERED IN ERROR	04/05/01	04/05/01	PET001	TBA			AR AR
0020000	Pre Trial Hearing Letter Issued	04/05/01	04/05/01	000	TBA		04/05/01	FG FG
0021000	Order to proceed w/out prehearing conf. * (James R. Eyler, Judge).	05/03/01	05/04/01	000	TBA			DFF DFF
0022000	Original Record sent to COSA of Maryland by certified mail #7099-3220-0003-8139-7986. 1 volume, 1 transcript, and 1 box of exhibits.	07/09/01	07/09/01	000	TBA			FG FG
0023000	Mandate from the COSAA affirming judgment	12/03/02	12/03/02	000	TBA			PH PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	03/27/00	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	03/16/01	365	no	no	DAAA	D	000	000
EXPU	Exhibit Pickup Notic	CLOSED	05/28/01	30	no	no			000	000
SLTR	Set List For Trial	DONE	03/27/00	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 Baltimore County Board Of App								
000		B	BOX 210/CBA APPEAL		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 06/23/00 Order Date : 06/23/00
Start Date : 06/23/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		07/08/00	03/29/01	CLOSED
All Motions (excluding Motions in Limine		08/12/00	03/29/01	CLOSED
TRIAL DATE is	09/28/00	09/21/00	09/28/00	REACHED

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, 2000' W of Falls Rd 3rd Election District, 3rd Councilmanic	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
Edgar Lucas Petitioner	*	CASE NO. 98-294-SPHX

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

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 9th day of March, 1998, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

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 26, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 APR 26 PM 2:59

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Special Exception
901 Greenspring Valley Road,
EDGAR LUCAS , Petitioner
Case No.: 99-294-SPHX

Dear Chairman Marks:

Enclosed for filing please find People's Counsel for Baltimore County's Entry of Appearance and Hearing Memorandum for filing in the Board proceedings and to express our interest as a party in land use issues of great public interest.

We do not anticipate calling or questioning any witnesses at the trial beginning April 27. In effect, we will submit on brief. We request the opportunity, however, to supplement our initial Memorandum, as necessary and appropriate, in the event that the Board accepts Post-Hearing Memoranda.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure

cc: G. Scott Barhight , Esq. and David K. Gildea, Esq., Attorneys for Petitioners
G. Macy Nelson, Esq., Attorney for Protestants

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
EDGAR LUCAS	*	Case Number: 98-294-SPHX
Petitioner	*	

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

RECEIVED
COUNTY BOARD OF APPEALS
99 APR 26 PM 2:55

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 of 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
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of April, 1999, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq. and David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IN THE MATTER OF	*	**BEFORE**
Edgar Lucas/Petitioner	*	**COUNTY BOARD OF APPEALS**
	*	**OF**
	*	**BALTIMORE COUNTY**
	*	**CASE NO.** 98-294-SPHX

* * * * * * * * *

S U B P O E N A

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) Mr. Charles Lamb
c/o G. Scott Barhight, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204-4515

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; (XX) Produce documents and/or objects only; ( ) Personally appear and produce documents or objects;

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday the 4th day of May, 1999, at 10:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects:

SEE ATTACHMENT A.

Subpoena requested by:

G. Macy Nelson, Esq., Suite 803, 401 Washington Ave., Towson, MD 21204
(Name of Party or Attorney, Address and Phone Number)
(410) 296-8166

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.)

99 APR 29 PM 3:52

COUNTY BOARD OF APPEALS
RECEIVED

Kathleen Bianco
County Board of Appeals of Baltimore County

ATTACHMENT A

1. All input and output files used by Charles Lamb or his staff to develop the sound exposure analysis at Helmore Farm. The input and output files should be both on a disk and on paper.

2. All information necessary to obtain a copy of the software for approximately $50.00 which allows one to run the sound exposure analysis.

3. A copy of the report of Kevin Miller. ✓

4. A copy of the file that Charles Lamb brought to the Board of Appeals on April 27, 1999, and left with the attorney for the Petitioner at the conclusion of Charles Lamb's testimony. ✓

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
EDGAR LUCAS Petitioner	*	BALTMORE COUNTY **Case No: 98-294-SPHX**

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

SUBPOENA

Please issue a Subpoena to the following named witness to personally appear before the Baltimore County Board of Appeals at the hearing for the matter captioned above in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on **Tuesday, May 18, 1999, at 10:00 a.m.**, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: JOHN McGRAIN
County Historian
Baltimore County Office of Planning
401 Bosley Avenue - 4th Floor
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
99 MAY 17 AM 11:31

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel For Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 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.

Charlotte E. Radcliffe
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

Cost: $_____ }

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Road, N/S Hillside Road, 2000' W of Falls Road 3rd Election District, 3rd Councilmanic **EDGAR LUCAS** Petitioner	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTMORE COUNTY **Case No: 98-294-SPHX**

RECEIVED
COUNTY BOARD OF APPEALS
99 MAY 17 PM 1:36

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 1999, at 11:50 a.m./p.m., I personally served copy of the attached Subpoena upon Witness **JOHN McGRAIN, County Historian, Baltimore County Office of Planning,** at 400 Washington Avenue, Room 47, Towson, MD 21204. Said Subpoena directs said witness to personally appear before the Baltimore County Board of Appeals at the hearing for the matter captioned above in Room 48 Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on **Tuesday, May 18, 1999, at 10:00 a.m.**, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Carol A. Fisher

CAROL A. FISHER
Legal Assistant
Office of the People's Counsel For Baltimore County
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

RECEIVED
COUNTY BOARD OF APPEALS
99 MAY 10 AM 10:45

IN RE: PETITION FOR 901 Greenspring Valley Road, S/S Greenspring Valley Road, 2000' W of Falls Road, 3rd Election District - 3rd Councilmanic District Legal Owner: Edgar Lucas	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 98-294-SPHX

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Mr. Jack Dillon, Executive Director
The Valleys Planning Council
207 Courtland Avenue
Towson, Maryland 21285-5402
(Baltimore County)

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: ( ) Personally appear; (X) Produce documents and/or objects only; ( ) Personally appear and produce documents or objects;

in Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on

Tuesday, the 18th day of May, 1999, at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects:

Any and all documents relied upon by you to formulate any and all expert opinions to be offered in the above referenced case.

Subpoena Requested By:
David K. Gildea, Esquire
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave., 4th Floor
Towson, Maryland 21204
(410)832-2066

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

166927

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Edgar Lucas -Petitioner
Case No. 98-294-SPHX

DATE : Tuesday, October 5, 1999

BOARD /PANEL : Charles L. Marks (CLM)
Lawrence M. Stahl (LMS)
Thomas P. Melvin (TPM

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 98-294-SPHX /Petition for Special Hearing /Petition for Special Exception. Appeal filed by Protestants, Valleys Planning Council, et al.

The Board, having convened for public deliberation as scheduled by notice dated August 31, 1999, and upon deliberation between panel members at the scheduled deliberation session, reached the following decision.

Basic case - semantics and uses of terminology. Factors include the use of facility; if an airport - acceptable use if all regulations are met; if an airstrip - then it is not allowed. Further question -- in term "aircraft" - does that include or exclude a helicopter.

Cited Schultz v. Pritts, if determined to be airport - question then would be -- is impact here any greater than elsewhere in the zone.

Reviewed regulations to determine use; reviewed history of statute; prior to 1979, helicopter allowed; in 1979, deleted helistop from special exception regulations. Reviewed testimony of Mr. Lucas; found business to be Rite Aid business; not farm business with less than 5 trips by anybody over 2 years.

Airstrip or airport is number one question to be answered; landing strip is not defined but codified.

No supportive services for an airstrip; whereas airport = terminal; rest station; parking; fueling; communications; basic maintenance; and so forth. "Air" = in common; "strip" = just land; "port" = other things added.

Vote: LMS - not an airport
CLM - agreed
TPM - agreed

Determined to be airstrip, rather than airport. Airstrip is not allowed.

Edgar Lucas -Petitioner
Case No. 98-294-SPHX /Minutes of Deliberation

Deliberation continued, in arguendo - if upper courts determine it to be airport, is use of helicopter within confines of airport?

LMS and TPM determined that, for safety reasons, if there is an airport, then helicopters are allowed; are inherent. But helicopter pads, heliports, etc., were removed legislatively from RC zones, to stop private usage on individual farms.

CLM -- helicopters are not allowed in RC 2 zone, even as part of airport.
LMS & TPM -- airport includes helicopters.

Opinion of Board to include CLM's comments regarding helicopters.

Is adverse impact more here than elsewhere in RC 2 zone? Two primary issues under 502.1 - spirit and intent; and health, safety and general welfare.

Noise discussed as primary factor; all airports generate noise. Discussed testimony received as to noise levels; discussed on-site visit versus testimony without on-site visit. Board also conducted on-site visit with counsel present.

Also discussed impact on neighbor's horses; effect on horses and horse-breeding.

Further discussion - uniqueness of area; this area is more unique than any other in RC 2; more populated than other Baltimore County valleys cited - borders urban and rural which does not exist in the northern county. This is the most vulnerable valley in Baltimore County. Would adverse effect be greater here because it is unique?
Final vote: LMS Yes
CLM Yes
TPM Yes
Found to be enough evidence and testimony to support that finding.

Final decision: It is an airstrip as opposed to airport.
In arguendo --even if an airport:
LMS and TPM believe as airport - helicopters would be allowed
CLM believes that helicopters are excluded from RC zone.
As to 502.1 for special exception for airport --
Petition would fail by unanimous vote of Board - does not meet criteria of 502.1 as to spirit and intent and also health, safety & general welfare.

~~~~~~~~~~~~~~~~~~~~
~~~~~~~~~~~~~~~~~~~~

Edgar Lucas -Petitioner
Case No. 98-294-SPHX /Minutes of Deliberation

NOTE: Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may file Petition for Judicial Review in Baltimore County's Circuit Court.

This document confirms for the file that public deliberation was held this date in the subject matter and a final decision rendered in which the requested relief was denied; determined to be an airstrip which is not permitted in RC 2 zone. In arguendo, even if it is determined by higher court to be an airport - special exception fails under 502.1.

Respectfully submitted,

Kathleen C. Bianco
Administrator

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

September 8, 1999

COUNTY BOARD OF APPEALS RECEIVED
99 SEP -9 AM 11:07

Lawrence M. Stahl, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: **EDGAR LUCAS , Petitioner**
Case No.: 99-294-SPHX

Dear Chairman Stahl:

For the Board's convenience, we are enclosing copies of the following out-of-state and federal court decisions cited in our prehearing memorandum:

1. ***Riggs v. Burson***
2. ***Gustafson v. City of Lake Angelus***
3. ***Guillot v. Brooks***
4. ***Faux-Burhans v. County Comm'rs. of Frederick County***
5. ***Garden State Farms, Inc. v. Bay***

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure
cc: G. Scott Barhight , Esq. and David K. Gildea, Esq., Attorneys for Petitioners
G. Macy Nelson, Esq., Attorney for Protestants

Bobby RIGGS and M–Helicopters of Tennessee, Inc., Plaintiffs–Appellees,

v.

Charles W. BURSON, Tennessee Attorney General and Reporter, Carl Johnson, Commissioner of the Tennessee Department of Transportation, Defendants–Appellants.

Supreme Court of Tennessee, at Knoxville.

March 10, 1997.

Rehearing Denied April 7, 1997.

Heliport operator brought action against state officials to enjoin enforcement of statute which prohibited use of land for heliport within nine miles of national park boundary. The Sevier County Circuit Court, William R. Holt, Jr., J., dismissed action, but the Court of Appeals reversed and remanded for evidentiary hearing. Officials appealed. The Supreme Court, Anderson, J., held that: (1) legal conclusions in complaint were not to be accepted as true for purpose of officials' motion to dismiss complaint for failure to state claim upon which relief could be granted; (2) statute was not preempted by Federal Aviation Act; (3) statute did not violate due process or equal protection rights of operator; (4) statute did not suspend general law in violation of state constitution; and (5) operator was not entitled to maintain heliport as nonconforming use.

Judgment of the Court of Appeals reversed; judgment of the trial court reinstated.

1. Pretrial Procedure ⇐622, 686.1

Motion to dismiss complaint for failure to state claim upon which relief can be granted tests legal sufficiency of complaint; it admits truth of all relevant and material allegations, but asserts that such facts do not constitute cause of action as matter of law. Rules Civ.Proc., Rule 12.02(6).

2. Pretrial Procedure ⇐679, 680

In ruling on motion to dismiss complaint for failure to state claim upon which relief can be granted, courts must construe allegations in plaintiff's favor and accept allegations of fact as true, but inferences to be drawn from facts or legal conclusions set forth in complaint are not required to be taken as true. Rules Civ.Proc., Rule 12.02(6).

3. Pretrial Procedure ⇐679

Allegations in complaint that particular statute violated provisions of Federal and State Constitutions were legal conclusions that should not have been taken as true on motion to dismiss complaint for failure to state claim upon which relief can be granted. Rules Civ.Proc., Rule 12.02(6).

4. Pretrial Procedure ⇐679

Plaintiffs' assertion in complaint that state statute was preempted by federal statute was legal conclusion that should not have been accepted as true on motion to dismiss complaint for failure to state claim upon which relief can be granted. Rules Civ.Proc., Rule 12.02(6).

5. States ⇐18.11

Whether federal law expressly or implicitly preempts state law requires investigation of Congress' intent in passing federal legislation.

6. States ⇐18.5

State law which conflicts with federal law is preempted or "without effect" pursuant to supremacy clause. U.S.C.A. Const. Art. 6, cl. 2.

7. States ⇐18.11, 18.13

Consideration of preemption issues under supremacy clause starts with assumption that historic police powers of states are not to be superseded by federal act unless that is clear and manifest purpose of Congress, and purpose of Congress in enacting federal law is thus ultimate touchstone of preemption analysis. U.S.C.A. Const. Art. 6, cl. 2.

8. States ⇐18.3

For purpose of preemption analysis, intent of Congress may be explicitly stated in

statute's language or implicitly contained in structure and purpose; where there is no express preemption provision in federal statute, state law is implicitly preempted if that law actually conflicts with federal law or if federal law so thoroughly occupies legislative field as to make reasonable inference that Congress left no room for states to supplement it. U.S.C.A. Const. Art. 6, cl. 2.

9. Aviation ⇐224
States ⇐18.17

State statute which prohibited use of land for heliport within nine miles of national park boundary was not preempted by Federal Aviation Act; Act did not expressly preempt state statute, and statute was not implicitly preempted, since purpose of Act was to regulate airspace, and state statute regulated use of land, not flight of aircraft or use of airspace. 49 U.S.C.A. §§ 40101–41901; West's Tenn.Code, § 42–8–102(a).

10. Statutes ⇐219(1)

Interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts.

11. Zoning and Planning ⇐68

Land use law, if otherwise constitutional, may permissibly restrict or eliminate existing use of land.

12. Constitutional Law ⇐251.3, 253.2(1)

Unless fundamental right is implicated, statute comports with substantive due process under Federal and State Constitutions if it bears reasonable relation to proper legislative purpose and is neither arbitrary nor discriminatory. U.S.C.A. Const.Amend. 14; West's Tenn.Code, Const. Art. 1, § 8.

13. Constitutional Law ⇐48(1, 3)

In evaluating statute, Supreme Court will indulge every presumption and resolve any doubt in favor of constitutionality.

14. Aviation ⇐212
Constitutional Law ⇐278.2(1)

Statute which prohibited use of land for heliport within nine miles of national park boundary was reasonably related to legitimate legislative purposes of public safety, health, and welfare, and thus did not violate heliport operator's due process rights. U.S.C.A. Const.Amend. 14; West's Tenn. Code, Const. Art. 1, § 8; West's Tenn.Code, § 42–8–102(a).

15. Aviation ⇐212
Constitutional Law ⇐228.2

Statute which prohibited use of land for heliport within nine miles of national park boundary did not violate heliport operators' equal protection rights by distinguishing among heliport operators based on their location, as statute sought to achieve legitimate interests related to public safety, health, and welfare, and classification based on distance to national park was reasonably related to those interests. U.S.C.A. Const.Amend. 14; West's Tenn.Code, Const. Art. 1, § 8; Art. 11, § 8; West's Tenn.Code, § 42–8–102(a).

16. Constitutional Law ⇐211(1)

Things which are different in fact or opinion are not required to be treated the same by either federal or state constitutional equal protection clauses. U.S.C.A. Const. Amend. 14; West's Tenn.Code, Const. Art. 1, § 8; Art. 11, § 8.

17. Constitutional Law ⇐213.1(1)

Strict scrutiny analysis of equal protection challenge is required only when legislative classification interferes with exercise of fundamental right or operates to peculiar disadvantage of suspect class. U.S.C.A. Const.Amend. 14; West's Tenn.Code, Const. Art. 1, § 8; Art. 11, § 8.

18. Constitutional Law ⇐213.1(2)

Under rational basis standard for evaluating equal protection challenge, legislative classification will be upheld if some reasonable basis can be found for classification or if any state of facts may reasonably be conceived to justify it; rational basis standard, compared to heightened or strict scrutiny, places greatest burden of proof upon those challenging statute. U.S.C.A. Const.Amend. 14; West's Tenn.Code, Const. Art. 1, § 8; Art. 11, § 8.

19. Statutes ⇐75

Constitutional provision prohibiting suspension of general laws for benefit of individual is implicated when statute contravenes

one was inside the Lewis apartment prior to his decision to conduct the protective sweep. Lack of information cannot provide an articulable basis upon which to justify a protective sweep. *See United States v. Delgadillo–Velasquez*, 856 F.2d 1292, 1298 (9th Cir.1988) (holding a protective sweep unconstitutional where officers had "no information that any other persons were in the apartment"); *United States v. Akrawi*, 920 F.2d 418, 420–21 (6th Cir.1990) (holding unconstitutional a sweep of the second floor of a house after arrest occurred on first floor where officers could point to "no specific basis" for believing anyone posed a threat from the second floor). Indeed, this justification threatens to swallow the general rule requiring that police obtain a warrant as completely as does focusing on the dangerousness of the arrestee.[2] In fact, allowing the police to conduct protective sweeps whenever they do not know whether anyone else is inside a home creates an incentive for the police to stay ignorant as to whether or not anyone else is inside a house in order to conduct a protective sweep. Finally, and perhaps most importantly, allowing the police to justify a protective sweep on the ground that they had no information at all is directly contrary to the Supreme Court's explicit command in *Buie* that the police have an articulable basis on which to support their reasonable suspicion of danger from inside the home. "No information" cannot be an articulable basis for a sweep that requires information to justify it in the first place.

Finally, we recognize that police officers have an incredibly difficult and dangerous task and are placed in life threatening situations on a regular basis. It would perhaps reduce the danger inherent in the job if we allowed the police to do whatever they felt necessary, whenever they needed to do it, in whatever manner required, in every situation in which they must act. However, there is a Fourth Amendment to the Constitution which necessarily forecloses this possibility. As long as it is in existence, police must carry out their often dangerous duties according to certain prescribed procedures, one of which has been transgressed here.

We reverse the judgment of the district court with regard to the legality of the protective sweep and its ruling on the admissibility of the evidence found as a result of the sweep. The case is remanded for further proceedings in accordance with this opinion. **REVERSED** and **REMANDED**.

2. We confronted a similar problem in *United States v. Hatcher*, 680 F.2d 438 (6th Cir.1982). There, the district court upheld a protective sweep of the basement of the house in which the defendant was arrested, focusing on the fact that drug trafficking and drug arrests posed great danger to police officers. We reversed the district court, noting that justifying a search because drug related arrests are dangerous "would permit wholesale abrogation of the Fourth Amendment reasonableness requirement." *Id.* at 444.

Robert GUSTAFSON, Plaintiff–Appellee/Cross–Appellant,

v.

CITY OF LAKE ANGELUS; Donald Althoff, Mayor of the City of Lake Angelus; Michael Stefani, Chief of Lake Angelus Police Force, Defendants–Appellants/Cross–Appellees.

Nos. 93–2508, 93–2537.

United States Court of Appeals, Sixth Circuit.

Argued March 20, 1995.

Decided Feb. 27, 1996.

Rehearing and Suggestion for Rehearing En Banc Denied April 3, 1996.

City resident brought suit to challenge city ordinances prohibiting operation of seaplanes on city lake. The United States District Court for the Eastern District of Michigan, Paul V. Gadola, J., 856 F.Supp. 324, granted summary judgment in favor of plaintiff on issue of federal preemption and granted summary judgment in favor of defendants on plaintiff's constitutional claims. Parties appealed. The Court of Appeals, Contie, Circuit Judge, held that: (1) Federal Aviation

did not preempt city ordinances, and (2) ordinances did not deprive plaintiff of equal protection or due process rights.

Affirmed in part, reversed in part, and remanded.

Nathaniel R. Jones, Circuit Judge, concurred in judgment and filed opinion.

Batchelder, Circuit Judge, concurred and filed opinion.

States ⇐18.3

Will of Congress to monopolize area of legislation may be expressed in authorizing statute and in regulations enacted pursuant to that statute.

States ⇐18.3

Statute is preemptive if Congress, in enacting federal statute, expresses clear intent to preempt state law.

States ⇐18.7

There is implied preemption of state law when there is a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for states to supplement it or because act of Congress touch field in which federal interest is so dominant that federal system will be assumed to preclude enforcement of state laws on same subject.

States ⇐18.3, 18.5

Federal law preempts state law where compliance with both federal and state regulations is a physical impossibility or where state law stands as an obstacle to accomplishment and execution of full purposes and objectives of Congress.

States ⇐18.11

Focus of preemption inquiry is on congressional intent.

Aviation ⇐224

States ⇐18.17

Federal Aviation Act does not preempt power of local governments to designate and operate aircraft landing areas. 49 U.S.C.A. §§ 40101–41901.

7. Statutes ⇐219(1)

Reviewing court must give great deference to views of federal agency with regard to scope of its authority.

8. States ⇐18.13

In reviewing an issue of preemption, court must start with assumption that historic police powers of states are not to be superseded by a federal act unless there is a clear and manifest purpose of Congress.

9. Aviation ⇐9
States ⇐18.17

Federal preemption of airspace under Federal Aviation Act did not limit city's right to prohibit seaplanes from landing or operating on city lake. 49 U.S.C.A. §§ 40101–41901; Lake Angelus, Mich., Ordinance §§ 25(J), 66(E).

10. Aviation ⇐9
States ⇐18.17

Michigan state law did not preempt city's right to prohibit seaplanes from landing or operating on surface of city lake. M.C.L.A. § 259.1 et seq.; § 281.1017 (Repealed); Lake Angelus, Mich., Ordinance §§ 25(J), 66(E).

11. Zoning and Planning ⇐70

Under Michigan law, party alleging exclusionary zoning must be prepared to establish both that exclusion exists throughout municipality and that there is a demonstrated need for use party proposes.

12. Waters and Water Courses ⇐40

Under Michigan law, riparian rights are not absolute, but are subject to reasonable regulation.

13. Aviation ⇐9
Navigable Waters ⇐39(3)

Under Michigan law, municipalities can restrict boat and seaplane usage by riparian owners.

14. Municipal Corporations ⇐589

Under Michigan law, test for determining whether municipal ordinance is reasonable requires assessment of existence of rational relationship between exercise of police power and public health, safety, morals, or

court noted that the employer's approach, and the trial court's analysis, was "simple and pragmatic," but not correct. 501 So.2d at 1047. We stated that the objective of rehabilitation was "to educate and increase the job marketability of employees who cannot return to their former positions." *Id.* We concluded that specialized job placement, such as Works's employer offered, was of an inherently temporary nature and did not satisfy the statute; rehabilitation services had to include "vocational education and appropriate training to make the worker competitive in the labor market." 501 So.2d at 1048. [illegible] reiterated this holding in *Frazier v. Con-[illegible]gra*, supra.

Since that time, however, the legislature has amended R.S. 23:1226. La.Acts 1989, No. 454, § 6. The new statute no longer extensively relies on vocational education and instead seeks a "minimum of retraining." It also provides that if the claimant is able to return to his old position, to a modified position, or a related occupation suited to his education and marketable skills, vocational training is not authorized. R.S. 23:1226 B(1)(a)-(c). Professor Johnson has stated that this [illegible]amendment was "primarily aimed at overruling" *Works*. Johnson, *Workers' Compensation*, 50 La.L.Rev. at 401 (1989). Under the circumstances, we are constrained to find the hearing officer applied the wrong standard to this case.

The uncontradicted medical evidence shows that despite his residual impairment, Green is physically able to work in Evis rehang or as a PM cutter at Con Agra's plant. Both of these jobs now pay more than his prior work in IQF Packout. Thus Green has not shown that he meets the requirement of § 1226 A. Moreover, it is obvious that the available sedentary jobs will return him to a related occupation suited to his education and marketable skills with a minimum of retraining. For this reason, vocational retraining is simply not authorized.

The statute was amended to its present form by La.Acts 1989, No. 454, a change in the law of which the hearing officer and Green's counsel appear to have been unaware. See Br., 13.

In brief Green urges that Dr. Sandifer [illegible] effect recommended vocational training. [illegible] Sandifer's opinion would not supersede the statute, if the other requirements were met. We observe parenthetically that the doctor's report states only that Green cannot return to his *prior* employment; it says nothing about the positions later approved by Dr. Webb. Further, Dr. Sandifer's prescription note of November 14, 1990 (shortly after the first surgery) does indeed mention "rehab," but taken in context this appears to be actually a request for physical therapy,[4] which Green attended only sporadically.

The hearing officer committed legal error by awarding Green vocational rehabilitation services; on the record presented, these are simply not authorized by the statute. That portion of the judgment will be reversed.

Penalties and attorney fees

By its sixth and seventh assignments, Con Agra urges the hearing officer erred in assessing penalties and attorney fees. First, it argues that contrary to the hearing officer's finding, Con Agra never refused any request for payment of medical expenses. Second, it argues that on the information available in November 1991, the [illegible]decision to terminate comp benefits was not arbitrary, capricious or without probable cause. Green argues in brief that the hearing officer did not commit manifest error.

[17] We have closely reviewed Green's testimony and the exhibits filed at the hearing. We are aware of four letters from Green's attorney to Con Agra (December 7, 1990, April 4, 1991, April 10, 1991, and November 11, 1991). None of these contain any request for medical expenses. We are also aware of Green's comment that he would like to undergo a third surgery, if it would relieve his problems. R.p. 250. He did not say that he requested this, and Dr. Webb did not recommend it. Dep., 25. On this evidence, we are constrained to hold that [illegible] officer was plainly wrong in finding Con Agra refused to pay requested medical expenses.

[illegible] Con Agra terminated Green's benefits effective November 11, 1991, after receiving medical reports from Dr. Webb, the treating orthopedic surgeon, and Dr. Springmeyer, another orthopedist secured for a second opinion, and work approvals signed by Dr. Webb. This is competent medical evidence. *Jim Walter Homes v. Lewis*, supra. At this time, the only contrary evidence was Green's own complaints, which were riddled with credibility problems. While we are required to defer to the hearing officer's broad discretion in fact *finding*, we are again constrained to hold that the evidence available to Con Agra overwhelmingly showed that Green was able to perform the work offered and not in need of further medical treatment. The decision to halt benefits was not, on the facts, arbitrary, capricious or without probable cause. The hearing officer committed manifest error. *Rosell v. ESCO*, supra. Later reports from Huey P. Long Hospital do not affect Con Agra's decision in November 1991; at any rate, they offer little to challenge the sound medical conclusions of Drs. Webb and Springmeyer.

[illegible] award of penalties and attorney fees is reversed.

Conclusion

For the reasons expressed, the judgment of the hearing officer awarding Green benefits for temporary, total disability, rehabilitation services, additional expenses and medical penalties, interest and attorney fees is reversed at Green's costs. Judgment is rendered dismissing his claim.

REVERSED; CLAIM DISMISSED.

4. The note reads: "Please begin a rehab program on Mr. Green's right knee 3 x weekly. Strain, contusion, right knee." This appears to be a request for physical therapy, and is actually initialled by "LB," not the doctor. Dr. Sandifer was not called to testify.

26,544 (La.App. 2 Cir. 3/1/95)

Jerry GUILLOT, et al.,
Plaintiff-Appellees,

v.

George C. BROOKS, Jr. and Charles Kudolis,
Defendants-Appellants.

No. 26544-CA.

Court of Appeal of Louisiana, Second Circuit.

March 1, 1995.

Stay Denied; Writ Denied April 6, 1995.

Neighbors sought injunctive relief barring landowners from using property as landing strip for ultralight aircraft. The Twenty-Sixth Judicial District Court, Bossier Parish, No. 84,318, Graydon K. Kitchens, Jr., J., determined that landowners were operating "airport" and enjoined use of property as landing strip. Landowners appealed. The Court of Appeal, Hightower, J., held that: (1) landing strip for ultralight aircraft was "airport," within meaning of zoning ordinance; (2) local zoning ordinance was not preempted by federal or state aviation laws; and (3) neighbors had standing to seek injunction of activities which violated zoning ordinance.

Affirmed.

1. Statutes ⇐183, 188

In interpreting statutory provisions, words and phrases are to be construed according to common and approved usage of language; clear and unambiguous wording should not be disregarded under pretext of pursuing spirit of statute. LSA-R.S. 1:3, 1:4.

2. Statutes ⇐212.1

Those who enact statutory provision are presumed to act deliberately and with full knowledge of all existing laws on same subject.

3. Zoning and Planning ⇐278.1

Property used as landing strip for ultralight aircraft was "airport," within meaning of zoning ordinance; in addition to flying aircraft and allowing other pilots to use property, landowners installed wind direction device, mowed grass to make runway, outlined

statements of the Freedom Spirit Shoppe for fiscal year 1984 were made available for their review in the latter part of October 1984. This was approximately one year and ten months before suit was filed. In response, plaintiffs assert that Sellors told them that he was a lawyer and an accountant and that they could rely upon him to analyze and evaluate the financial condition of the Freedom Spirit Shoppe. Thus, they contend, it was not until they had operated the business themselves for some period of time and received updated financial information that they knew or reasonably could have known that Sellors had improperly led them to place confidence in him and that information which he had given them was incorrect. This contention places in genuine dispute facts concerning the relationship between the parties and the reasonableness of plaintiffs' reliance upon what Sellors told them. Accordingly, the question of whether plaintiffs' securities claims are barred by limitations cannot be resolved short of trial. *See, e.g., Norris v. Wirtz*, 818 F.2d 1329, 1334 (7th Cir.1987); *O'Hara v. Kovens*, 305 Md. 280, 503 A.2d 1313 (1986).

A separate order effecting the rulings made in this Memorandum is being entered herewith.

ORDER

Upon the parties' various motions for partial summary judgment and in accordance with the memorandum entered herein, it is this 2nd day of November 1987

ORDERED

1. The motion for summary judgment filed by Robert and Frances Pretty against plaintiffs is granted insofar as it pertains to legal claims for monetary damages asserted by plaintiffs and judgment is entered in favor of the Prettys as to those claims;

2. The Prettys' motion for summary judgment is denied insofar as it pertains to plaintiffs' request for a rescission and that claim remains to be tried (by the Court without a jury);

3. Summary judgment is entered in favor of plaintiffs on the issues of whether James Sellor is an agent of RGT Enterprises, and whether RGT Enterprises, Inc. is an agent of VR Business Broker, Inc.;

4. Summary judgment is entered on behalf of all defendants on limitations grounds as to Counts IV and VI asserting claims for the sale of unregistered securities; and

5. The motions for partial summary judgment by defendants Sellors, RGT and VR Business Brokers on limitations grounds as to Counts I, II, III and V are denied.



Amos Denslow FAUX-BURHANS

v.

COUNTY COMMISSIONERS OF FREDERICK COUNTY.

Civ. No. S-87-2556.

United States District Court, D. Maryland.

Dec. 17, 1987.

Owner of private airfield brought action challenging county's zoning restrictions on private airfield operations. On county's motion for summary judgment, the District Court, Smalkin, J., held that: (1) county zoning restrictions were not preempted by federal law, and (2) county zoning restrictions did not amount to unconstitutional taking of property.

Motion granted in part; dismissed in part.

1. States ⇐18.11

Issue of federal preemption of state or local regulation poses entirely question of federal statutory construction, depending for its application in particular case upon ascertainment of intent of Congress to enact pervasive scheme of regulation of subject matter.

2. Zoning and Planning ⇐14

Federal law did not preempt county zoning ordinance insofar as it regulated private airfield; ordinance did not regulate noise emissions or actual conduct of flight operation within navigable air space, but rather regulated intensity of use, type of aircraft that could use airfield, clear zone at runway ends, locale of operation, and type of aircraft operations. Federal Aviation Act of 1958, § 101 et seq., as amended, 49 U.S.C.A. § 1301 et seq.

3. Eminent Domain ⇐2(1.2)

County zoning restrictions on private airfield did not amount to unconstitutional taking of property which would entitle owner to just compensation, given owner's continued operation of airfield in conformity with special exception granted prior owner and county's substantial interest in regulating land used for airports. 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 6, cl. 2; Amend. 5.

4. Civil Rights ⇐13.3(1)

Violation of supremacy clause does not give right of action recognized under federal civil rights deprivation statute. 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 6, cl. 2.

Paul Victor Jorgensen, Middletown, Md., for plaintiff.

Lawrence E. Speelman, Co. Atty., Joseph E. Emerson, Deputy Co. Atty., Frederick, Md., for defendant.

MEMORANDUM OPINION

SMALKIN, District Judge.

This is a case within the federal question and civil rights enforcement jurisdictions of this Court, 28 U.S.C. §§ 1331 and 1343, in which the plaintiff, owner-operator of a small private airfield in Frederick County, Maryland, challenges the County's zoning restrictions on private airfield operations as set forth in § 1-19-381 of the Frederick County Zoning Ordinance. The challenge is based on three grounds. First, plaintiff claims that the County Zoning Ordinance, insofar as it attempts to regulate his airfield, is pre-empted by federal law. (Plaintiff's complaint does not identify the allegedly pre-empting statute(s), but his summary judgment opposition does.) Second, plaintiff claims that application of the County Zoning Ordinance to him constitutes state action which has deprived him of federal rights, giving him a claim under 42 U.S.C. § 1983 for "devaluation of his property, loss of investments, lost past and future income, and emotional distress and mental anguish." Third, and finally, plaintiff asserts a state-law based claim, *viz.*, that the Frederick County Zoning Ordinance's regulation of private airports is pre-empted by Maryland state law (Md. Transp. Code Ann. §§ 5-601—5-617 (1977)). The defendant has moved for summary judgment and has supplemented its motion as directed by the Court, and the plaintiff has filed a consolidated response. No oral hearing is necessary. Local Rule 6, D. Md.

The facts alleged in the plaintiff's complaint are entirely uncontested. In 1980, a special exception was granted to plaintiff's father-in-law to operate, within an agricultural zone, a private airfield in accordance with the restrictions on use and operation of such airfields as set forth in the Frederick County Zoning Ordinance, at § 1-19-381 (1977). (These restrictions are discussed *post* in some detail.) In 1983, plaintiff's father-in-law conveyed the airport parcel of his property to plaintiff, a federally licensed aircraft mechanic and inspector. Even before this conveyance, plaintiff had been using the field (on which he had erected a hangar) as a facility to inspect and repair general aviation (private) aircraft. After the conveyance, plaintiff paved the runway and improved the hangar. He registered the facility as a private airport with both the Federal Aviation Administration and the Maryland State Aviation Administration. When he was informed in 1985 by Frederick County authorities that his use of the improved facility was still subject to the restrictions of § 1-19-381, he applied for, but was denied,

Allstate Insurance Co., 54 *N.J.* 287, 303–304, 255 *A.2d* 208 (1969); *Kievit v. Loyal Protective Life Insurance Co.*, 34 *N.J.* 475, 482, 170 *A.2d* 22 (1961). That being the key criterion, the amount of recovery may not necessarily be limited to the precise situation of the insured as [illegible] and subsequen[t] in determining

[5, 6] For ex[ample] doubtlessly cont[emplated] fendant of the [insurance] redemption had [expired] period. The pl[aintiff] peet redemption [interest] stroyed by fire. [$]60 on the buildi[ng] basis and obtai[n] year period. M[ost] the time of the [fire] record" of the be[lief] ed that the own[er] plete.

Plaintiff's fail[ure] cation for the p[roof] evidenced by th[e] Seized Property [Report] fraudulent or du[e] fendant conceded [at] the trial when [it] defenses predicat[ed] sentation and con[cealment] was made probati[ve] had been willing [to] had been willing

doubt where there [is] *Handbook on the* [Law] 810 (footnote omit[ted]).

plaintiff. There was no evidence of plaintiff's bad faith or fraud. At most disclosure of plaintiff's specific interest in the property related only to the amount of the risk. Therefore, there can be no doubt that defendant had an exposure at least to that tent. So even assuming redemption, the fendant had contemplated that plaintiff uld be entitled to at least the value of e interest it held on the day of the fire. fendant had accepted a premium for an posure of a far greater amount. Defendt had contracted to incur its obligation thout knowledge of the existence of the der of the redemption interest and in r event with no assurance that redemp[tion] would occur. In fact, one would have ught that destruction of the premises uld have made redemption even more likely. The contention that redemption, sequent to the casualty, made the plainwhole and therefore recovery should be ied overlooks the underlying insurance ntract under which the defendant agreed n premium to pay plaintiff the actual value of the property. To deny any very would create a windfall for the rance company and ignore what we ceive to be the reasonable expectation of parties.[2]

rever, the burden was on the plaintiff tablish the value of that interest in the t of redemption. It made no showing y special or other value of that interest than the purchase price. It is fair to

2. Our holding does not foreclose the possibility that the ultimate beneficiary of a fire insurance policy's proceeds may be someone other than the named insured. It has been held that a contract purchaser may be entitled to the proceeds of a fire policy purchased by the seller. See Annot., "Rights of vendor and purchaser, as between themselves, in insurance proceeds," 64 *A.L.R.2d* 1402 (1959). See also *Wolf v. Home Ins. Co.*, *supra*, 100 *N.J.Super.* at 32–38, 240 *A.2d* 28; Vance, "Vendee's Claim to Insurance Money Received by Vendor," 34 *Yale L.J.* 87 (1924); J. Cribbet, *Principles of the Law of Property* 156–162 (2d ed. 1975). In *Allstate Auto v. Weatherby*, 82 *N.J.Eq.* 655, 657, 88 *A.* 947, 948 (Ch. 1913), the court wrote:

> a purchaser under a valid contract of purchase vendee becomes the equitable owner of the property, in equity the property is regarded as belonging to him, the vendor retaining the legal title simply as trustee and as security for the unpaid purchase-money. By reason of this equitable relation of the parties to a contract of sale of land, it has been determined by the great weight of American authority that money accruing on a policy of insurance, where the loss has occurred subsequent to the execution of the contract, will in equity inure to the benefit of the vendee, the vendor still retaining his character as trustee, and the insurance money in his hands representing the property that had been destroyed.

presume that the value was equivalent to at least the amount expended for that interest some three months before the fire. Accordingly, judgment should be entered in favor of plaintiff in that amount, plus interest at the rate of 20% per annum to the date of the fire. In addition, plaintiff is entitled to a partial return of premium, its interest in the property having been severed on July 19, 1974. Determination of that amount shall be made by the trial court, both parties being entitled to introduce relevant evidence on that issue.

Reversed and remanded for further proceedings in accordance with this opinion.

For reversal and remandment: Chief Justice HUGHES and Justices SULLIVAN, PASHMAN, CLIFFORD, SCHREIBER and HANDLER—6.

For affirmance: None.

77 N.J. 439

GARDEN STATE FARMS, INC.,
Plaintiff-Respondent,

and

State of New Jersey, Department of Transportation, Division of Aeronautics, Plaintiff-Respondent,

v.

Mayor Louis BAY, II, Commissioner Floyd and Commissioner Arthur A. Brokaw, of the Borough of Hawthorne, Jules Raabis, Joseph Rooney, John Sotneck, Paul Elwood, Joseph Pinto and the Borough of Hawthorne, a municipality of the State of New Jersey, Defendants-Appellants.

Supreme Court of New Jersey.

Argued March 3, 1978.

Decided Aug. 9, 1978.

Company which desired to maintain heliport brought action to have zoning ordinance prohibiting such use of land declared invalid. The Superior Court, Law Division, 136 *N.J.Super.* 1, 343 *A.2d* 832, denied relief, and company appealed. The Superior Court, Appellate Division, 146 *N.J.Super.* 438, 370 *A.2d* 37, reversed and remanded, and certification was granted. The Supreme Court, Handler, J., held that: (1) federal legislation and regulation have not preempted state and local jurisdiction with respect to the placement of private heliports; (2) the Commissioner of Transportation has ultimate authority as to placement of aeronautical facilities, but (3) failure of Commissioner to weigh conscientiously local interests, to examine carefully whether proposed avigation facility is compatible with surrounding land uses, and to consult local ordinances and authorities in making licensing decision would constitute an abuse of discretion.

Modified and affirmed.

Conford, P. J. A. D. (temporarily assigned), filed opinion concurring and dissenting.

1. States ⇐4.10

Federal preemption will be found where the subject activity intrinsically requires uniformity of regulation or where Congress has either expressly or impliedly assumed regulatory control over the entire field of activity.

2. Aviation ⇐9

States ⇐4.12

Federal legislation and regulation have not preempted state and local jurisdiction with respect to the placement of private heliports. Federal Aviation Act of 1958, §§ 101 et seq., 107(4), 1108(a), 204(b), 302(b) as amended 49 U.S.C.A. §§ 1301 et seq., 1301(4), 1303(a), 1324(b), 1342(b); U.S.C.A. Const. art. 1, § 8, cl. 8; Airport and Airway Development Act of 1970, §§ 2 et seq., 16(b), 49 U.S.C.A. §§ 1701 et seq., 1716(b).

3. Aviation ⇐9

Though state and local authority over the operation and navigation of aircraft is

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

May 18, 1999

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

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, MD 21204

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

RE: In the Matter of Edgar Lucas -Petitioner
Case No. 98-294-SPHX

Dear Counsel:

This letter will confirm the on-site visit /observation which has been scheduled for Wednesday, June 2, 1999 at 7:30 a.m. at the subject site, as confirmed between the Board and counsel this date.

In addition, hearing days 4 and 5 have been scheduled for Wednesday, June 23, 1999 at 9:00 a.m. and Thursday, July 1, 1999 at 10:00 a.m., respectively. Enclosed is a copy of the Notice of Assignment for days 4 and 5.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

fee exempt

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County Board of Appeals of Baltimore County
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410-887-3180

June 2, 1999

David Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: In the Matter of Edgar Lucas -Petitioner
Case No. 98-294-SPHX

Dear Mr. Gildea:

On behalf of the Board members, I would like to thank you for making the arrangements on Wednesday, June 2, 1999, for the Board's viewing of the helicopter landing /takeoff, and fixed wing aircraft activities at Helmore Farm.

It may be helpful to have the helicopter pilot present at the future hearing(s) to provide a detailed analysis of his weekday activities on the Farm, along with the opportunity for the Board to ask any questions; and to provide cross-examination to the other side, all of which will be on the record.

Very truly yours,

Charles L. Marks, Chairman
County Board of Appeals

cc: G. Scott Barhight, Esquire
G. Macy Nelson, Esquire
Peter Max Zimmerman, Esquire

FILE

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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

May 6, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 MAY -7 PM 2:08

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204
Hand-delivered

Re: Petitions for Special Hearing and Special Exception
Edgar Lucas, Petitioner
Case No.: 98-294-SPHX

Dear Chairman Marks:

Consistent with the proceedings on May 4, 1999, we are transmitting Rule 8 materials for The North County Coalition, Inc. and the Maryland Line Area Association, Inc. These supplement the testimony of Dr. Richard McQuaid, president of both organizations.

Dr. McQuaid is available for further cross-examination at the next hearing date on May 18. We propose that the Rule 8 materials be identified and accepted as People's Counsel's Exhibit Nos. 7 and 8.

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, Esq.
G. Macy Nelson, Esq.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
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410-887-3180
FAX: 410-887-3182

August 23, 1999

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, MD 21204

RE: In the Matter of Edgar Lucas /Petitioner
Case No. 98-294-SPHX

Dear Mr. Nelson:

In response to your letter of August 23rd, and to confirm our conversation this date, written memorandums (original and three copies) are now due in the Board's office by Friday, September 3, 1999, as opposed to the date originally set at the conclusion of the hearing in this matter (two-day extension granted).

There has been no change in the date of open deliberation (scheduled for Thursday, September 16, 1999 at 10:00 a.m.).

Very truly yours,

Kathleen C. Bianco
Administrator

c: David Gildea, Esquire
Peter Max Zimmerman
People's Counsel for Baltimore County

FILE

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G. MACY NELSON
ATTORNEY AT LAW

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401 WASHINGTON AVENUE
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TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

August 23, 1999

HAND DELIVERY

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 23 PM 2:27

Charles L. Marks, Chairman
County Board of Appeals of
Baltimore County
Towson, Maryland 21204

Re: Petitions for Special Hearing and Special Exception
Edgar Lucas, Petitioner
Case No. 98-294-SPHX

Dear Mr. Marks:

The Board requested that the parties submit their Post-Hearing Memorandum by Wednesday, September 1, 1999. I am writing to request permission to file my clients' Memorandum on September 3, 1999. I discussed this issue with David Gildea, counsel for the Petitioner. Mr. Gildea authorized me to report to you that he does not object to this request. In the event that the Board grants this request, he too will file his Memorandum on Friday, September 3, 1999.

I am making this request because I hope to be on vacation for a few days leading up to August 30, 1999. These extra two days will allow me to complete the Memorandum after I return. If it is possible, I would appreciate knowing the Board's response to this request by the end of business Tuesday because I am leaving Wednesday morning for vacation.

Very truly yours,

G. Macy Nelson

GMN:pwc
cc: David Gildea, Esq. (via fax)

pc to G. M. Nelson and D. Gildea (by fax) PMZ via "c"

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G. SCOTT BARRIGHT
DIRECT NUMBER
410 832-2050
gbarright@wtplaw.com

April 17, 1998

VIA FACSIMILE ONLY (410-887-4386)
The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farms
Case No. 98-294-SPHX
Our File: 6197/1

Dear Deputy Zoning Commissioner Kotroco:

Pursuant to your request, we have been attempting to arrange a demonstration for you of the proposed airport on Helmore Farms. It is my understanding that you are available on May 13, May 19, and May 20, 1998 in the morning for the demonstration.

These dates have been given to Macy Nelson and he is currently checking with his clients as to which dates are convenient.

Upon discussion with my client, we suggest that the demonstration occur on May 19, 1998, with May 20, 1998 being a backup date should there be conditions which would preclude the demonstration on the 19th.

It is my understanding that you would like the demonstration to begin at approximately 9:30 a.m. to 10:00 a.m. It is also my understanding that you want counsel only at the demonstration and that there be no clients in close proximity who would have an opportunity to speak with you. Obviously, the parties would not be precluded from being present on the property; however, your request is that the parties not speak with you during the demonstration.

Counsel will attempt to contact you to further finalize the planning for the demonstration. I will coordinate with Macy Nelson to arrange that teleconference.

Sincerely,

G. Scott Barhight

GSB:lb

cc: G. Macy Nelson, Esquire (via facsimile)
Mr. Dale Lucas (via facsimile)
Mr. Martin L. Grass (via facsimile)

WHITEFORD, TAYLOR & PRESTON
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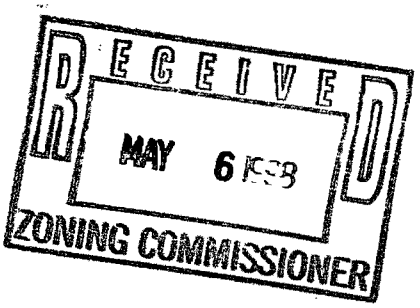
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FAX 703 836-0265

May 5, 1998



Deputy Zoning Commissioner Timothy M. Kotroco
Office of the Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farm
Case No.: 98-294-SPHX
Our File No.: 06197/00001

Dear Deputy Zoning Commissioner Kotroco:

This letter will confirm that the demonstration of the proposed airport at Helmore Farm will occur on Tuesday, May 19, 1998, at 9:45 a.m. I will arrange for both fixed wing and rotary aircraft to land and take off at Helmore Farm.

Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,

David K. Gildea

DKG:bhb
CC: G. Macy Nelson, Esquire
Mr. Dale Lucas
G. Scott Barhight, Esquire
135477

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

September 8, 1998

Via Hand Delivery
Arnold Jablon, Director
Zoning Administration and
Development Management Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal in *Case No: 98-294-SPHX*
Petition for Special Exception and Special Hearing
In the Matter of: Helmore Farm

Dear Mr. Jablon:

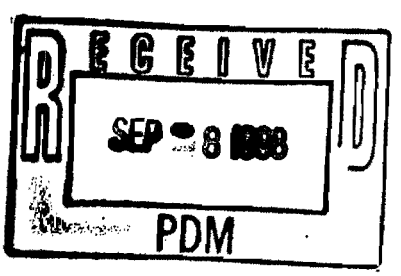
Please enter an appeal on behalf of the Petitioner, Helmore Farm and Edgar Lucas, 901 Greenspring Valley Road, to the County Board of Appeals from restrictions numbered 2, 3, 4, 5 of the Deputy Zoning Commissioner's Order dated August 5, 1998 in case number 98-294-SPHX, and condition number 13 in the Deputy Zoning Commissioner's Order dated August 6, 1998, in case number 98-294-SPHX.

Enclosed please find a check in the amount of $460.00 for the filing fee.

Please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

G. Scott Barhight



GSB:bhb
cc: People's Counsel for Baltimore County
G. Macy Nelson, Esquire
144794

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10480 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

DAVID K. GILDEA
DIRECT NUMBER
410 832-2065
dgildea2@wtplaw.com

May 28, 1999

Via Facsimile Only
Charles L. Marks, Esquire, Chairman
Lawrence M. Stahl, Esquire
Thomas P. Melvin, Esquire
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Helmore Farm
Case No.: 98-294-SPHX
Our File No.: 06197/00001

Gentlemen:

The parties in the above referenced matter jointly request of the Board of Appeals that the following conditions to the June 2, 1999 observation at Helmore Farm be considered. It is our understanding that there will not be a court reporter present and the observation is not intended for the Board to receive any evidence, other than their personal observations of the site conditions and operations of the airport. The parties agree to the following conditions for the observation on June 2, 1999:

1. There will be no communications to any of the Board members unless through counsel.

2. Counsel will not make argument regarding any issues pertinent to the case to the Board members.

3. The Board members will not request any information from any of the parties at the observation. Should the Board members seek additional information, that information can be provided at a hearing wherein a court reporter is present and a record will be created.

I trust that these stipulations are agreeable to the Board members. It is a concern of the parties that there will be communications made to the Board members which will not be part of the record, however, may be persuasive to the Board members in rendering their decision. The parties are not suggesting that the Board members would act inappropriately at the observation, rather, would like to ensure that the Board members are not placed in an awkward situation.

We look forward to seeing you on Wednesday, June 2, 1999, at 7:30 a.m.

Very truly yours,

David K. Gildea

DKG:bhb
CC: G. Macy Nelson, Esquire
People's Counsel
G. Scott Barhight, Esquire
168596

JOHN MARKS
ASSOCIATES
ADVERTISING/
PUBLIC RELATIONS

April 1, 1998

Pinoaks
10711 Greenspring Avenue
Lutherville, MD 21093

Mr. Larry Schmidt
Zoning Commissioner, Baltimore County
County Court Building
407 Bosley Avenue
Towson, MD 21204

Dear Mr. Schmidt:

It is our understanding that there is to be a zoning hearing April 6, 1998 regarding the use of Helmore Farms as an "airport."

As residents of the immediate Greenspring Valley neighborhood with property adjacent to Helmore Farms, this letter would serve as our family's support of the proposed airport.

We are perfectly aware of the current helicopter usage and do not find it objectionable. It has been our experience that the usage and frequency of the flying has been kept to a minimum. We're sure that we can speak for most of our neighbors who live near Helmore Farms in saying that we support the usage of Helmore Farms as an airport and do not feel it would effect the quality of life in Greenspring Valley.

Sincerely,
Mr. and Mrs. H. John Marks, Jr.

Henny Marks
John Marks

1416 CLARKVIEW ROAD, BALTIMORE, MARYLAND 21209 • 410-821-7100 • FAX: 410-821-7149

G. MACY NELSON
ATTORNEY AT LAW
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

3/4/98
S
TO OR
File

March 2, 1998

Arnold Jablon, Director
Department of Permits &
Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: CASE NUMBER: 98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Dear Mr. Jablon:

Please enter my appearance on behalf of:

Deirdre Smith
Douglas Carroll
1117 Greenspring Valley Road
Brooklandville, MD 21022

William Brewster
P.O. Box 433
Brooklandville, MD 21022

Susan C. Immelt
Stephen J. Immelt
P.O. Box 714
Brooklandville, MD 21022

Laura J. Robertson
David B. Gorzsas
10628 Falls Road
Lutherville, MD 21093

Jack Dillon, Executive Director
The Valleys Planning Council, Inc.
212 Washington Avenue
P.O. Box 5402
Towson, MD 21285-5402

RECEIVED
MAR - 3 1998
98-868
PDM

Please send to me any notice with respect to any hearing in the above-captioned case.

Very truly yours,

G. Macy Nelson

GMN/jlr

cc G. Scott Barhight

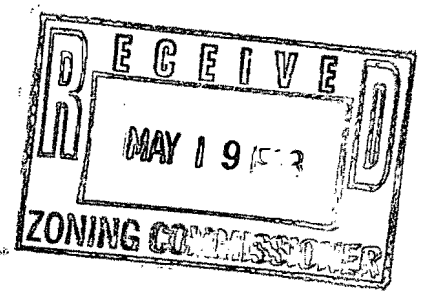
G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

May 14, 1998



The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I write now to make a proposal with respect to the demonstration now scheduled for May 19, 1998 at 9:45 a.m. You previously advised counsel that you had no objection if counsel were present, but you did not want the clients to be present. You stated that you did not feel comfortable being in a position where the clients might in good faith lobby their positions.

My recommendation is that Doug Carroll and Dale Lucas be permitted to be present with the express understanding that they not communicate anything of substance to you concerning the case. I think it would be helpful for each of them to be there because each of them will be able to direct you to certain places during the demonstration. I have discussed this issue with David Gildea and he has told me that he will instruct his client not to communicate directly with you on anything of substance. I have just spoken with Doug Carroll. He has confirmed that he will not speak to you about anything of substance.

I feel strongly that Doug Carroll ought to be there. He can very easily direct you to certain locations which we believe are relevant. For example, it is our hope that you will go to the footbridge at a time when no aircraft are flying overhead. This is an extraordinarily quiet location. Furthermore, if you are interested in seeing where the Immelts have the right to build a house, Doug Carroll can direct you to that location.

My memory of the evidence is that there are no limitations on how either an airplane or a helicopter can approach the site.

The pilot emphasized, as I recall, that he thought that should be in the discretion of the pilot for safety reasons. That being the case, I think the pilot of both the fixed-wing aircraft and the helicopter should utilize several flight patterns. Of course, they should use the standard patterns that Martin Grass has been using. Furthermore, since the pilots are not restricted to those patterns, I request that the pilots also fly over, for example, the Carroll residence, the Immelt residence and the footbridge.

If you are not comfortable with these recommendations, please let me know and I will convey your views to my clients. I am sending a copy of this letter to Doug Carroll so he is aware of the parameters of his role (assuming you do not object to his presence).

Very truly yours,

G. Macy Nelson

GMN/jlr

cc David K. Gildea
Douglas Carroll
Jack Dillon

G. MACY NELSON
ATTORNEY AT LAW

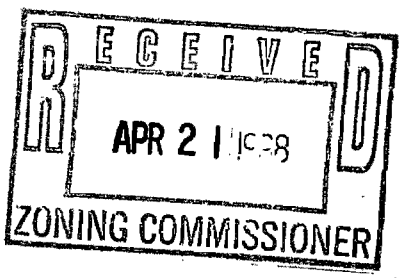
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

April 20, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204



Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I have enclosed a copy of a letter dated April 13, 1998 from Bruce F. Mundie. As you can see, Mr. Mundie is the Director of Regional Aviation Assistance. I am offering this letter as further evidence with respect to the two private airstrips that are less than 1200 feet in length.

I faxed a copy of that letter to Mr. Barhight on April 15, 1998.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosure

cc G. Scott Barhight (with encl.)

Parris N. Glendening
Governor

David L. Winstead
Secretary

Maryland Aviation Administration

*"To provide services to our customers and the air transportation industry
To foster and develop aviation in Maryland • To develop and empower our employees."*

Theodore E. Mathison Executive Director

April 13, 1998

C. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson MD 21204

Dear Mr. Nelson:

Thank you for the opportunity to comment upon the two airports you have properly identified as those less than 1,200 feet in length registered in the State of Maryland. As Director of Regional Aviation Assistance, I am responsible for the inspection and certification that the airports do not pose a risk to aircraft operating from the airports and the people in those aircraft and on the ground.

The first airport, Recompense Farm Airport is located in southern St. Mary's County. It is in a mostly agricultural setting with some large acreage residences nearby. The airport's runway is 1,100 feet in length and is used by the owner and his Ryan Navion aircraft which has the capability to safely operate from that length of runway.

Approaches to the runway ends are, for Runway 27, essentially over water and, for Runway 09, over trees and a road running across the close-in approach. As far as I know, no helicopters operate from the airport.

The second airport, Stol Crest Airport is near Ijamsville in Frederick County. It has a runway 600 feet in length. The area is similar in nature as stated above, but appears more agricultural with fewer large acreage residences. Approaches to the ends of this airport are, for Runway 04, over a highway, and for Runway 22, over sparse trees. The aircraft used at this airport is a Maule, manufactured for its short take-off and landing capabilities and well suited for use in short fields. As far as I know, there is no helicopter traffic into or out of this airport.

If you have any further questions, please contact me at (410) 859-7064.

Sincerely,

Bruce F. Mundie, Director
Regional Aviation Assistance

FAXED 4-14-98

APR 15 1998

P.O. Box 8766, BWI Airport, Maryland 21240-0766 (410) 859-7100
TOLL FREE: 1 (800) I-FLY-BWI • FAX: (410) 850-4729 • TDD for the hearing impaired: (410) 859-7227
The Maryland Aviation Administration is an agency of the Maryland Department of Transportation

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

September 4, 1998

VIA HAND-DELIVERY

Arnold Jablon, Director
Department of Permits &
Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: CASE NUMBER: 98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road, N/S of Hillside Road,
2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Dear Mr. Jablon:

Please enter an appeal on behalf of The Valleys Planning Council, Inc., c/o Jack Dillon, P.O. Box 5402, Towson, Maryland 21285-5402, Deirdre Smith and Douglas Carroll, P.O. Box 945, Brooklandville, MD 21022, William Brewster, P.O. Box 433, Brooklandville, MD 21022, Mr. and Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, and Laura J. Robertson and David B. Gorzsas, 10628 Falls Road, Lutherville, MD 21093, to the County Board of Appeals from the portion of the Order dated August 5, 1998 and Amended Order dated August 6, 1998 of the Baltimore County Deputy Zoning Commissioner granting the Special Exception in the above-entitled case. I am counsel for the parties identified in this paragraph.

Enclosed please find my law firm's check for the filing fee. Please date-stamp the extra copy of this appeal letter and return it to me.

Please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosures

cc G. Scott Barhight

PARRIS N. GLENDENING, *Governor*
LEWIS R. RILEY, *Secretary*
HENRY A. VIRTS, D.V.M., *Deputy Secretary*

The Wayne A. Cawley, Jr. Building
50 HARRY S. TRUMAN PARKWAY
ANNAPOLIS, MARYLAND 21401
Baltimore/Annapolis (410) 841-5700
Washington (301) 261-8106
Facsimile (410) 841-5914
MD Relay 1-800-735-2258
Home Page: http://www.state.md.us

STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
March 2, 1998

Mr. Lawrence E. Schmidt, Zoning Commissioner
Zoning Commissioner's Office
Baltimore Court Courts Building
401 Bosley Avenue
Baltimore, MD 21204

Re: Use of Easement Property for Helicopter Landing

Dear Mr. Schmidt:

As a result of the attention that has been drawn to the landing of a helicopter on the easement property of Mr. Lucas in Baltimore County, the Foundation wishes to offer the following information which will, hopefully, assist the Commission in its review of this issue.

The Foundation has, in the past, approved the use of an existing airstrip for personal and recreational use on other properties which were in existence prior to entering the property into the Maryland Agricultural Land Preservation Program. The airstrip was grassed and did not change the agricultural use of the land. With regard to the Lucas property, we have reviewed our files and find that there was no correspondence or indication of an existing airstrip at the time of district establishment, nor did the appraisals reflect that an airstrip was present at the time that we purchased the easement. However, that is not to say that an airstrip was not there, as appraisers may not include that as part of their review.

I hope this information is useful to the Zoning Commission in your efforts to determine whether this use should be allowed.

Should you require further assistance, please feel free to contact me at (410) 841-5860.

Sincerely,

Paul W. Scheidt
Executive Director

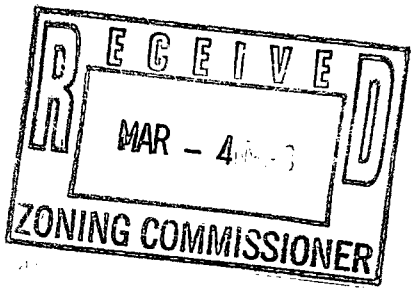
RECEIVED
MAR -4 1998
ZONING CO

PWS:CSC

cc: Wally Lippincott, Program Administrator
Mark Danneker

February 25, 1998

Mr. Lawrence Schmidt,
Zoning Commissioner
401 Bosley Ave.
Towson, Md. 21204



Re: Variance on Helicopter landings

Dear Mr. Schmidt,

I felt it necessary to write this letter to let you know of yet another opinion concerning the helicopter issue facing the Greenspring Valley.

Over the last fifteen years I have lived and worked here in Green Spring Valley. I am amazed at how many people feel they can come into this area that is clearly zoned RC2 and then try to change it to suit their needs. Mr. Grass is one of the more recent individuals to do this. I know important executives may feel it necessary to get to the office in a timely manor. But it would seem to me that if it were so important to be able to get to the office quickly then maybe you would want to live a little closer to the office.
Mr. Grass should have looked into this possibility before he settled into the Green Spring Valley. He has been a very generous man to the local community and we would like to see him continue, but not at the expense of the rural and long-standing agricultural area.

The repeated take offs and landings on Mr. Lucas' farm are a clear disregard of the RC2 zoning. He seems to feel that since Mr. Lucas has an airstrip on his property that this makes it legal for him to take off and land there. The airstrip may have been there for a long time but to the best of my knowledge it hasn't been used. Another point here is that Mr. Lucas also has the property on the market to sell. Has anyone considered what will happen then? If the new owner doesn't want the helicopter landing there is Mr. Grass going to find yet another field to land in?

Another fear I have concerning this issue is that Mr. Grass may decide to allow others to use his landing pad for their use if he is granted this variance. Will there be any limitations on time or schedules of take offs and landings for this area? A ruling in his favor may encourage other busy important executives to want to do the same on their properties. How many helipads are allowed in one rural setting? Safety for the community is also an issue. Does Mr. Grass follow the FAA rules, or does he feel they need changing also? I remember one foggy morning I was not sure if the helicopter would be able to find the landing pad, much less land it without hitting a house.

It makes me wonder if Mr. Grass will enjoy living in this peaceful, quiet rural setting if helicopters are taking off and landing whenever the mood strikes. It seems to me, he'll probably decide it's too noisy and move away. I don't think that would be fair to citizens who are opposing this now.

I hope Mr. Schmidt, the zoning board will continue to look into this and come up with an appropriate decision that will be fair to all concerned. Mr. Grass has been looking into other areas to land his helicopter other than the Green Spring Valley; perhaps he will find an area that will be more suited to his needs.

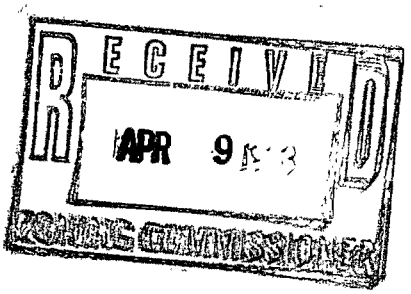
Sincerely,

Lynne Ellis

Lynne Ellis
Farm Manager
Waverly Farms

21 Hickory Knoll Court
Lutherville, MD 21093

April 8, 1998



Deputy Zoning Commissioner Timothy Kotroco
401 Bosley Avenue
Towson, MD 21204

Dear Commissioner Kotroco:

I wrote to offer my protest vote to oppose special exception for helicopter and airplane landings at Helmore Farms.

This is a beautiful serene country setting and is no place for helicopters and airplanes. Why should a whole area be inconvenienced for the convenience of one man.

An exception for this change in zoning opens the door for more changes to an area that should be preserved.

I strongly oppose permitting the landings of helicopters and airplanes in this area.

Thank you.

Sincerely,

Melinda M. Rose

GARLAND P. MOORE, JR.
10707 GREENSPRING AVENUE
LUTHERVILLE, MD 21093

April 2, 1998

Mr. Larry Schmidt
Zoning Commissioner,
Baltimore County, County Court Building
407 Bosley Avenue, Towson, MD 21204

Dear Mr. Schmidt:

I understand that you currently have under consideration the question of whether the property known as Helmore Farms should be allowed zoning giving it "Airport" status. It is also my understanding that such status would carry with it certain restrictions concerning hours of operation and daily flight volume.

My wife and I have resided at 10707 Greenspring Avenue for 29 years and have been active participants in the ongoing effort to preserve The Valleys. Our residence, while not adjacent to Helmore Farms, is approximately one quarter of a mile away as the crow flies.

We are aware of Martin Grass's intention to use Helmore Farms for his helicopter transportation if the zoning is approved. In that regard, some months ago after careful underwriting of the questions of noise and safety, we indicated to Mr. Grass that we had no objection to his operating a helicopter out of his property which is adjacent to ours, and subsequently, during his usage found no reason to change our position.

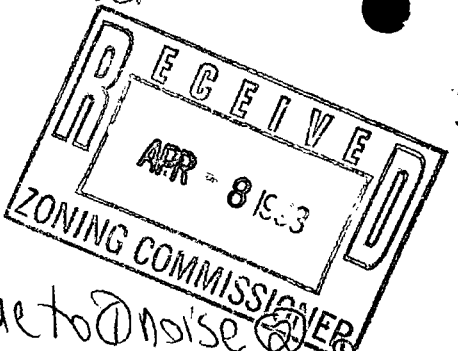
Therefore, we are confident in our decision to support the proposed usage.

Sincerely,

Garland P. Moore, Jr.

Re: 48-244 Helicopter
Zoning

Tim Kotroco
Deputy Zoning Commissioner
County Cts. Bldg.
401 Bosley Ave.
Towson, Md. 21204



Tim:

Objection strenous due to ① noise ② inappropriately using space we cherish for farms & quiet ③ the times he'll choose to go so low to the neighborhood.

No more Buzz Berg games please!

Liz Beckley

BOX 947
831 HILLSIDE ROAD
BROOKLANDVILLE, MARYLAND 21022

Sep
4 | 6
98-294-SPH

January 28, 1998

Dear Mr. Schmidt,

I want to express my strong opposition to Mr. Grass's landing a helicopter within the residential areas of the Valleys. As is the case of my neighbors, my family came to the area seeking its tranquility wildlife and green fields. Like othe residents, we, too, are looking to place our land in a trust to ensure the future of this special area.

To place the contrived right of one person above an entire community is wishes is too preposterous to contemplate. Surely you recognize this and will act accordingly.

Sincerely yours,

Barbara Wilson Schweiger

cc: Valley Planning Council

RICHARD F. BLUE, JR.
SUITE 610
502 WASHINGTON AVENUE
TOWSON, MD 21204

RECEIVED
APR - 6 1998
ZONING COMMISSIONER

April 2, 1998

Jim

Mr. Larry Schmidt
Zoning Commissioner
Baltimore County
County Courts Building
407 Bosley Avenue
Towson, Maryland 21204

Dear Mr. Schmidt:

I am writing in support of the proposed airport at Helmore Farms on Greenspring Valley Road.

My residence is at 1914 Green Spring Valley Road abutting the Grass' residence, and do not find the helicopter use a nuisance. On our property, we have thoroughbred horses which have not been effected by the helicopter.

I hope the County will ruie in favor of permitting this use.

Very truly yours,

Richie

Richard F. Blue, Jr.

RFB/ame

RFB/pers/schmidt.doc

Gloria W. Levenson
2104 Wiltonwood Road • Stevenson, Maryland 21153

April 7, 1998

Dear Sir:

I write to you in reference to case #98-294 – The helicopter hearing.

I strongly object to changing the zoning for helicopter privileges for this arragant man. His helicopter is extremely large and extremely noisy.

The helicopter privileges were removed many years ago at the time Bugs Berg was flying. They should not be changed now.

I have lived here for Thirty years and feel that I should have a voice in this matter.

Sincerely,
Gloria Levenson

RECEIVED
APR - 8 1998
ZONING COMMISSIONER

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Siwan Immelt	P.O. Box 714, Brooklandville MD
Stephen Howard	PO Box 48 Stevenson MD 21153
Deirdre Smith	Po Box 945 Brooklandville 21022
Lynne Ellis	11044 Greenspring Ave Lutherville, 21093
Jorgen Jensen	8216 Tally Ho Rd. Lutherville 21093
[redacted]	
Douglas Carroll	1117 Greenspring Valley Rd. 21093
Jack Dill	The Valleys Planning Council

To _____

Date _____ Time _____ ☐AM ☐PM

WHILE YOU WERE OUT

M _____

of _____

Phone Numbers

Office _____ (Area Code / Number / Ext.)

Voicemail _____

FAX Mike Rubey

Pager _____

Mobile _____

e-mail _____

☐ Telephoned
☐ Please call
☐ Returned your call
☐ Called to see you
☐ Wants to see you
☐ Will call again
☐ URGENT

Message

Helicopter case

Dena (410) 494 1822

Copy 9

AMPAD EFFICIENCY®

Operator

Reorder #23-000

To Sink

Date 7/23 Time 1:45 ☐AM ☐PM

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M Mark Heckathorn

of Patriot News

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Office _____ (Area Code / Number / Ext.)

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☑ Please call
☐ Returned your call
☐ Called to see you
☐ Wants to see you
☐ Will call again
☐ URGENT

Message

re Helicopter Case

Patriot News
2320 Market St 17011
Camp Hill, PA

AMPAD EFFICIENCY®

Operator

Reorder #23-000

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Dale Lucas	P.O. Box 1248, Brooklandville MD 21022
JAMES MATIS	6000 YORK ROAD SUITE 204 BALTO MD 21212
Charles Lamb	7333 Whitepine Road, Richmond, VA 23237
Kevin Miller	6731 whittier Ave Mclean Va, 22101
G. Scott Burbright	Whiteford, Taylor & Preston
David K. Gildea	210 W. Penn. Ave., Towson Md 21204

Mark,
1-717-975-9782
Fax #
717 975 9788
Patriot News

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EXHIBITS
TRANSCRIPTS

(Remember: just scan first page of bound items)

(1998029 4) "S" supplemental


107
Green Spring Valley Road
NHEL PC
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3.7
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NHEL/PC
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4-2.6
5-2.8
NHEL NW
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1.7
NHEL/PC 2-3.5
NHEL/NW
NHEL NW
NHEL/PC
2-6.7
4
2.2
3 8.9
VIOLATION AREA
1 4.1
2-17.2
3 6.0
H 11
M 2

North County Coalition, Inc ASSOCIATION

RESOLVED: That at the March 22, 1999 meeting of the North County Coalition, Inc. Association held on March 22, 1999, it was decided by the Association that responsibility for review and action on all zoning matters for the period March 22, 1999 - March 22, 2000 be placed in the (Board of Directors) ~~(Zoning Committee)~~ consisting of the following members:

Sterling Leese
Mike Reier
Foster Nichols
George Harman
Martha Lessner
Douglas Behr
Charlotte Pine
Dr. Richard McQuaid
Harold Lloyd
Janet Rittenhouse
Rebecca Riegel
Tom Hourihan
Sharon Thieleke
Ron Pradis
George Neubeck
Brad Kunhard
Jodie Kronsberg
George McCeney
Mark Habicht
David Boyd

AS WITNESS OUR HANDS AND SEAL THIS 22 day of March, 1999.

ATTEST: North County Coalition, Inc. Association

Rebecca Riegel
Secretary

Richard W. McQuaid
President

Maryland Line Area ASSOCIATION Inc.

RESOLVED: That at the General meeting of the Maryland Line Area Association held on December 9, 1998, it was decided by the Association that responsibility for review and action on all zoning matters for the period Dec 1, 1998 - Dec 1, 1999 be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members:

Dr. Richard W. McQuaid
Robert Leonard
Richard Jiranek
Mary Wallace
LuAnn Ensor
Christine Plettenberg
Walter K. Gettle
Bruce Guthrie

AS WITNESS OUR HANDS AND SEAL THIS 9 day of December, 1999.

ATTEST: Maryland Line Area Association Inc.

Christine Plettenberg
Secretary

Richard W. McQuaid
President

E.T. Dolan & Associates, Inc.
2352 York Road
Lutherville, Maryland 21093
561-2044

FY90 January Cycle

October 28, 1989

Mr. Edgar M. Lucas
Helmore Farm
901 Greenspring Valley Road
Brooklandville, Maryland 21022

Re: File No. 03-03-89-17
Agricultural Preservation Easement
Baltimore County, Maryland

Dear Mr. Lucas,

Recently you requested that we estimate the market value of the development rights easement for your 87 acre farm located at 901 Greenspring Valley Road, Baltimore County, Maryland 21022.

Your appraisers have carefully investigated the subject neighborhood and surrounding environment in order to determine their impact, if any, on the subject property. We have established a market value using sales of properties which may have some potential for subdivision, and an agricultural value using sales of properties which will probably be maintained as operating farms. The difference between these two value estimates is considered the value of the development rights easement.

In completing this report, a personal inspection of the subject property was made on October 24, 1989. In addition, Mr. Paul Solomon, Baltimore County Program Administrator, was consulted on 10/20/89 regarding the subject.

By reason of our investigation and by virtue of our experience, it is our opinion that the subject property has an estimated value for the development rights easement as of October 24, 1989 as follows:

FAIR MARKET VALUE.....	$820,000
AGRICULTURAL USE VALUE.....	$164,000
DIFFERENCE-DEVELOPMENT RIGHTS EASEMENT....	$656,000

We herewith submit our appraisal report setting forth the facts upon which this valuation is predicated.

Respectfully submitted,

Earl T. Dolan, Jr. SRA/CRA
President

Page Kimball
Associate Appraiser

RECEIVED

MAR 4 1992

R.R.

LIBER 8891 PAGE 798

FOUNTAINHEAD TITLE GROUP
1526 YORK ROAD
LUTHERVILLE, MD 21093
583-1424
DGS FILE No. 03-03-90-15A

THIS DEED OF EASEMENT made this 13th day of August, 1991, by and between EDGAR M. LUCAS, party of the first part, Grantor, MERCANTILE SAFE DEPOSIT AND TRUST COMPANY, party of the second part, Mortgagee, and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the third part, Grantee, and containing covenants intended to be real covenants running with the land,

WITNESSETH:

WHEREAS, Title 2 of Subtitle 5 of the Agriculture Article, Annotated Code of Maryland, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

WHEREAS, by authority of Agriculture Article, Section 2-504(3), Annotated Code of Maryland, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantor owns the hereinafter described tract(s) or parcel(s) of land located in an agricultural preservation district established pursuant to Agriculture Article, Section 2-509, Annotated Code of Maryland, and desires to sell an agricultural preservation easement to the Grantee to restrict the land to agricultural use.

D REC/F 40.50
DC INF 5.00
DEED (ESMT.) 0
TOTAL 45.50
CHECK TENDERED
08/22/

NOW, THEREFORE, in consideration of the sum of FIVE HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED DOLLARS ($586,800.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor for the Grantor, the successors, personal representatives and assigns of the Grantor, does grant and convey, to the State of Maryland, for the use of the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tract(s) or parcel(s) of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

5 / 40.50

4619

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY MARYLAND
Per _____
Authorized Signature
Date 8/21/91 Sec. 33-139 (B)

[redacted] TRANSFER TAX
APPLICABLE
[redacted] DATE 8/21/91

FILED FOR TRANSFER
State Department of
[redacted] Taxation
8/21/91
Date

Rough Draft

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF: *
EDGAR LUCAS *
*
* 03-C-99-2648
*
*
* * * * * * * * * * * * * * * * *

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Hearing)

September 28, 2000
Towson, Maryland

BEFORE: THE HONORABLE JOHN O. HENNEGAN

APPEARANCES:

On behalf of the Appellant:

SCOTT G. BARHIGHT, Esquire

On behalf of the Individual Appellees:

G. MACY NELSON, Esquire

On behalf of People's Counsel for Baltimore County:

PETER MAX ZIMMERMAN, Esquire

Patricia M. Dudzinski
Official Court Reporter

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * July 1, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., July 1, 1999.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * June 23, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 9:45 o'clock a.m., June 23, 1999.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204
(24 Hrs./7 Days) 410-828-4148 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 4, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 4, 1999.

* * * * *

- original - cp -

Reported by:

C.E. Peatt

(24 Hrs./7 Days) 410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.
TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

PEOPLE'S COUNSEL'S EXHIBITS

(1696094) Supplemental

Protestant #1

DATE: 4/27/99

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: 98-294-SPHX

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
CAROL TREZA	5433 PATTERSON Road BALDWIN, Md 21013	Long Green Valley Association
Charlotte Pine	13310 Fork Road Baldwin Md	Long Green Valley Assoc

Protest 1

Long Green Valley ASSOCIATION

RESOLVED: That the position of the Long Green Association as adopted by the (Board of Directors) (~~Zoning Committee~~) on the zoning matter known as:

Petition for Special Hearing
Case No 98-294-SPHX

is that:

We are opposed to any landings or take-off of helicopters in RC 2 Zones

AS WITNESS OUR HANDS AND SEAL THIS 26 **day of** April, 1997.

ATTEST:

Long Green Valley Association

Carol L Lyle
Secretary

Charlotte W Rice
President

PEOPLE'S COUNSEL Exh. 2

E F G H I J K

21 20 19 18 17 16 15 14

(SHEET 4E) (SHEET 3D) (SHEET 4C) (SHEET 5C)

HARFORD COUNTY

10th. District

11th. District

GUNPOWDER FALLS STATE PARK

LONG GREEN VALLEY N.R.H.D.

LITTLE GUNPOWDER FALLS

LONG GREEN CREEK

PATAPSCO RIVER

SMITH EASE 13035 LONGGREEN PIKE

RC 2 RC 4 RC 5

CARROLL MANOR RIDGE
SWEET AIR WOODS
LONG GREEN ESTATES
BALDWIN MILL TERRACE
LONG GREEN MANOR
LOCUST HILL
DULANEY VALLEY ESTATES
PATTERSON FARMS
CARROLL MANOR PARK
DULANEY HEIGHTS
CARROLL MANOR
KNOEBEL
DULANEY HILLS
RAVENHURST
LONG GREEN
HYDES
CARROLL MANOR MS (SITE)
JENKINS
BURTON
LONG GREEN WOODS
MARGATE
RECKORD
LONG GREEN VALLEY N.R.H.D.
REGWOOD
CITY VISTA ESTATES
MOUNT VISTA
MERRY WOOD
GUNPOWDER FALLS STATE PARK
KINGSVILLE
WALNUT HILL ESTATES
MEADOWCLIFF
GLEN ARM
NOTCH CLIFF

BL-CR BM-CR BR-CR RO-CR ML

SCALE 1"=1000'
0 1/4 1/2 3/4 1 MILES
0 1000 3000 5000 FEET

BALTIMORE COUNTY OFFICE OF PLANNING

KINGSVILLE

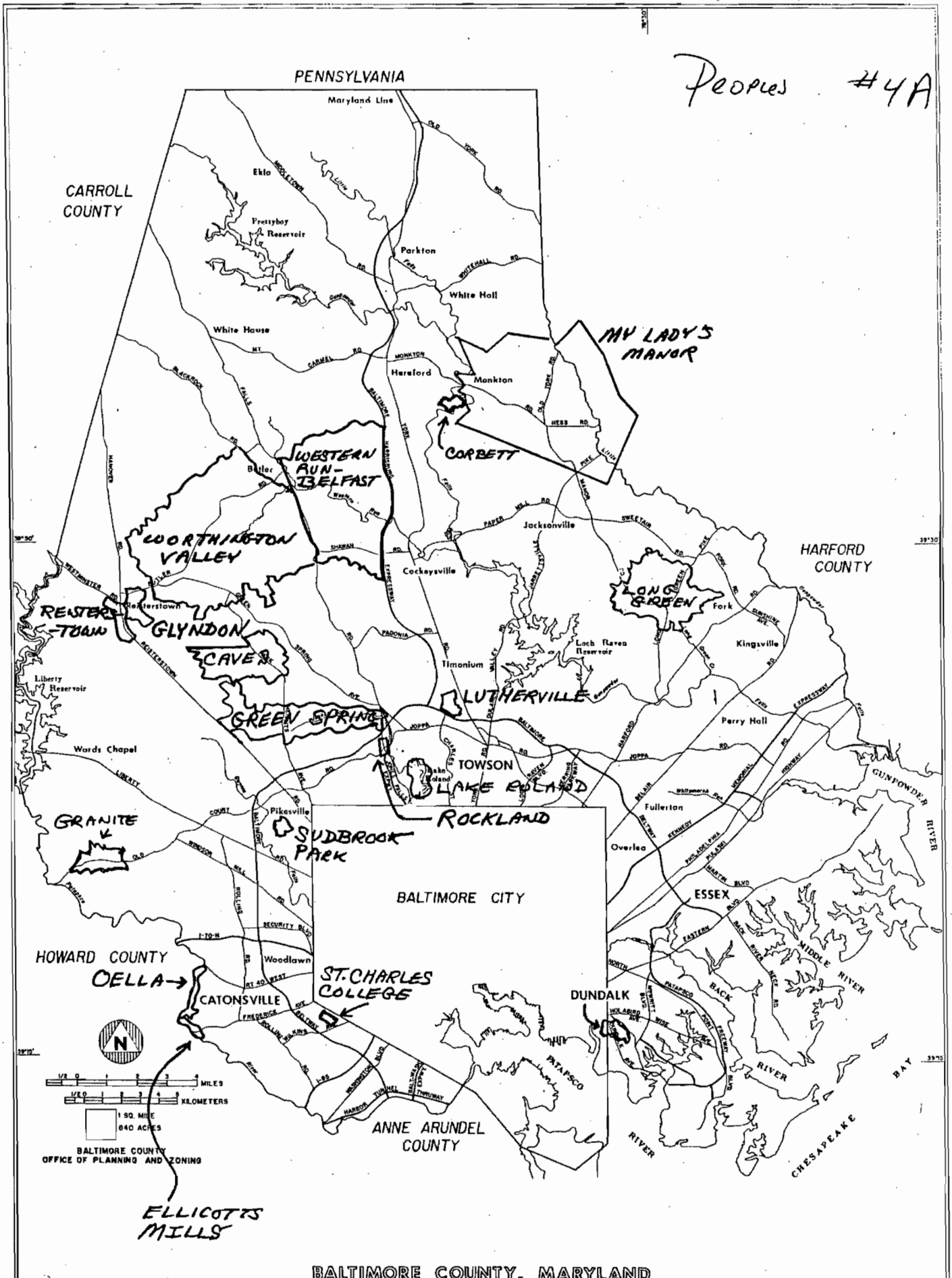
BALTIMORE COUNTY BASE MAP SERIES

REVISED DATE FEB '95

4D

RC Exh. 2

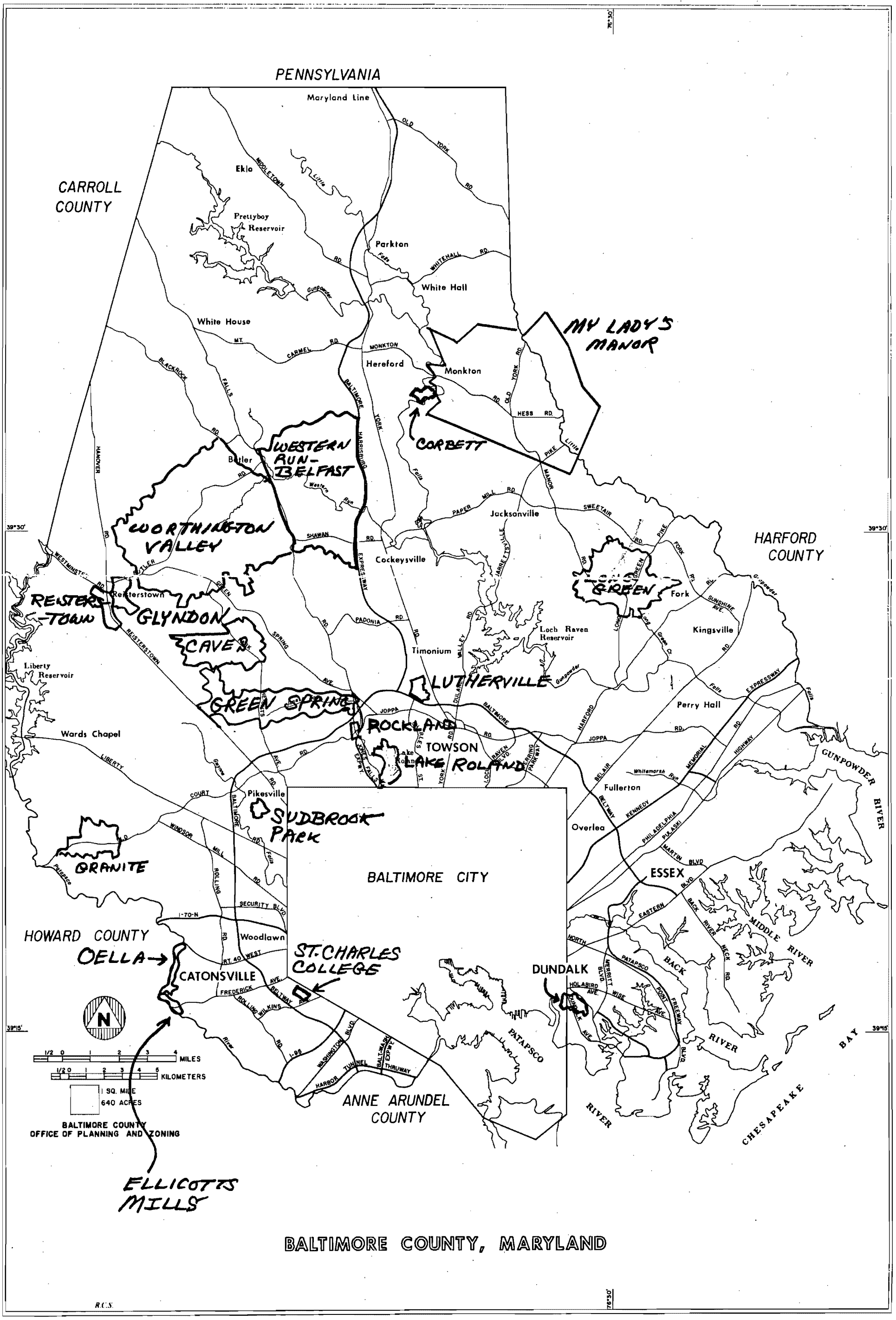
NATIONAL REGISTER HISTORIC DISTRICTS



BALTIMORE COUNTY, MARYLAND

Peoples 4B

NATIONAL REGISTER HISTORIC DISTRICTS

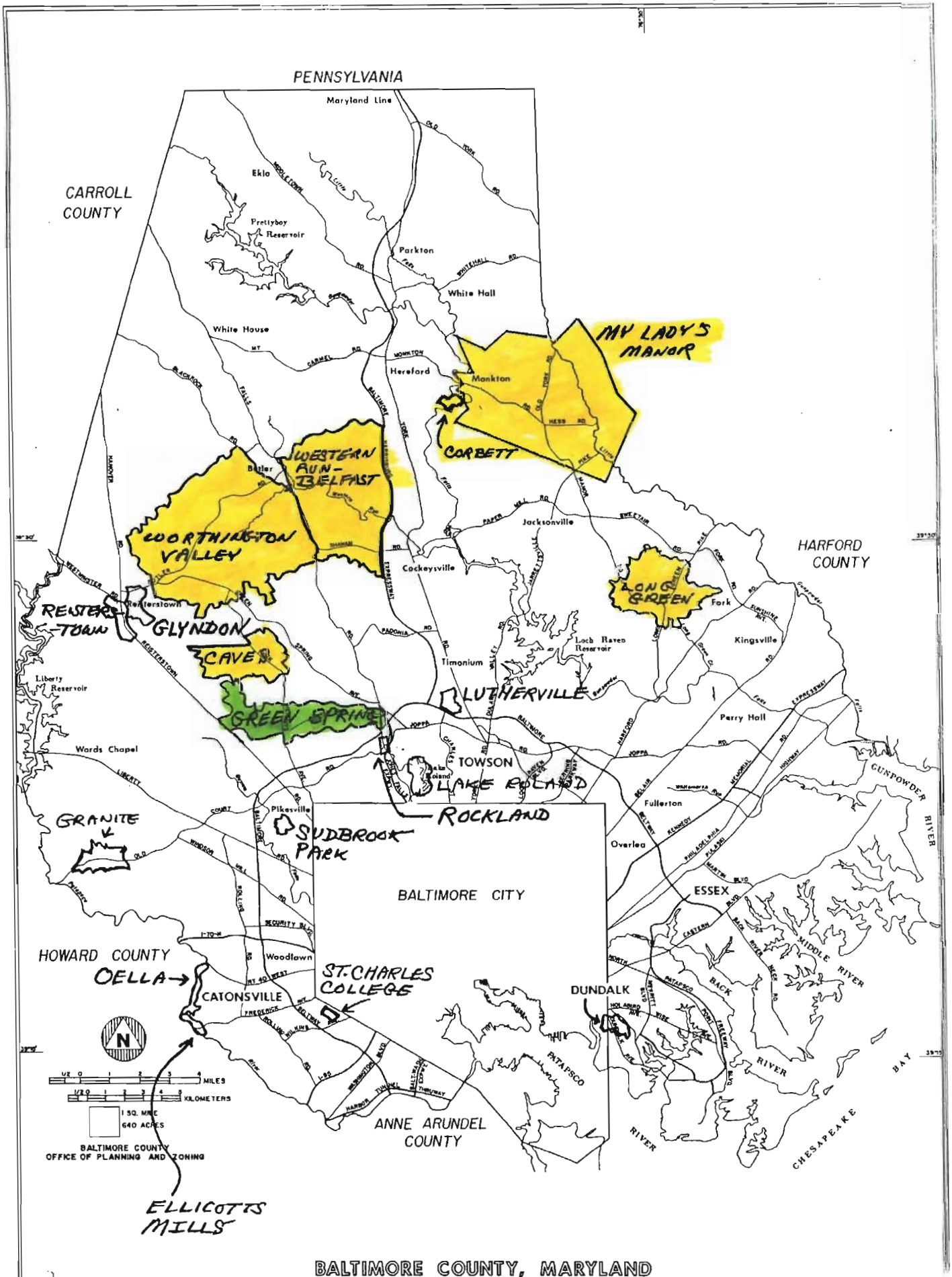


BALTIMORE COUNTY, MARYLAND

R.C.S.

Peoples 4C

NATIONAL REGISTER HISTORIC DISTRICTS



BALTIMORE COUNTY, MARYLAND

PC Exh 5

C B A A B C

YORK COUNTY, PENNSYLVANIA

MASON-DIXON LINE

39 38 37 36

MARYLAND LINE

HORSE FARMS

McQuaid

ABANDONED AIRSTRIP

VILLAGE

DAIRY FARM

BEE TREE MILL

CHALET DE LA RANCE

SEVENTH DIST. E.S.

FIVE FORKS

WINDTREE VALLEY

COUNTRY NORTH

JORDAN MILL FARMS

TRUMP

INDIAN MEADOWS

SHANE VALLEY

DEER HAVEN LA.

WEST LIBERTY

BORSUCH MILLS

BALTIMORE — HARRISBURG EXPRESSWAY

LITTLE DEER CREEK

DEER CREEK

THIRD BRANCH

PLUMTREE BRANCH

POWER TRANSMISSION LINES

RC 2 RC 4 RC 5 RCC BL BM-CR ML

(SHEET 2G) (SHEET 3F)

SCALE 1"= 1000'
0 1/4 1/2 3/4 1 MI.
0 1000 3000 5000 FT.

MAP INDEX

BALTIMORE COUNTY OFFICE OF PLANNING

MARYLAND LINE

BALTIMORE COUNTY BASE MAP SERIES

REVISED DATE SEP. '94

3G

HARFORD COUNTY

PC Exh 5

People 6 1.0.

8216 Tally Ho Road
Lutherville, MD. 21093
May 1, 1999

Mr. Chairman,
Baltimore County Board of Appeals:

As a member of the Executive Board of the Heatherfield Association I wish to voice my opposition to the establishment of an airfield and a heliport at the Helmore farm.

I feel that granting the permission to allow this facility in our neighborhood sets a dangerous precedent of county-wide implications.

My neighborhood abuts a large field currently used for farming. If the present request is granted I see no relief from a similar future request for airport operations out of this field.

I am also concerned that the flight path from the proposed air port seems to go over my community, thereby creating a potential safety hazard.

The citizens of this county depend on their elected and appointed representatives and the professional staffs for protection. I feel that the Board has the responsibility to give the strictest interpretation of the laws and regulations pertaining to the present case. I therefore urge that the proposed request by Mr. Lucas be denied.

Jorgen Jensen
President

John Price
Vice President

Margaret Flanigan
Secretary/Treasurer

Finton Cordell

Mae Gerace

Patricia Hoffman

William Mauldin

Hugh Meade Jr.

Martha Shackelford

Martha Shackelford

People #7

North County Coalition, Inc ASSOCIATION

RESOLVED: That at the March 22, 1999 meeting of the North County Coalition Inc. Association held on March 22, 1999, it was decided by the Association that responsibility for review and action on all zoning matters for the period March 22, 1999 - March 22, 2000 be placed in the (Board of Directors) ~~(Zoning Committee)~~ consisting of the following members:

Sterling Leese
Mike Reier
Foster Nichols
George Harman
Martha Lessner
Douglas Behr
Charlotte Pine
Dr. Richard McQuaid
Harold Lloyd
Janet Rittenhouse
Rebecca Riegel
Tom Hourihan
Sharon Thieleke
Ron Pradis
George Neubeck
Brad Kunhard
Jodie Kronsberg
George McCeney
Mark Habecht
David Boyd

AS WITNESS OUR HANDS AND SEAL THIS 22 day of March, 1999.

ATTEST:

North County Coalition Inc Association

Rebecca Riegel
Secretary

Richard W. McQuaid
President

Peoples 8

Maryland Line Area ASSOCIATION Inc.

RESOLVED: That at the General meeting of the Maryland Line Area Association held on December 9, 1998, it was decided by the Association that responsibility for review and action on all zoning matters for the period Dec 1, 1998 - Dec 1, 1999 be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members:

Dr. Richard W. McQuaid
Robert Leonard
Richard Jiranek
Mary Wallace
LuAnn Ensor
Christine Plettenberg
Walter K. Gettle
Bruce Guthrie

AS WITNESS OUR HANDS AND SEAL THIS 9 day of December, 19 99.

ATTEST: Maryland Line Area Association Inc.

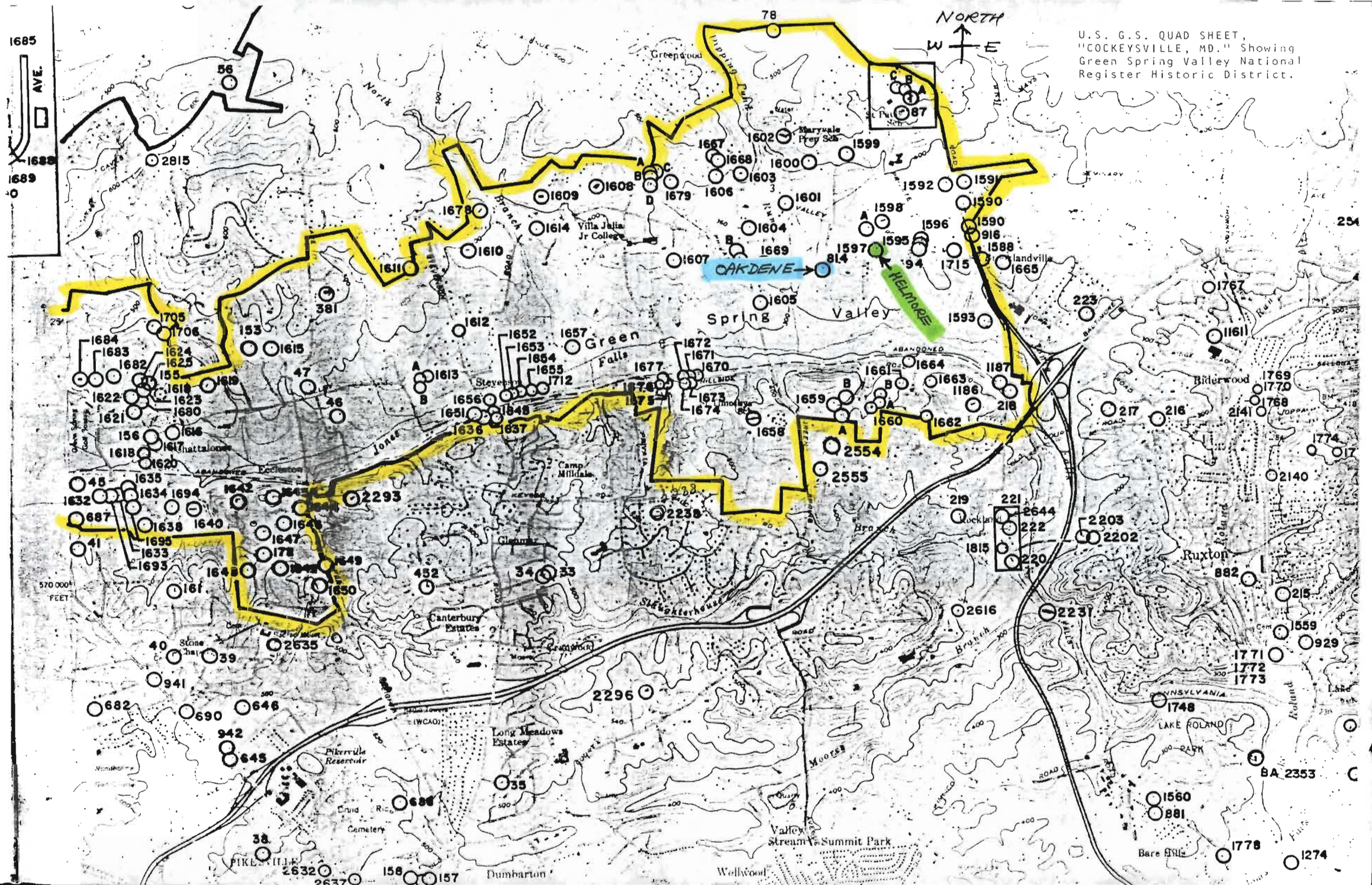
Joanne Christine Plettenberg
Secretary

Richard W. McQuaid
President

Peoples #9

NO.	ED-QUAD	DISTRICTS by order of entry date
1	8 COC & 9 TOW	LUTHERVILLE HISTORIC DISTRICT, approx. 277 acres (11-9-72)
2	3 COC 9	ROCKLAND HISTORIC DISTRICT, approx. 24 acres (4-11-73)
3	3 BAW	SUDBROOK PARK HISTORIC DISTRICT, approx. 200 acres (6-19-73)
4	4 REI	GLYNDON HISTORIC DISTRICT, approx. 560 acres (9-20-73)
5	1 ELL	OELLA HISTORIC DISTRICT, approx. 180 acres (11-7-76)
6	1 ELL	ELLICOTTS MILLS HISTORIC DISTRICT, approx. 45 acres (11-19-76)
7	4, 5 HAM-HER 8 RIE-COC	WORTHINGTON VALLEY HISTORIC DISTRICT, approx. 8,000 acres (12-12-76)
8	10 PHO	MY LADY'S MANOR HISTORIC DISTRICT, approx. 10,000 acres, part in Harford County (4-15-78)
9	8 HER & 5 COC	WESTERN RUN - BELFAST ROAD HISTORIC DISTRICT, approx. 9,975 acres (1-23-79)
10	4 REI	REISTERSTOWN HISTORIC DISTRICT, approx. 125 acres (11-15-79)
11	3 REI-COC	GREEN SPRING VALLEY HISTORIC DISTRICT, approx. 4,800 acres (10-3-80)
12	11 TOW, etc.	LONG GREEN VALLEY HISTORIC DISTRICT, 4,480± acres (1983)
13	12 BAE	DUNDALK HISTORIC DISTRICT, 240± acres, (12-22-83)
14	8 PHO	CORBETT HISTORIC DISTRICT, 64.34 acres (9-12-85)
15	1 BAW-3	ST. CHARLES COLLEGE HISTORIC DISTRICT, 15 acres, (12-29-87)
16	3 REI-COC	CAVES VALLEY, 1,500 acres, (11-20-88)
17	9 COC	LAKE ROLAND HISTORIC DISTRICT, 281 acres (10-15-92)
18	2 ELL	GRANITE HISTORIC DISTRICT, 300 acres (9-22-94)

JM/mjm
DISTRICT/PZONE/LANDMARK

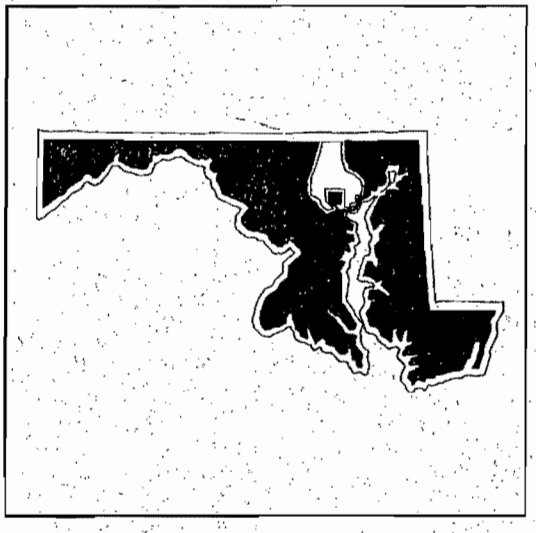

NORTH
W
E
U.S. G.S. QUAD SHEET, "COCKEYSVILLE, MD." Showing Green Spring Valley National Register Historic District.
OAKDENE
HELMORE
Spring Valley
Green Falls
Jones
Greenwood
Villa Julie Jr College
Stevenson
Camp Milldale
Eccleston
Thattaloose
Canterbury Estates
Glenmar
Slaughterhouse
Long Meadows Estates
Pikesville Reservoir
Valley Stream Summit Park
Wellwood
Dumbarton
Bare Hills
Biderwood
Ruxton
Rockland
Brooklandville
Maryvale Prep Sch
Lake Roland
Pennsylvania
Roland
Moores
Stone Chat
Enid
Cemetery
PIKESVILLE
570 000 FEET
ABANDONED
Quarry
Water
Tank
Tower
(WCAO)
Park
Lake Park
Run
Branch
Creek
Road
Ave.

People #10

Peoples #11 1.0.

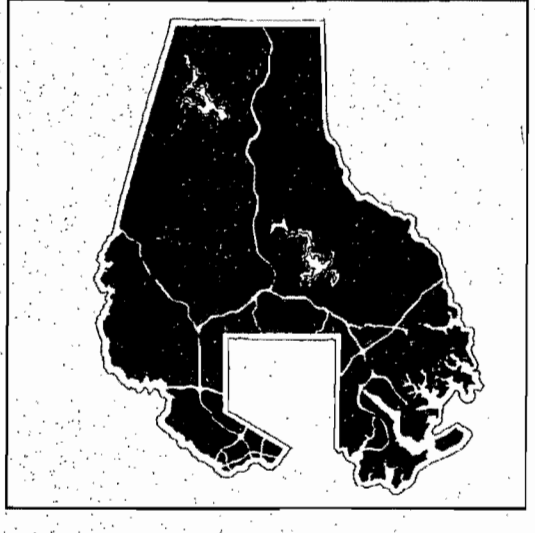
MASTER PLAN 2010

BALTIMORE COUNTY, MARYLAND









PROPOSED

MAY 1999

Post-it® Fax Note 7671	Date 4/1/98	# of pages ▶ 1
To M Gildea	From JEFF Long	
Co./Dept. WTOP	Co. Planning	
Phone # 832-2066	Phone # 887-3495	
Fax # 832 2015	Fax #	

BALTIMORE COUN

INTER-OFFICE COR

TO: Arnold Jablon, Director
and Development Management

Date: March 19, 1998

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 901 Greenspring Valley Road

Pet #12

INFORMATION

Item Number: 294

Petitioner: Edgar Lucas

Zoning: RC 2

Requested Action: Special Exception

Summary of Recommendations:

Any decision on this matter should be based on applicable regulations outlined in pertinent sections within the Baltimore County Zoning Regulations.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\294.DOC

PETITIONER'S

EXHIBITS

(1998094)

Sample warrant

Pet Ex 1a + 1b





Pet Ex # 3





Pet
Ex # 6









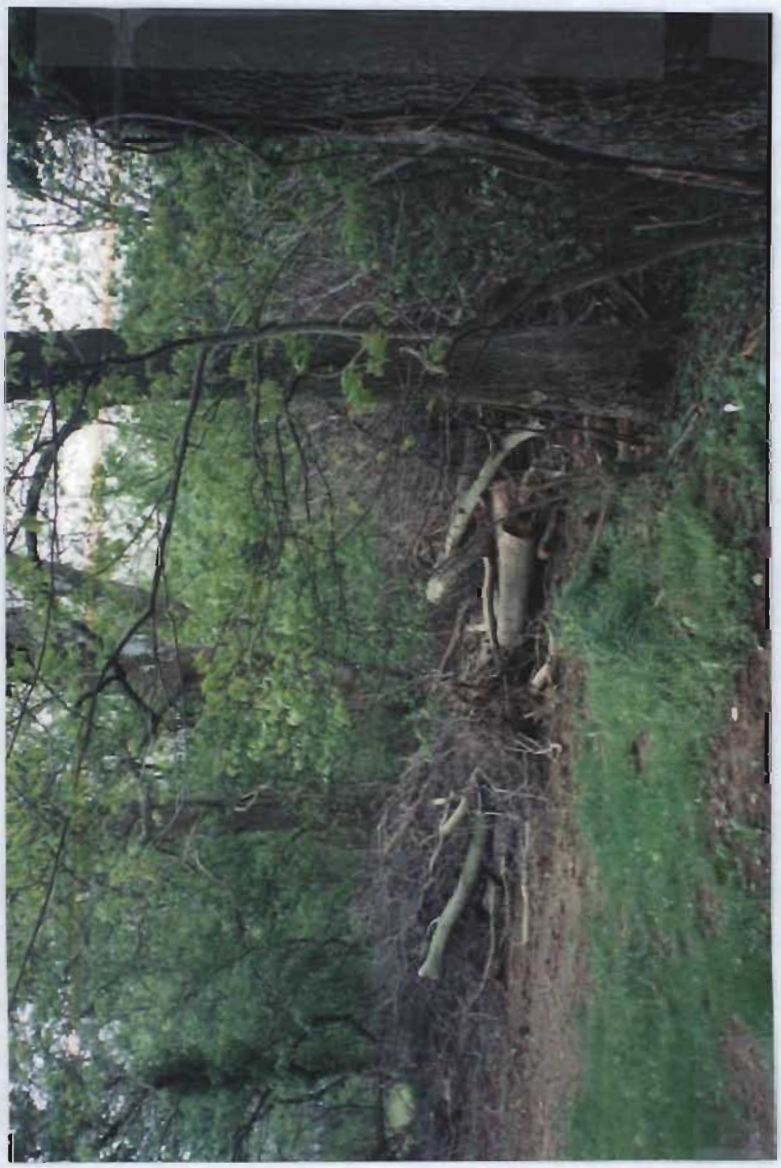














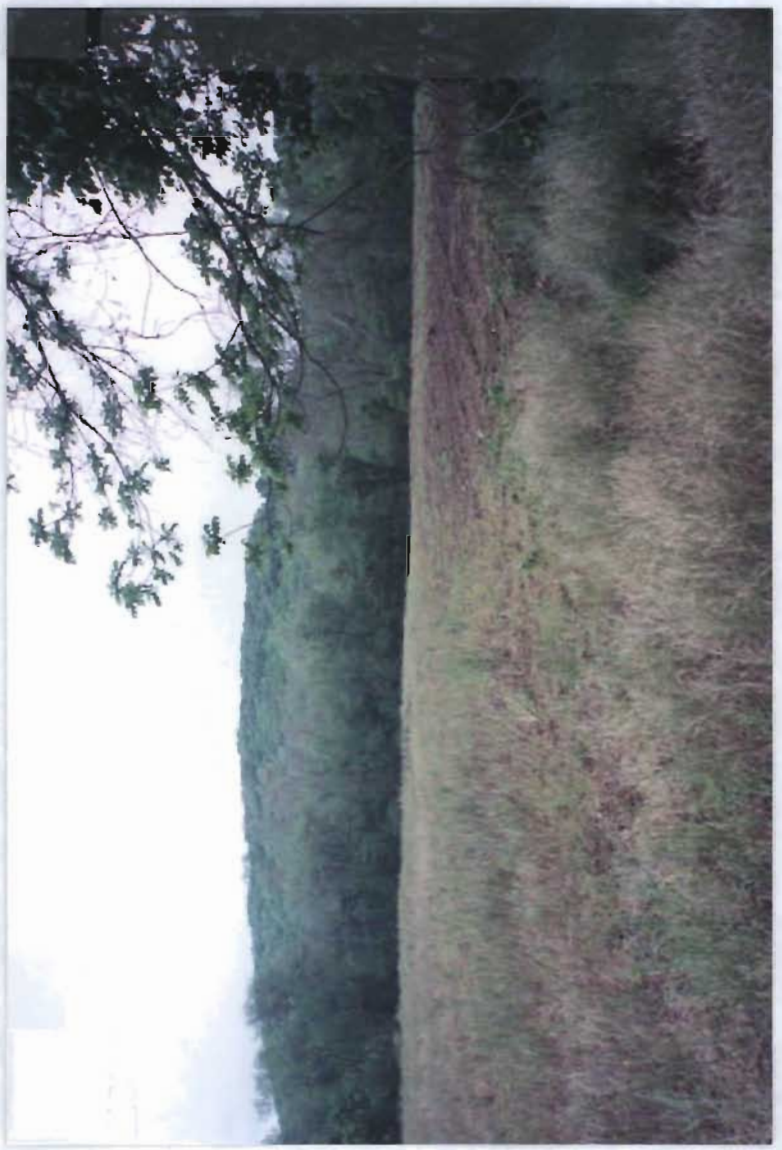












COPY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

DEIDRE SMITH, et al.

PLAINTIFFS

VERSUS

CASE NO.
03-C-98-000364

EDGAR LUCAS, et al.

DEFENDANTS

_____/ Friday,
February 20th, 1998

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE R. DANIELS, JUDGE

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

G. MACY NELSON, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

JAMES R. CHASON, ESQUIRE
THOMAS M. WOOD, ESQUIRE
DAVID K. GILDEA, ESQUIRE

REPORTED BY:
DEBORAH K. LAMBERT
Official Court Reporter
Baltimore County Circuit Court
401 Bosley Ave., Room M-08
Towson, Maryland 21204
(410) 887-2635

PETITIONER'S
EXHIBIT 5

ORIGINAL

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

DEIDRE SMITH, et al.

PLAINTIFFS

6

CASE NO.
03-C-98-000364

VERSUS

EDGAR LUCAS, et al.

DEFENDANTS

_____/ Friday,
February 20th, 1998

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE R. DANIELS, JUDGE

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

G. MACY NELSON, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

JAMES R. CHASON, ESQUIRE
THOMAS M. WOOD, ESQUIRE
DAVID K. GILDEA, ESQUIRE

REPORTED BY:
DEBORAH K. LAMBERT
Official Court Reporter
Baltimore County Circuit Court
401 Bosley Ave., Room M-08
Towson, Maryland 21204
(410) 887-2635

Pet #3

U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Regulations

Part 150
Airport Noise Compatibility Planning

This edition replaces the existing loose-leaf Part 150 and its changes.

This FAA publication of the basic Part 150, effective January 18, 1985, incorporates Amendments 150–1 and 150–2 with preambles.

Published
September 1993

Pet. #4

State of Maryland
LETTERS OF ADMINISTRATION

Estate No. 105816

I certify that administration of the Estate of

EDGAR M LUCAS

was granted on the 8th day of February, 1999.

to DALE KIRK STAMMER LUCAS AND G RICHARD SCHOLL

as personal representative(s) and the appointment is in effect

this 8th day of February, 1999.

☑ Will probated 02/08/1999
(date)

☐ Intestate estate.

Grace G. Connolly
GRACE G. CONNOLLY
Register of Wills for

Baltimore County

RW 1120

VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER

PS-3576

MILLER HENNING ASSOCIATES, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION, & A/V DESIGN

PET #5 1.0 only

HELMORE FARM

BALTIMORE, MARYLAND

Acoustical Evaluation of Proposed Special Exception for Airport Use

Project Number 98-43

Kevin C. Miller
President

April 2, 1998

6731 WHITTIER AVENUE, SUITE A110, McLEAN, VIRGINIA 22101 TEL (703) 506-0005 FAX (703) 506-0009

#6
PeT I.D. ONLY
FILE

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 MARYLAND AVIATION ADMINISTRATION

Chapter 04 Aeronautical Regulations

Authority: Transportation Article, §5-208, Annotated Code of Maryland

.01 Authority.

These regulations are issued under the authority granted to the Maryland Aviation Administration by the Transportation Article, §5-208, Annotated Code of Maryland.

.02 Definitions.

A. "Administration" means the Maryland Aviation Administration of the Maryland Department of Transportation.

B. "Airport" refers to a combination of one or more designated landing areas and any surrounding support facilities.

C. "Commercial use airport" means any airport which:

(1) Charges landing or tie down fees;

(2) Sells aviation fuel or oil;

(3) Rents space;

(4) Sells goods or services, whether for profit or not;

(5) Engages in any activity for which fees are charged or payment is received; or

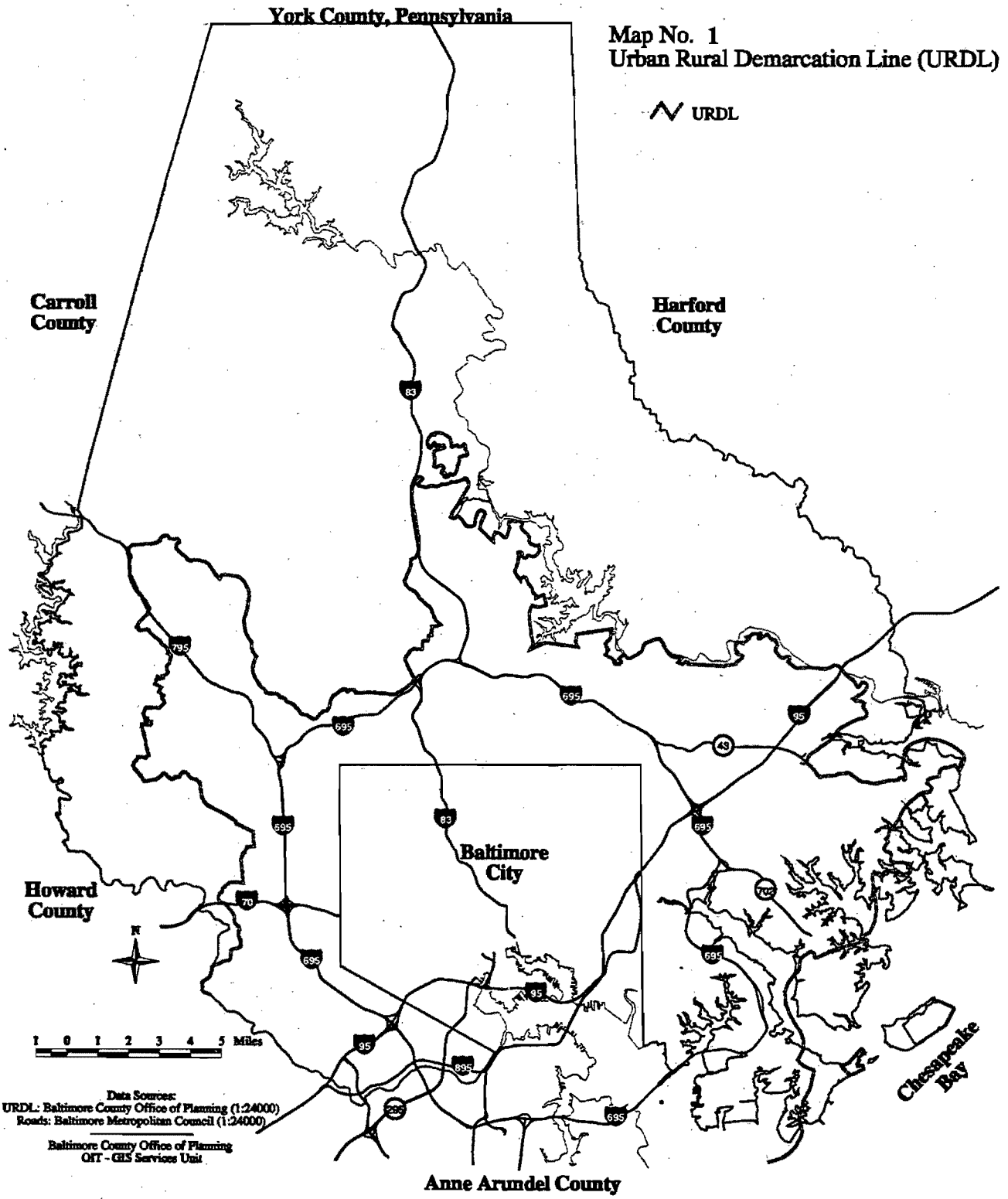
(6) Engages in any combination of the above activities.

D. "Designated landing area" means any surface on land, on water, or on a structure which is specifically adapted and maintained for the landing and taking off of aircraft. It does not include a location used only as the point of departure or only as the destination of an aircraft operation.

E. "FAA" means Federal Aviation Administration.

F. "Noncommercial use airport" means any airport which is not a commercial use airport.

Pet. #7


York County, Pennsylvania
Map No. 1
Urban Rural Demarcation Line (URDL)
URDL
Carroll County
Harford County
Howard County
Baltimore City
Anne Arundel County
Chesapeake Bay
N
1 0 1 2 3 4 5 Miles
Data Sources:
URDL: Baltimore County Office of Planning (1:24000)
Roads: Baltimore Metropolitan Council (1:24000)
Baltimore County Office of Planning
OIT - GIS Services Unit

Pet. #9

Post-it® Fax Note 7671
To Daniel Colhoun
Co./Dept.
Phone #
Fax # 410-832-2015
From Wally Lippincott
Co. DEPRM
Phone # 410-887-3544
Fax # 410-887-4804
Date 10/21/98
# of pages 2

BALTIMORE COUNTY AGRICULTURAL LAND PRESERVATION ADVISORY BOARD

Department of Environment Protection and Resource Management
401 Bosley Ave, Towson, MD 21204

MINUTES

Date: October 6, 1998
Time: 7:00 Meeting
Place: Zoning Hearing Rm, 4th Floor, County Courts Bldg.

BOARD MEMBERS PRESENT: Mark Daneker, Chairman; Daniel Colhoun, Vice Chairman; JoAnn Weber, Richard Jackson, John McGinnis.

OTHERS PRESENT: David Gildea, Dale Lucas, Mike Pate, Edward Royston, Chris Royston, Macy Nelson, Roda Mielke, Victoria Woodward, Doug Carroll, Loren Friedel. Amy Christman Oelki, Jimmy Rouse, Jim Ensor, Mark Ferguson, David Martin, Wally Lippincott.

I. CALL TO ORDER: 7:15 pm at Balto. Co. Hearing Rm, 4th floor, 401 Bosley Ave, Towson.

II. APPROVAL OF MEETING MINUTES: July 22, 1998.

III. OLD BUSINESS:

A. Mr. Richard Price, File No. 03-10-82-07 A&B. Request for owner's lot. Report on visit to the farm. Discussion of field meeting with Mr. Price by Dan Colhoun, Mac Jackson and Wally Lippincott. Same concerns raised by full board over proposed location of owner's lot and potential for nuisance issues with sprays, dusts and chemicals. Reason lot is not on corner, is the location shown is on a slight rise and is felt by Mr. Price to be a better house site. Concern is for acreage around the lot and ability to still work this land. Also, plan indicates a two acre lot. Only permitted one acre.

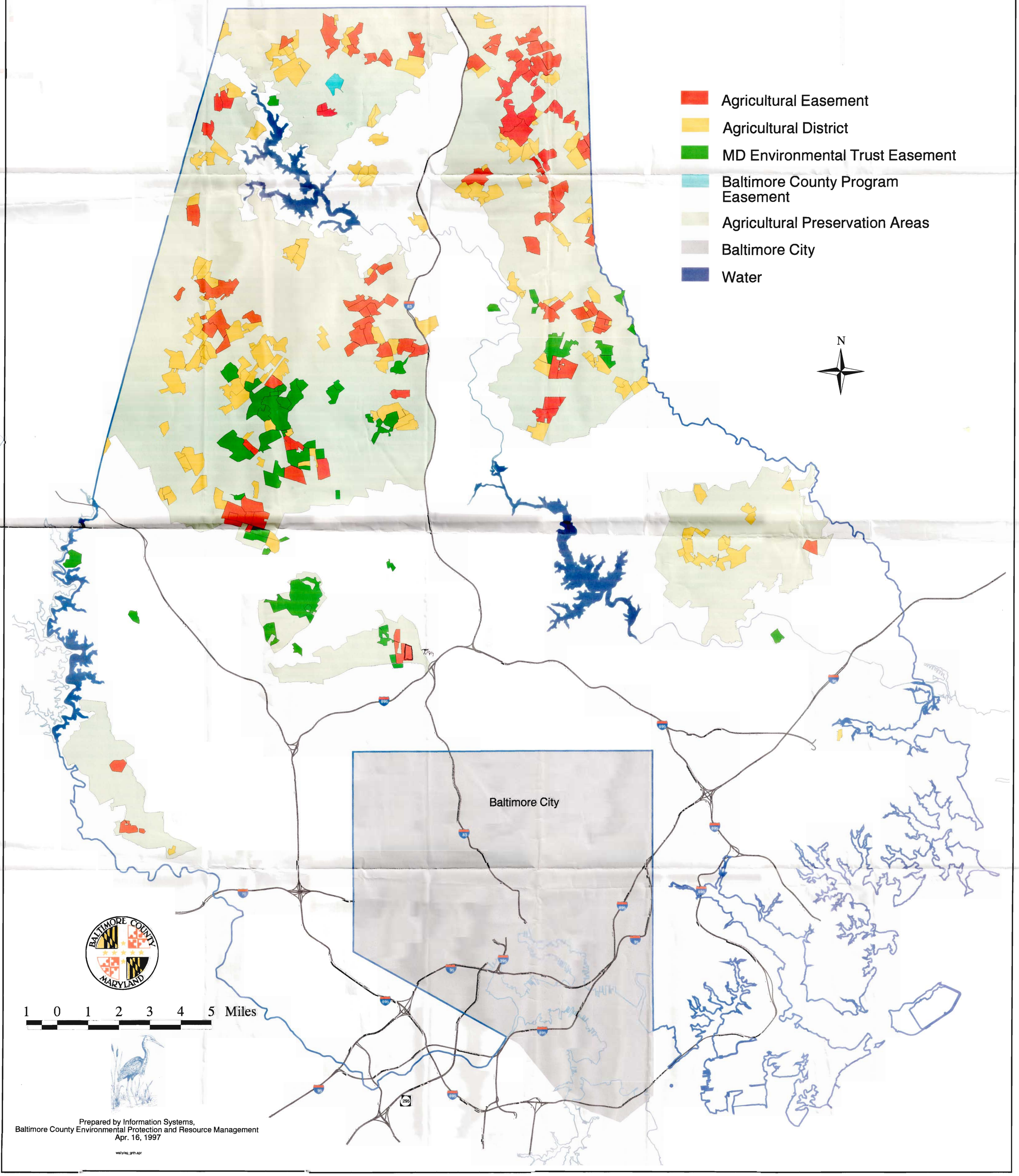
Recommendation for administrator to indicate the concern of the Board and to see if he would restrict the lot as a farm residence so as it could not be subdivided off from the farm but would remain as the farm building for the farm.

B. Discussion of changes to the ranking formula. The suggestion was made to give more points for implementation of a complex plan. Postponed discussion until next meeting.

Baltimore County Agricultural Land Preservation Program

Participating Properties

1997



Prepared by Information Systems,
Baltimore County Environmental Protection and Resource Management
Apr. 16, 1997

wallyhtg_grth.apr

PETITIONER'S EXHIBIT Nº 8

EXHIBIT 6

PETITIONERS #10

FINAL Report of the
Baltimore County Planning Board
Adopted July 26, 1979 and August 2, 1979

GROWTH-MANAGEMENT LEGISLATION: PHASE I

Baltimore County Office of Planning and Zoning
Towson, Maryland

Petitioners #11

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1979, Legislative Day No. 20

BILL NO. 178-79

Mr. Norman W. Lauenstein, Councilman

By the County Council, October 15, 1979

A BILL
ENTITLED

AN ACT to implement various elements of the County's ~~Comprehensive~~ Master Plan, and more specifically those objectives, policies and standards relating to the assimilation, location, quantity, quality and timing of growth and development in Baltimore County, the provision of adequate public facilities to support development and the protection of agricultural and environmentally-sensitive land in the resource conservation zoning classifications, ~~and to provide for the establishment of overlay district areas and regulations and requirements pertaining thereto; to provide for a master plan consistency determination~~ AND TO ADOPT BASIC SERVICES MAPS AND REGULATIONS AND REQUIREMENTS PERTAINING THERETO; and to provide for monitoring of development activity; by adding new Article 4A - GROWTH MANAGEMENT; by repealing Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. of said regulations and enacting new Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. in lieu thereof; by adding Subsections 1A01.4, 1A02.4, 259.3 and new definitions ~~"Facilities impact use, Class A"~~, ~~"Facilities impact use, Class B"~~, "Housing for the elderly"; "Industrial, quasi-industrial, or industry-related use"; and "Nonindustrial use" to Section 101, all of the Baltimore County Zoning Regulations; ~~by repealing and re-enacting with amendments Subsections 100.1.B.2, 100.1.C., 100.4, the definition of "Farm" under Section 101, and Subsection 259.2, all of the Baltimore County Zoning Regulations;~~ by repealing Subsection 1A04.3.B.2 of said regulations; and by repealing Council Bill 177-79.

NOTE: NOTICE OF AMENDMENT TO THIS BILL.
At the time of Final Reading, the Council unanimously voted to delete pages 3 through 43 of the bill as introduced and replace them with pages 3 through 21. For purposes of clarity and economy, the deleted pages are not included.

PROTESTANT'S

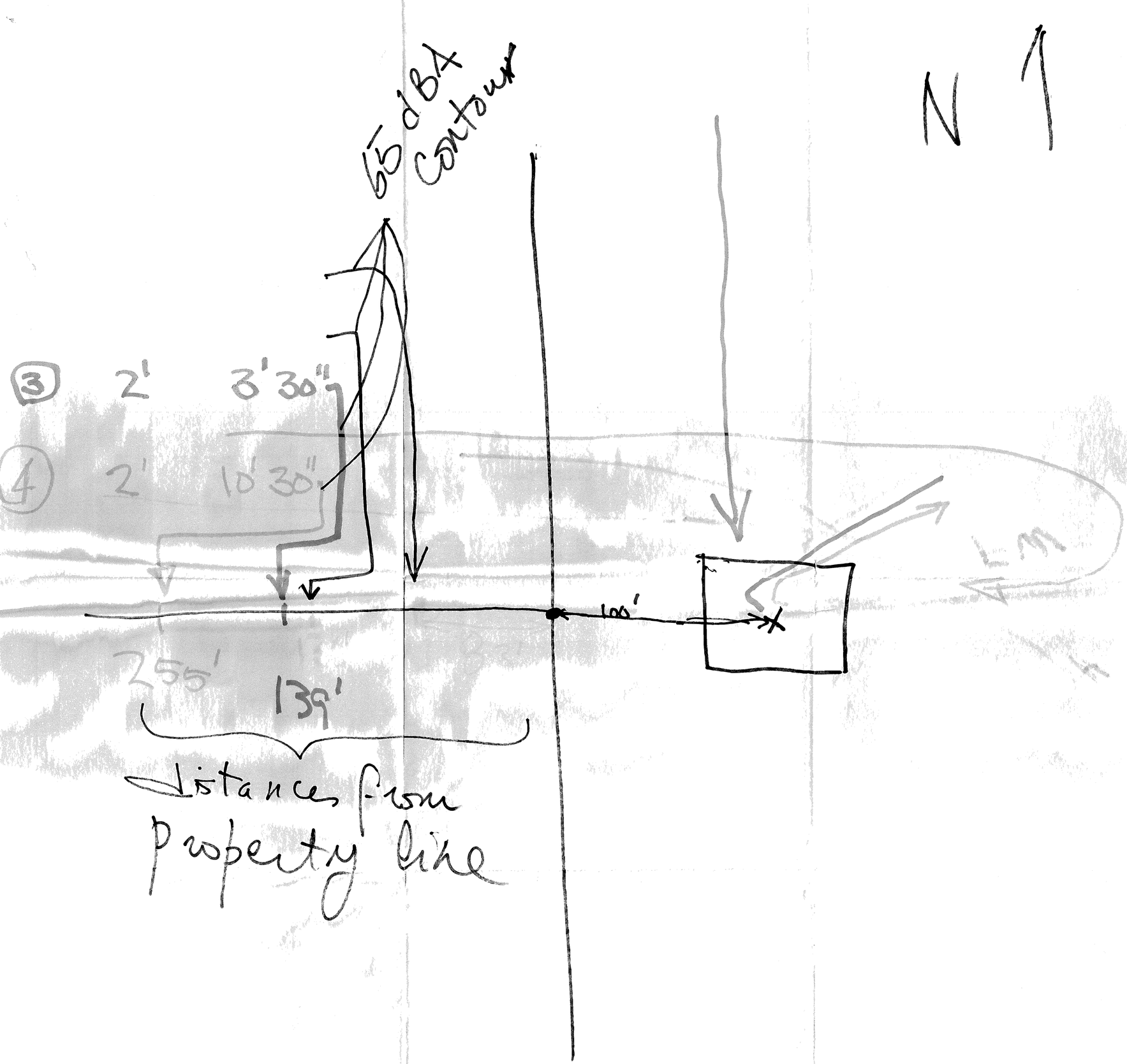
EXHIBITS

(1996029)

Supplemental

			dBA
Peak	Hover	30m	91.5
"	App	30m	97
Peak	Hover	152m	74.6
"	App.	152m	80

PROTESTANTS' EX. #11



PROCEDURE #4

The Valleys Planning Council, Inc. Association

RESOLVED: That at the Board of Directors meeting of the Valleys Planning Council, Inc. Association held on March 23, 1999, it was decided by the Association that responsibility for review and action on all zoning matters for the period of one year March 23, 1999 to March 23, 2000 be placed with the Executive Director and or Assistant Director consisting of the following members:

Mr. Jack Dillon - Executive Director

Ms. Loren Friedel - Assistant Director

AS WITNESS OUR HANDS AND SEAL THIS 23 day of March, 1999.

ATTEST: The Valleys Planning Council Association

Secretary

Richard B. Buck
President

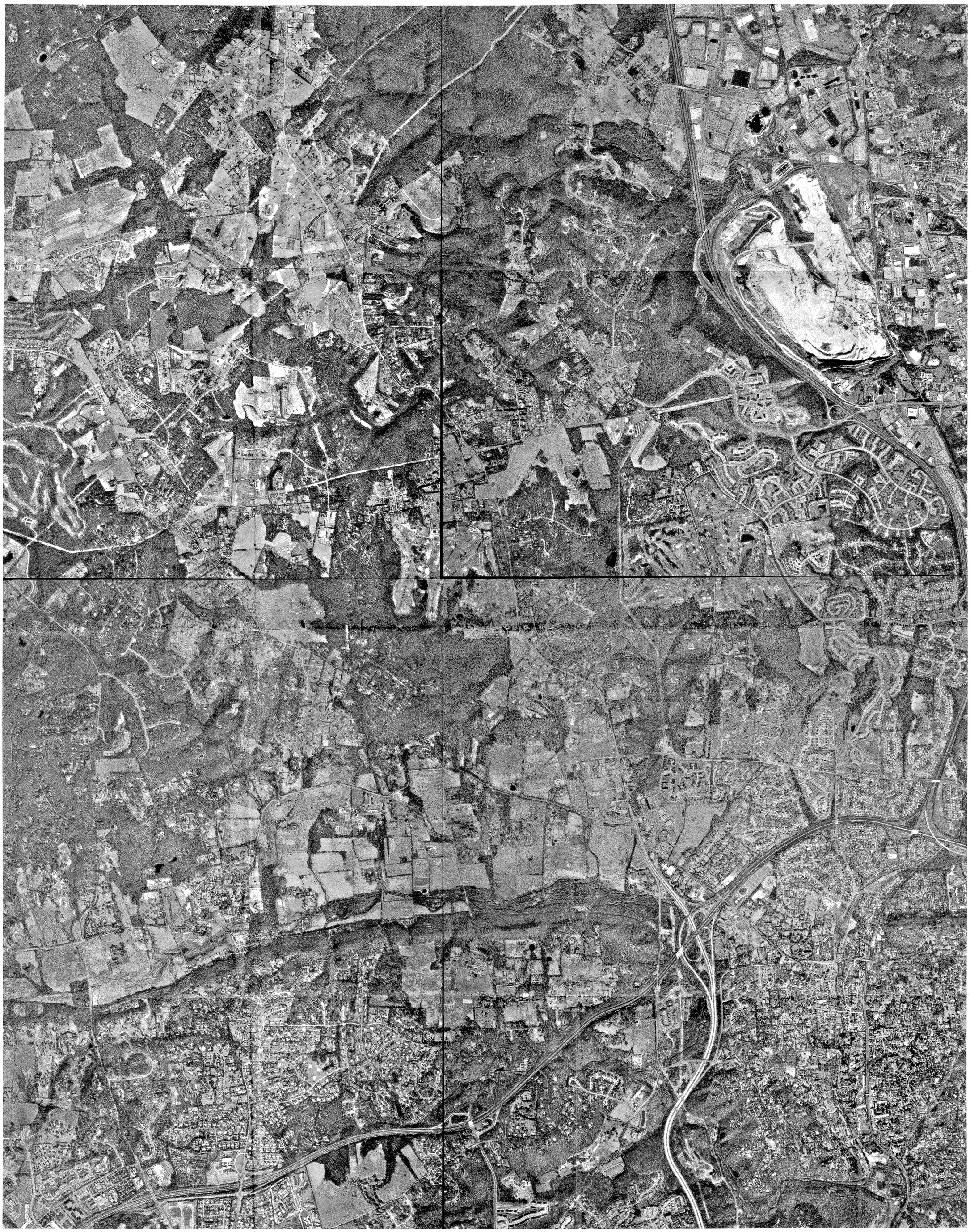
Protestants #5

Airport and Helicopter Uses as limited by the Baltimore County Zoning Regulations

Zone	Airport	helistop	Heliport I	Heliport II
DR 1 – DR-16	X	SE	X	X
R.C. 2	SE	X (178-79)	X	X
R.C. 3	SE	SE	X	X
R.C. 4	X	X	X	X
R.C. 5	X	X	X	X
R.C. 20	X	X	X	X
R.C. 50	X	X	X	X
RAE I	X	X	X	X
RAE II	X	X	X	X
R.O.	X	X	X	X
O.R. I	X	SE	X	X
O.R. 2	X	SE	X	X
O 3	X	X	X	X
SE	X	X	X	X
B.L.	X	PU	X	SE
B.M.	X	PU	SE	SE
B.R.	SE	PU	SE	SE
CB	X	X	X	X
BLR	X	X	X	X
RCC	X	X	X	X
M.R.	X	PU	X	PU (200'setback)
M.L.R.	SE(airstrips)	PU	X	SE
M.L.	SE(airstrip/airport)	PU	PU	PU
M.H.	X	PU	PU	PU

PU – Permitted Use, X – Not permitted, SE – Special Exception

COCKEYSVILLE QUARTER QUAD



Baltimore County OIT/GIS Services Unit
Quarter Quad Date: April 1994

2000 0 2000 4000 6000 8000 Feet

Scale 1" = 1000'

N
W E
S

Prot. # 6

FAX TO R. ROBIN PHZ 8/20/97

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

DATE: August 13, 1997

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 10714 Greenspring Avenue

1.0 #8

PROTEST

INFORMATION

Item Number: # 37

Petitioner: Hillside Reality L.L.C.

Zoning: RC 2

Summary of Recommendations:

Section 101 of the BCZR establishes definitions of three different types of Helicopter operations. They are, Heliport, type I, Heliport, type II, and Helistop. They seem to vary according to the intensity of the proposed use.

The DR zones and the RC 3 zone list helistop as a use permitted by special exception. It appears that a deliberate legislature decision was made to include helistop as a permitted use in those zones. Therefore, the absence of helistop, as a listed permitted use in the RC 2, RC 4, and RC 5 zones indicates a similar deliberate decision to exclude helicopter operation from these zones.

In addition, please find a copy of Case No. 90-1 SPHX, which addressed issues common to the instant case (see attached).

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL:lsn

Attachment

A:\ITEM-37.JL

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

887-4488 Ext. 241 Fax 887-4804

To: Development Coordination Date: August 14, 1997
From: Wally Lippincott, Jr.
Re: SpH 37

Recommend denial of this request. The proposed use has the potential to conflict with certain agricultural operations such as livestock. This property is in close proximity to two farms that the County has purchased development rights (Maryland Agricultural Land Preservation Foundation) from in order to preserve for agricultural use. Both farms have livestock, however, one farm, Helmore Farm, is major thoroughbred horse operation with significant capital improvements devoted solely to maintaining a thoroughbred operation.

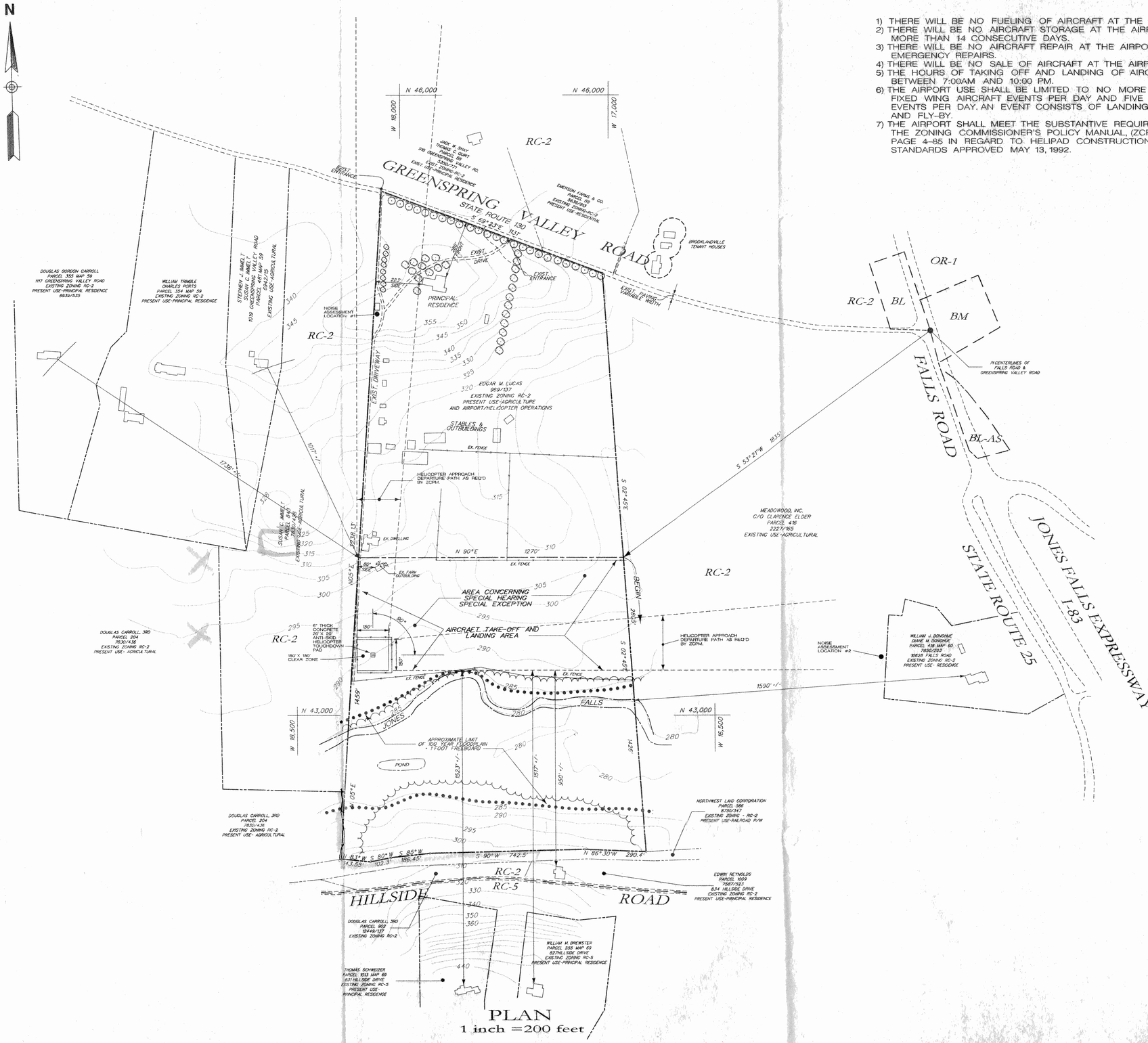
#9 1.0.

Pros

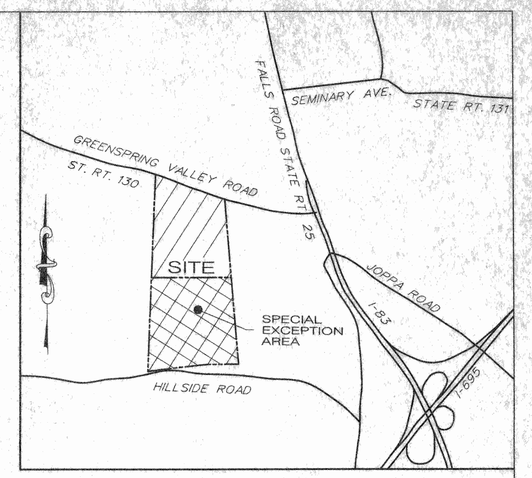
Prot #7

Paletch Ex #7

N



PLAN
1 inch =200 feet



LOCATION MAP
SCALE 1" = 1,000'

SPECIAL NOTES REGARDING AIRPORT USE

1) THERE WILL BE NO FUELING OF AIRCRAFT AT THE AIRPORT.
2) THERE WILL BE NO AIRCRAFT STORAGE AT THE AIRPORT FOR MORE THAN 14 CONSECUTIVE DAYS.
3) THERE WILL BE NO AIRCRAFT REPAIR AT THE AIRPORT, EXCEPT EMERGENCY REPAIRS.
4) THERE WILL BE NO SALE OF AIRCRAFT AT THE AIRPORT.
5) THE HOURS OF TAKING OFF AND LANDING OF AIRCRAFT WILL BE BETWEEN 7:00AM AND 10:00 PM.
6) THE AIRPORT USE SHALL BE LIMITED TO NO MORE THAN FIVE (5) FIXED WING AIRCRAFT EVENTS PER DAY AND FIVE (5) HELICOPTER EVENTS PER DAY. AN EVENT CONSISTS OF LANDING, IDLING, TAKE-OFF AND FLY-BY.
7) THE AIRPORT SHALL MEET THE SUBSTANTIVE REQUIREMENTS OF THE ZONING COMMISSIONER'S POLICY MANUAL, (ZCPM) SECTION 420.1 PAGE 4-85 IN REGARD TO HELIPAD CONSTRUCTION AND SAFETY STANDARDS APPROVED MAY 13, 1992.

SITE DATA

GROSS/NET AREA OF PROPERTY: 87 ACRES +/- 3,789,720 SF (INCLUDES PORTION OF THE RIGHT-OF-WAY FOR GREENSPRING VALLEY ROAD)
AREA CONCERNING SPECIAL HEARING/SPECIAL EXCEPTION: 45 ACRES +/-
EXISTING ZONING: RC-2
EXISTING USE: AGRICULTURAL(THOROUGHBRED HORSE FARM) AND AIRPORT & HELICOPTER OPERATIONS
PROPOSED USE: SAME
TAX ACCOUNT # 0312074275
DEED REFERENCE: 969137
STORM WATER MANAGEMENT:
N/A NO DEVELOPMENT OR GRADING PROPOSED
FOREST CONSERVATION:
N/A NO DEVELOPMENT OR GRADING PROPOSED
TAX MAP 60 PARCEL 793
PRIOR PERMITS: UNKNOWN
PRIOR ZONING CASES: NONE
DRC ACTIONS: UNKNOWN
SITE IS LOCATED IN THE GREENSPRING VALLEY NATIONAL REGISTER HISTORIC DISTRICT
PORTIONS OF THIS PROPERTY LIE WITHIN ZONE 'A' (100 YEAR FLOODPLAIN) AS DEPICTED ON THE FLOOD INSURANCE RATE MAP 240010 0245E EFFECTIVE DATE NOV. 17, 1993. THE AREA SHOWN HEREON AS THE 100 YEAR FLOODPLAIN + 1 FOOT FREEBOARD WAS DETERMINED BASED ON THE 100 YEAR FLOW PROVIDED BY BALTO. CO. DPW AND A PRELIMINARY ANALYSIS OF THE CROSSECTIONAL AREA OF THE JONES FALLS STREAM CHANNEL MADE BY THIS OFFICE.
THIS PROPERTY IS SERVED BY PRIVATE WATER AND SEWAGE DISPOSAL SYSTEMS.
NO PUBLIC FIRE HYDRANTS ADJACENT TO SITE.
PORTIONS OF THIS PROPERTY ARE SUBJECT TO AN AGRICULTURAL PRESERVATION EASEMENT DESCRIBED IN LIBER 8891 FOLIO 798
SIGNAGE: NO SIGNAGE IS PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNAGE SHALL CONFORM TO SECTION 450 BCZR AND ALL ZONING SIGN POLICIES.

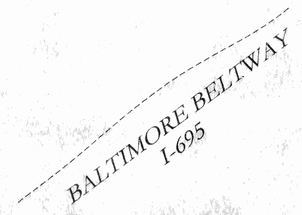
PARKING TABULATION

NOT SPECIFICALLY ADDRESSED IN BCZR. PARKING FOR PASSENGER VEHICLES IS AVAILABLE ON THE OVERALL PROPERTY AND WITHIN THE AREA DESIGNATED FOR AIRPORT OPERATIONS.

NOTE:

1) THIS PLAT WAS PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED FOR USE IN CONVEYANCE OF LAND.
2) THE PROPERTY OUTLINE SHOWN HEREON WAS COMPILED FROM DEEDS, TAX RECORDS, AND AVAILABLE PUBLIC INFORMATION AND THEREFORE DOES NOT REPRESENT A BOUNDARY SURVEY.
3) THE TOPOGRAPHIC INFORMATION SHOWN WAS COMPILED FROM AVAILABLE PUBLIC RECORDS.

ALL KNOWN STRUCTURES AND USES ARE SHOWN WITHIN 200 FEET OF THE SITE



PLAT TO ACCOMPANY ZONING PETITION

HELMORE FARM

901 GREENSPRING VALLEY ROAD

BALTIMORE COUNTY, MD.
ELECTION DISTRICT NO.3
COUNCILMANIC DISTRICT NO.3

SCALE 1" = 200'
FEBRUARY 3, 1998
REV. APRIL 3, 1998
REV. APRIL 25, 1999

MWI 97083

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: 410 377-7596
FAX: 410 377-7657

4/25/99

A SPECIAL EXCEPTION IS REQUESTED FOR AN AIRPORT USE PURSUANT TO SECTION 1A01.2C.1 BCZR

LEGAL OWNER / PETITIONER

THE ESTATE OF EDGAR M. LUCAS
901 GREENSPRING VALLEY ROAD
P.O. BOX 1248
BROOKLANDVILLE, MARYLAND 21022
410-821-5125

STEPHEN J. IMMELT
SUSAN C. IMMELT
PARCEL 481, MAP 59
D.B. 6942 / PG. 15

JACK W. SHAY
THOMAS C. QUIRT
PARCEL 58
D.B. 5350 / PG. 771

EMERSON FARMS & CO.
PARCEL 88
D.B. 5636 / PG. 913

GREENSPRING VALLEY ROAD (STATE ROUTE 130)

BROOKLANDVILLE
TENANT HOUSES

N

DOUGLAS GORDON CARROLL
PARCEL 355, MAP 59
D.B. 6939 / PG. 535

WILLIAM TRIMBLE
CHARLES PORTS
PARCEL 354, MAP 59

EDGAR M. LUCAS
D.B. 969 / PG. 137

FALLS ROAD (STATE ROUTE 25)

MEADOWOOD, INC.
C/O CLARENCE ELDER
PARCEL 416
D.B. 2227 / PG. 165

FIXED-WING
FLIGHT TRACK

SUSAN C. IMMELT
PARCEL 843
D.B. 7830 / PG. 428

FIXED-WING
FLIGHT TRACK

65 LDN

70 LDN

HELICOPTER
FLIGHT TRACK

IONES FALLS EXPRESSWAY (I-83)

WILLIAM J. DONOHUE
DIANE M. DONOHUE
PARCEL 418, MAP 60
D.B. 7850 / PG. 203

FALLS

JONES

POND

DOUGLAS CARROLL, III
PARCEL 204
D.B. 7830 / PG. 436

NORTHWEST LAND CORPORATION
PARCEL 566
D.B. 8750 / PG. 347

HILLSIDE ROAD

EDWIN REYNOLDS
PARCEL 1009
D.B. 7587 / PG. 523

DOUGLAS CARROLL, III
PARCEL 902
D.B. 12449 / PG. 137

THOMAS SCHWEIZER
PARCEL 1013, MAP 69

WILLIAM M. BREWSTER
PARCEL 255, MAP 69

1"=200' SCALE

200 0 200 400 FEET

8053SEN3.DWG
PSHT200

SOUND EXPOSURE ANALYSIS

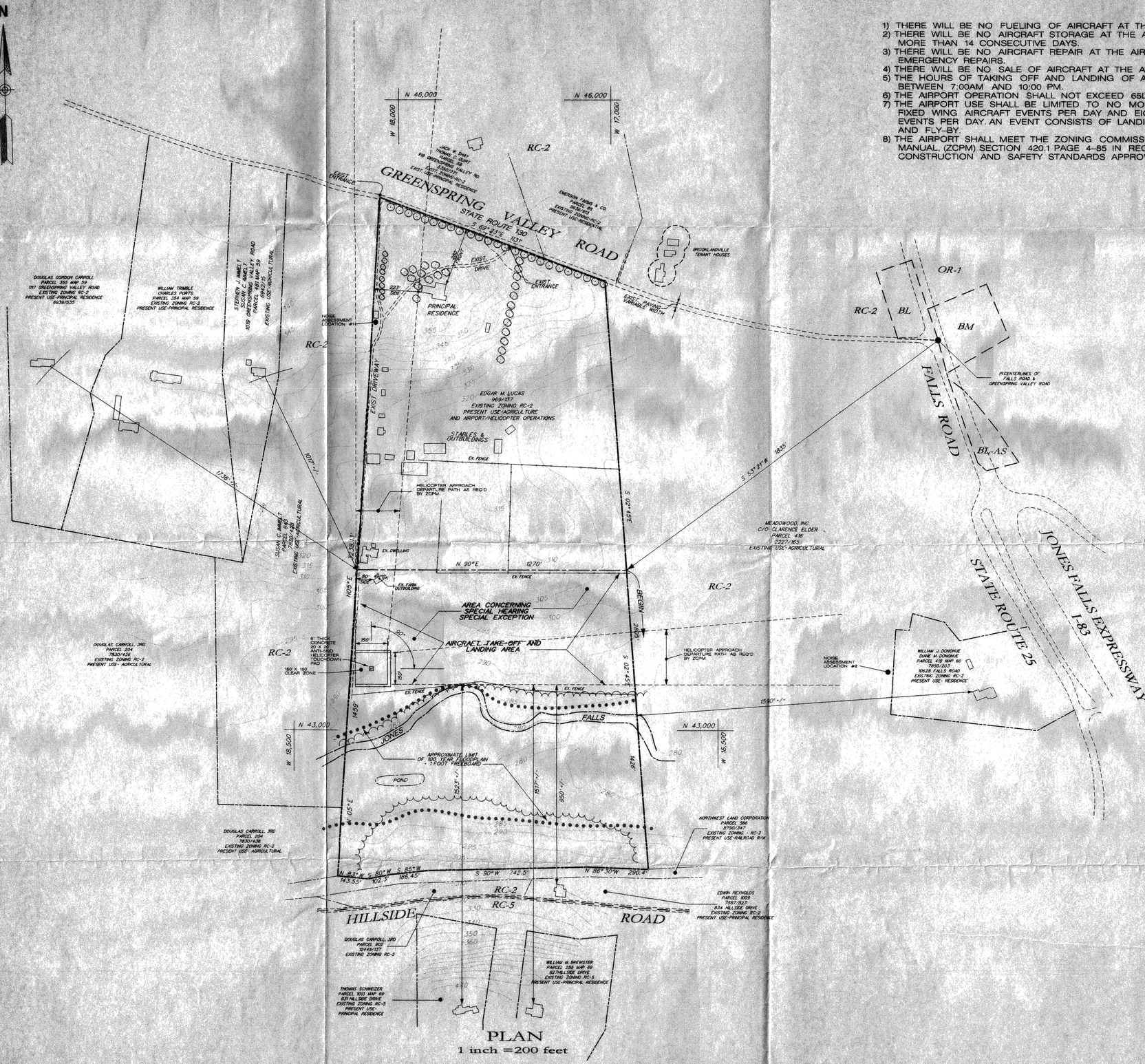
HELMORE FARMS
BROOKLANDVILLE, MARYLAND

DELTA AIRPORT CONSULTANTS, INC.
engineers – planners

DRAWN BY:	RWW	SCALE:	1"=200'
CHECKED BY:	CAB	DATE:	APRIL 1999

SHEET 1 OF 1

X:\98053\80535EN3.DWG Mon Apr 26 13:50:57 1999 RWW


N
GREENSPRING VALLEY ROAD
STATE ROUTE 130
S 69°41'E 1611'
N 46,000
W 18,000
N 46,000
W 17,000
RC-2
EXIST. ENTRANCE
EXIST. DRIVE
PRINCIPAL RESIDENCE
223' SIDE
NOISE ASSESSMENT LOCATION #1
EXIST. DRIVEWAY
EDGAR M. LUCAS
969/137
EXISTING ZONING: RC-2
PRESENT USE: AGRICULTURE AND AIRPORT/HELICOPTER OPERATIONS
STABLES & OUTBUILDINGS
EX. FENCE
HELICOPTER APPROACH DEPARTURE PATH AS REQ'D BY ZCPM
EX. DWELLING
EX. FARM OUTBUILDING
80' RADIUS
N 90°E
1270'
N05°E
BEGIN
AREA CONCERNING SPECIAL HEARING SPECIAL EXCEPTION
AIRCRAFT TAKE-OFF AND LANDING AREA
6" THICK CONCRETE 30' X 25' ANTI-SKID HELICOPTER TOUCH-DOWN PAD
150'
90°
150'
REQ'D 100' CLEAR ZONE
HELICOPTER APPROACH DEPARTURE PATH AS REQ'D BY ZCPM
S 05°E 1459'
EX. FENCE
EX. FENCE
1590'+/-
FALLS
JONES
N 43,000
W 18,500
N 43,000
W 16,500
APPROXIMATE LIMIT OF 100 YEAR FLOODPLAIN + 1 FOOT FREEBOARD
POND
1652'+/-
187'+/-
350'+/-
S 05°E 1434'
DOUGLAS CARROLL, 3RD
PARCEL 204
7830/436
EXISTING ZONING RC-2
PRESENT USE- AGRICULTURAL
N 83°W 143.55'
S 80°W 102.3'
S 85°W 186.45'
S 90°W 742.5'
N 88°30'W 290.4'
RC-2
RC-5
HILLSIDE
ROAD
DOUGLAS CARROLL 3RD
PARCEL 802
12449/137
EXISTING ZONING RC-2
THOMAS SCHNEIZER
PARCEL 1013 MAP 59
831 HILLSIDE DRIVE
EXISTING ZONING RC-5
PRESENT USE-PRINCIPAL RESIDENCE
WILLIAM M. BRENSTER
PARCEL 233 MAP 59
837 HILLSIDE DRIVE
EXISTING ZONING RC-5
PRESENT USE-PRINCIPAL RESIDENCE
DOUGLAS CARROLL, 3RD
PARCEL 204
7830/436
EXISTING ZONING RC-2
PRESENT USE- AGRICULTURAL
DOUGLAS GORDON CARROLL
PARCEL 355 MAP 59
117 GREENSPRING VALLEY ROAD
EXISTING ZONING RC-2
PRESENT USE-PRINCIPAL RESIDENCE
6931/535
WILLIAM TRIMBLE
CHARLES PORTO
PARCEL 124 MAP 59
EXISTING ZONING RC-2
PRESENT USE-PRINCIPAL RESIDENCE
STEPHEN J. MINELLI
SUSAN A. MINELLI
919 GREENSPRING VALLEY RD.
PARCEL 481 MAP 59
EXISTING ZONING RC-2
EXISTING USE-PRINCIPAL DWELLING
SUSAN C. MINELLI
PARCEL 640
MAP 59
EXISTING USE-AGRICULTURAL
1736'+/-
907'+/-
HOPE H. SHAY
PARCEL 24
919 GREENSPRING VALLEY RD.
6 BEDROOM
2 STORY/2 1/2
EXIST. RC-2 ZONING
EXIST. USE-PRINCIPAL RESIDENCE
EMERSON FARMS, & CO.
PARCEL 28
2676/29
EXISTING ZONING-RC-2
PRESENT USE-AGRICULTURAL
BROOKLANDVILLE TENANT HOUSES
EXIST. ENTRANCE
EXIST. ENTRANCE
EXIST. ENTRANCE

PLAN
1 inch =200 feet

LOCATION MAP
SCALE 1" = 1,000'

SPECIAL NOTES REGARDING AIRPORT USE

1) THERE WILL BE NO FUELING OF AIRCRAFT AT THE AIRPORT.
2) THERE WILL BE NO AIRCRAFT STORAGE AT THE AIRPORT FOR MORE THAN 14 CONSECUTIVE DAYS.
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SITE DATA

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AREA CONCERNING SPECIAL HEARING/SPECIAL EXCEPTION: 45 ACRES +/-
EXISTING ZONING: RC-2
EXISTING USE: AGRICULTURAL(THOROUGHBRED HORSE FARM) AND AIRPORT & HELICOPTER OPERATIONS
PROPOSED USE: SAME
TAX ACCOUNT # 0312074275
DEED REFERENCE: 969/137
STORM WATER MANAGEMENT:
NA NO DEVELOPMENT OR GRADING PROPOSED
FOREST CONSERVATION:
NA NO DEVELOPMENT OR GRADING PROPOSED
TAX MAP 60 PARCEL 793
PRIOR PERMITS: UNKNOWN
PRIOR ZONING CASES: NONE
DRC ACTIONS: UNKNOWN
SITE IS LOCATED IN THE GREENSPRING VALLEY NATIONAL REGISTER HISTORIC DISTRICT
PORTIONS OF THIS PROPERTY LIE WITHIN ZONE 'A' (100 YEAR FLOODPLAIN) AS DEPICTED ON THE FLOOD INSURANCE RATE MAP 240010 0245E
EFFECTIVE DATE NOV. 17, 1993. THE AREA SHOWN HEREON AS THE 100 YEAR FLOODPLAIN + 1 FOOT FREEBOARD WAS DETERMINED BASED ON THE 100 YEAR FLOW PROVIDED BY BALTO. CO. DPW AND A PRELIMINARY ANALYSIS OF THE CROSSECTIONAL AREA OF THE JONES FALLS STREAM CHANNEL, MADE BY THIS OFFICE.
THIS PROPERTY IS SERVED BY PRIVATE WATER AND SEWAGE DISPOSAL SYSTEMS.
NO PUBLIC FIRE HYDRANTS ADJACENT TO SITE.
PORTIONS OF THIS PROPERTY ARE SUBJECT TO AN AGRICULTURAL PRESERVATION EASEMENT DESCRIBED IN LIBER 8891 FOLIO 798
SIGNAGE: NO SIGNAGE IS PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNAGE SHALL CONFORM TO SECTION 450 BCZR AND ALL ZONING SIGN POLICIES.

PARKING TABULATION

NOT SPECIFICALLY ADDRESSED IN BCZR. PARKING FOR PASSENGER VEHICLES IS AVAILABLE ON THE OVERALL PROPERTY AND WITHIN THE AREA DESIGNATED FOR AIRPORT OPERATIONS.

NOTE:

1) THIS PLAT WAS PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED FOR USE IN CONVEYANCE OF LAND.
2) THE PROPERTY OUTLINE SHOWN HEREON WAS COMPILED FROM DEEDS, TAX RECORDS, AND AVAILABLE PUBLIC INFORMATION AND THEREFORE DOES NOT REPRESENT A BOUNDARY SURVEY.
3) THE TOPOGRAPHIC INFORMATION SHOWN WAS COMPILED FROM AVAILABLE PUBLIC RECORDS.

ALL KNOWN STRUCTURES AND USES ARE SHOWN WITHIN 200 FEET OF THE SITE

A SPECIAL EXCEPTION IS REQUESTED FOR AN AIRPORT USE PURSUANT TO SECTION 1A01.2C.1 BCZR

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: 410 377-7596
FAX: 410 377-7657

LEGAL OWNER / PETITIONER

THE ESTATE OF EDGAR M. LUCAS
901 GREENSPRING VALLEY ROAD
P.O. BOX 1248
BROOKLANDVILLE, MARYLAND 21022
410-821-5135

PLAT TO ACCOMPANY ZONING PETITION

HELMORE FARM

901 GREENSPRING VALLEY ROAD

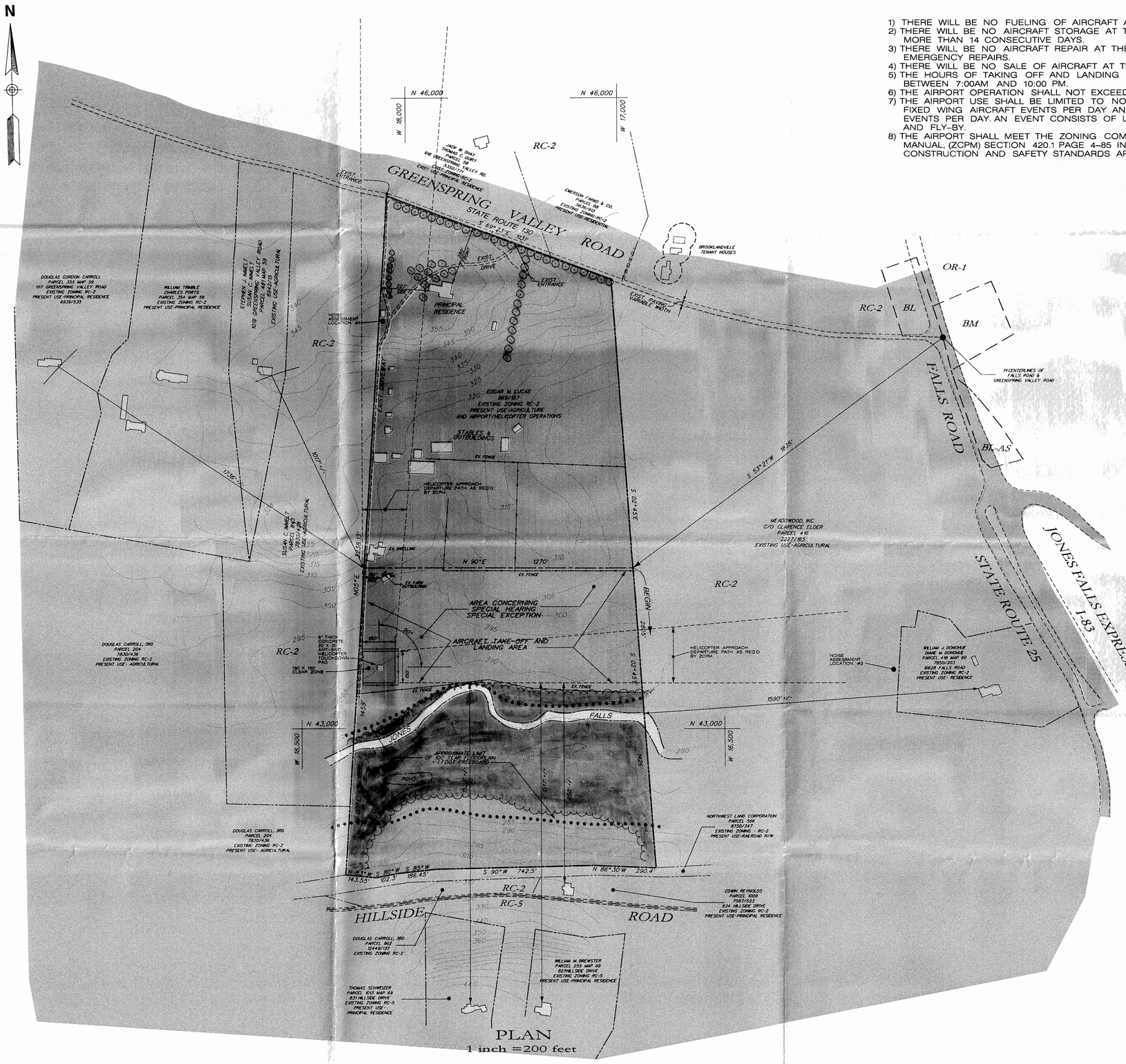
BALTIMORE COUNTY, MD
ELECTION DISTRICT NO.3
COUNCILMANIC DISTRICT NO.3

SCALE 1" = 200'
FEBRUARY 3, 1998
REV. APRIL 3, 1998
REV. APRIL 25, 1999

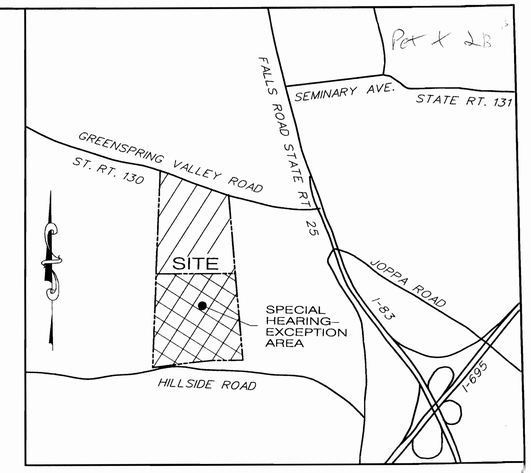
MWI 97083

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7) THE AIRPORT USE SHALL BE LIMITED TO NO MORE THAN EIGHT (8) FIXED WING AIRCRAFT EVENTS PER DAY AND EIGHT (8) HELICOPTER EVENTS PER DAY. AN EVENT CONSISTS OF LANDING, IDLING, TAKE-OFF AND FLY-BY.
8) THE AIRPORT SHALL MEET THE ZONING COMMISSIONER'S POLICY MANUAL, (ZCPM) SECTION 420.1 PAGE 4-85 IN REGARD TO HELIPAD CONSTRUCTION AND SAFETY STANDARDS APPROVED MAY 13, 1992.



PLAN
1 inch =200 feet



LOCATION MAP
SCALE 1" = 1,000'

SITE DATA

GROSS-NET AREA OF PROPERTY: 87 ACRES +/- 3,789,720 SF (INCLUDES PORTION OF THE RIGHT-OF-WAY FOR GREENSPRING VALLEY ROAD)
AREA CONCERNING SPECIAL HEARING-SPECIAL EXCEPTION: 45 ACRES +/-
EXISTING ZONING: RC-2
EXISTING USE: AGRICULTURAL(THOROUGHBRED HORSE FARM) AND AIRPORT & HELICOPTER OPERATIONS
PROPOSED USE: SAME
TAX ACCOUNT # 0312074275
DEED REFERENCE: 969/137
STORM WATER MANAGEMENT:
N/A NO DEVELOPMENT OR GRADING PROPOSED
FOREST CONSERVATION:
N/A NO DEVELOPMENT OR GRADING PROPOSED
TAX MAP 60 PARCEL 793
PRIOR PERMITS: UNKNOWN
PRIOR ZONING CASES: NONE
DRC ACTIONS: UNKNOWN
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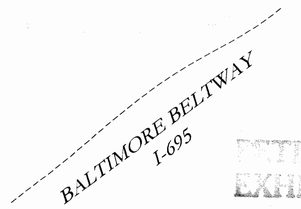
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ALL KNOWN STRUCTURES AND USES ARE SHOWN WITHIN 200 FEET OF THE SITE



PETITIONER'S EXHIBIT 28

PLAT TO ACCOMPANY ZONING PETITION

HELMORE FARM

901 GREENSPRING VALLEY ROAD

BALTIMORE COUNTY, MD
ELECTION DISTRICT NO.3
COUNCILMANIC DISTRICT NO.3

SCALE 1" = 200'
FEBRUARY 3, 1998
REV. APRIL 3, 1998

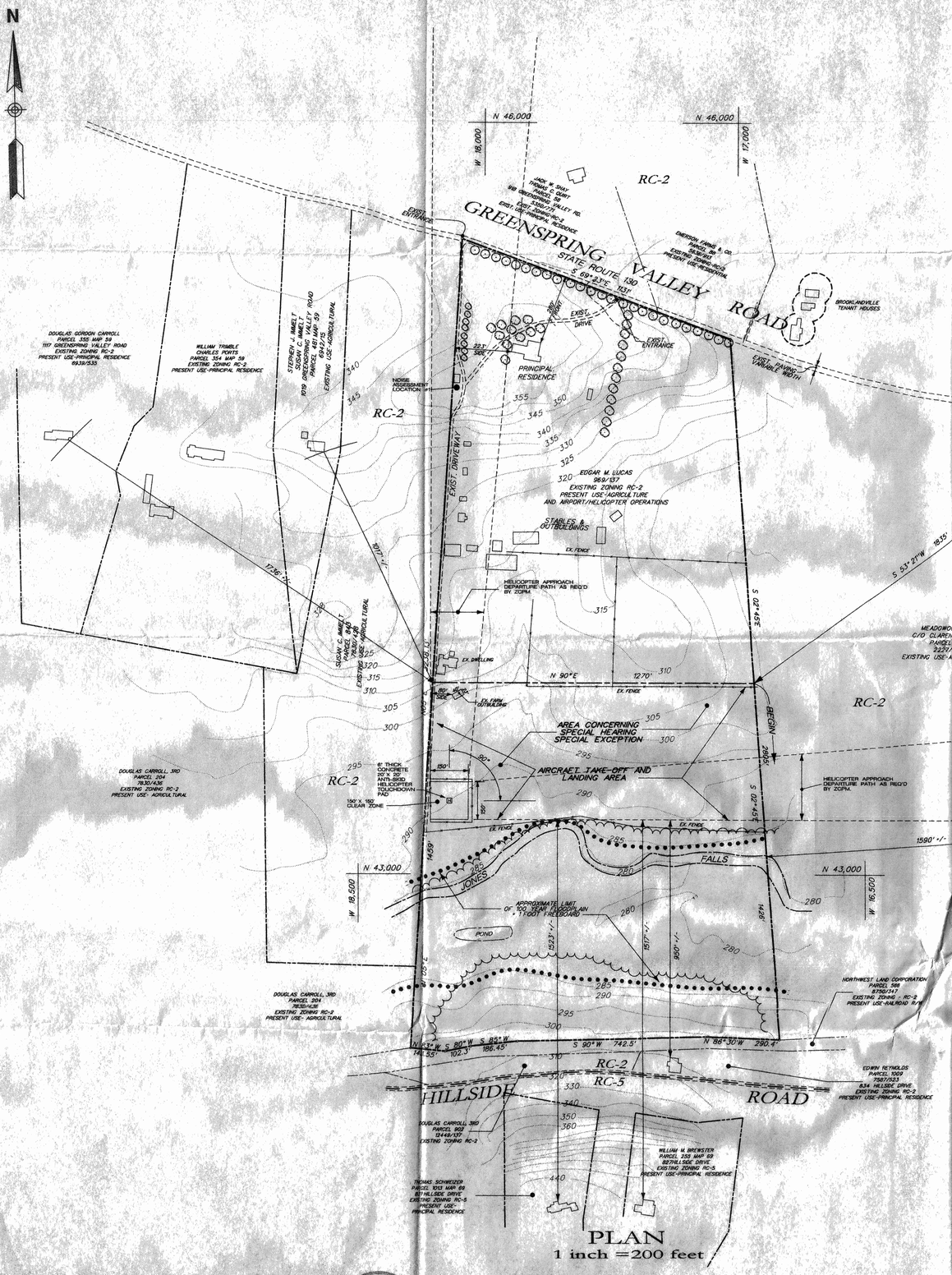
MWI 97083

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: 410 377-7596
FAX: 410 377-7657

A SPECIAL HEARING IS REQUESTED TO CONFIRM THE LEGAL NON-CONFORMING USE FOR AN AIRPORT AND /OR HELICOPTER OPERATION.
A SPECIAL EXCEPTION IS REQUESTED FOR AN AIRPORT USE PURSUANT TO SECTION 1A01.2C.1 BCZR

LEGAL OWNER / PETITIONER

EDGAR M. LUCAS
901 GREENSPRING VALLEY ROAD
P.O. BOX 1248
BROOKLANDVILLE, MARYLAND 21022
410-821-5125

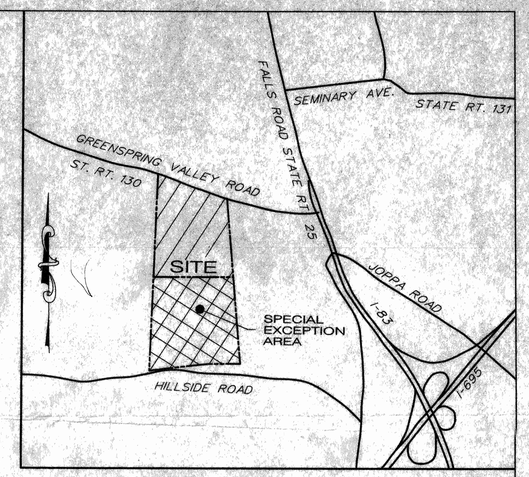


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7) THE AIRPORT SHALL MEET THE SUBSTANTIVE REQUIREMENTS OF THE ZONING COMMISSIONER'S POLICY MANUAL, (ZCPM) SECTION 420.1 PAGE 4-85 IN REGARD TO HELIPAD CONSTRUCTION AND SAFETY STANDARDS APPROVED MAY 13, 1992.



LOCATION MAP
SCALE 1" = 1,000'

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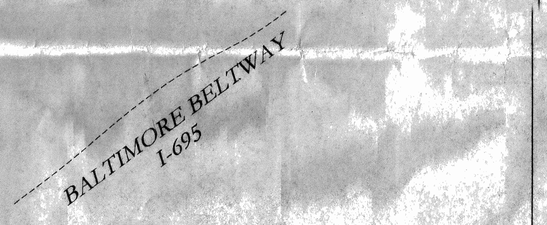
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PLAT TO ACCOMPANY ZONING PETITION
HELMORE FARM
901 GREENSPRING VALLEY ROAD

BALTIMORE COUNTY, MD
ELECTION DISTRICT NO.3
COUNCILMANIC DISTRICT NO.3

SCALE 1" = 200'
FEBRUARY 3, 1998
REV. APRIL 3, 1998
REV. APRIL 25, 1999

MWI 97083

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: 410 377-7596
FAX: 410 377-7657

STATE OF MARYLAND — 4/25/99

LEGAL OWNER / PETITIONER
THE ESTATE OF EDGAR M. LUCAS
901 GREENSPRING VALLEY ROAD
P.O. BOX 1248
BROOKLANDVILLE, MARYLAND 21022
410-821-5125

Par #1 1D

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

October 1, 1998

G. Scott Barhight, Esquire
David Gildea, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, 21204

RE: MOTION FOR RECONSIDERATION
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
S/S of Greenspring Valley Rd, N/S Hillside Road, W of Falls Road
(901 Greenspring Valley Road)
3rd Election District - 3rd Councilmanic District
Edgar Lucas- Petitioner
Case No. 98-294-SPHX

Dear Messrs. Barhight, Gildea and Nelson:

Inasmuch as appeals have been filed by all parties in the above-captioned case, I am divested of jurisdiction over this matter. Therefore, the Motions for Reconsideration and subsequent Oppositions thereto filed by you on behalf of your respective clients are hereby dismissed.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: People's Counsel; Case Files

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

September 14, 1998

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, MD 21204-4515

Dear Mr. Barhight:

RE: Petitions for Special Hearing and Special Exception, Case No.: 98-294-SPHX, 901 Greenspring Valley Road, District: 3c3, Edgar Lucas - Petitioner

Please be advised that an appeal of the above referenced case was filed in this office on September 4, 1998 by G. Macy Nelson, Esquire on behalf of The Valleys Planning Council, Inc., c/o Jack Dillon, Deirdre Smith and Douglas Carroll, William Brewster, Mr. and Mrs. Stephen Immelt, and Laura J. Robertson and David B. Gorzsas. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Ms. Lynne Ellis
Mr. Jorgen Jensen
People's Counsel

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COUNTY BOARD OF APPEALS
98 SEP 17 PM 2:49

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February 11, 1998	Petitions for Special Hearing and Special Exception filed by G. Scott Barhight, Esquire, on behalf of Edgar Lucas, Legal Owner; SPH /to approve the legal non-conforming use for an airport and/or helicopter operation; and in the alternative the SE /for an airport.
March 9	Entry of Appearance filed by People's Counsel for Baltimore County.
April 6	Hearing (Day #1) held before the Deputy Zoning Commissioner
April 7	Hearing (Day #2) held before the Deputy Zoning Commissioner
April 14	Hearing (Day #3) held before the Deputy Zoning Commissioner
April 16	Hearing (Day #4 – concluded) held before the Deputy Zoning Commissioner.
August 5	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing is DENIED and Petition for Special Exception is GRANTED with restrictions.
August 6	Amended Order issued by the Deputy Zoning Commissioner; amended as to adding a restriction.
September 4	Notice of Appeal filed by G. Macy Nelson, Esquire, on behalf of The Valleys Planning Council c/o Jack Dillon, Deidre Smith, Douglas Carroll, William Brewster, Mr. and Mrs. Stephen Immelt, and Laura J. Robertson and David B. Gorzsas.
September 8	Notice of Appeal filed by G. Scott Barhight, Esquire, on behalf of Helmore Farm and Edgar Lucas.
April 26, 1999	Entry of Appearance and Hearing Memorandum filed by People's Counsel for Baltimore County.
April 27	Hearing (Day #1) held before the Board of Appeals.
May 4	Hearing (Day #2) held before the Board of Appeals.
May 7	Rule 8 materials for The North County Coalition, Inc. and the Maryland Line Association, Inc. filed by People's County to supplement testimony of Dr. Richard McQuaid, President of both organizations.
May 18, 1999	Hearing (Day #3) held before the Board of Appeals.
June 2	On-site visit to Helmore Farm for the Board's viewing of the helicopter landing /takeoff, and fixed wing aircraft activities.
June 23	Hearing (Day #4) held before the Board of Appeals.
July 1	Hearing (Day #5) held and concluded by the Board of Appeals

September 2, 1999		Memorandum of People's Counsel for Baltimore County filed.
September 3		Memorandum of Law in Lieu of Closing Argument filed by David Gildea, Esquire, on behalf of Petition.
September 3		Protestant's Memorandum In Opposition to Petition for Special Exception filed by G. Macy Nelson, Esquire
October 5		Public Deliberation conducted by the Board of Appeals. (Board determined that use is an airstrip and not an airport and therefore not permitted).
February 25, 2000		Opinion and Order issued by the Board of Appeals; Petition for Special Hearing is DENIED; and, Petition for Special Exception is DENIED.
March 15	✓E	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David Gildea, Esquire, on behalf of Edgar Lucas.
March 20		Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
March 20		Certificate of Notice sent to interested parties.
March 24		Supplemental Petition for Judicial Review filed in the Circuit Court for Baltimore County by David Gildea, Esquire, on behalf of Dale Lucas.
March 29		Amended Certificate of Notice (Pursuant to Supplemental Petition for Judicial Review filed by Counsel for Petitioner on 3/24/00) sent to interested parties.
May 17, 2000	✓	Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.
March 16, 2001	✓E	Memorandum Opinion issued by the Circuit Court (Judge Hennegan); decision of the CBA is AFFIRMED; Petitions for SPH and SE are DENIED.
March 28	✓E	Notice of Appeal filed in the Court of Special Appeals by G. Scott Barhight, Esquire, and Jennifer R. Busse, Esquire.

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7/11/01

EDGAR LUCAS, ET AL	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
COUNTY BOARD OR APPEALS	*	CASE NO. C00-2648

01 JUL 11 PM 2:08
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

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EXHIBITS FROM BOX 210

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

07/09/01

Case Number: 03-C-00-002648 AE
Date Filed: 03/17/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Edgar Lucas

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-294-SPHX
Case Folder ID	C00002648V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Lucas, Edgar		BT DO 03/29/01	03/17/00
		Mail: 901 Greenspring Valley Rd Brooklandville, MD 21022	03/31/00		
Attorney	0016859	Gildea, David K Gildea L L C 301 North Charles St Ste 800 Baltimore, MD 21201 (410)234-0070			03/17/00
	0016862	Barhight, G Scott Whiteford, Taylor & Preston L.L.P. 210 West Pennsylvania Ave 400 Court Towers Towson, MD 21204-4515			03/28/00

(410)832-2000

0803639 Busse, Jennifer R 08/02/00
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Ave
Towson, MD 21204-4515
(410)832-2000

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	Baltimore County Board Of Appeals The		BT DO 03/29/01	03/17/00
Mail:		Room 49 Old Courthouse	03/17/00		
		400 Washington Avenue			
		Towson, MD 21204			
Attorney:		0005744 Demilio, Carole S		03/31/00	
		206 Washington Avenue			
		Towson, MD 21204			
		(410)825-6963			
		0029075 Zimmerman, Peter M		03/31/00	
		People's Counsel For Baltimore County			
		Room 47 Courthouse			
		400 Washington Ave			
		Towson, MD 21204			
		(410)887-2188			
ITP	002	Smith, Deidre		BT DO 03/29/01	04/04/00
Attorney:		0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			
		Towson, MD 21204			
		(410)296-8166			
ITP	003	Carroll, Douglas		BT DO 03/29/01	04/04/00
Attorney:		0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			
		Towson, MD 21204			
		(410)296-8166			
ITP	004	Brewster, William		BT DO 03/29/01	04/04/00
Attorney:		0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			
		Towson, MD 21204			
		(410)296-8166			
ITP	005	Immelt, Susan C		BT DO 03/29/01	04/04/00
Attorney:		0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			

Towson, MD 21204
(410)296-8166

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	006	Immelt, Stephen J		BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			
		Towson, MD 21204			
		(410)296-8166			
ITP	007	The Valleys Planning Council, Inc.		BT DO 03/29/01	04/04/00
		Attorney: 0023418 Nelson, G Macy		04/04/00	
		401 Washington Avenue			
		Suite 803			
		Towson, MD 21204			
		(410)296-8166			
ITP	008	Peoples Counsel For Baltimore County		BT DO 03/29/01	07/11/00
		Attorney: 0029075 Zimmerman, Peter M		07/12/00	
		People's Counsel For Baltimore County			
		Room 47 Courthouse			
		400 Washington Ave			
		Towson, MD 21204			
		(410)887-2188			

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of	Rslt	By	ResultDt	Jdg T	Notice	Rec	User ID
09/28/00	09:30A	01H	yes	CIVI	S		JOH	01 /01	CON	C	09/28/00	JOH	P	Y	KLS

Stenographer(s): Patricia M. Campbell

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	03/17/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	03/16/00	03/17/00	PET001	TBA		03/29/01	TT LG

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001001	*Answer	03/27/00	03/28/00	PET001	TBA		03/29/01	MF LG
0001002	Response to Petition for Judicial Review Filed by ITP001-Baltimore County Board Of Appeals The. . ITP007-The Valleys Planning Council. Inc.. . ITP006-Immelt. Stephen J. ITP005-Immelt. Susan C. ITP004-Brewster. William. ITP003-Carroll. Douglas	03/31/00	04/04/00	ITP001	TBA		03/29/01	AR LG
0001003	Answer Filed by ITP007-The Valleys Planning Council. Inc.. . ITP006-Immelt. Stephen J. ITP005-Immelt. Susan C. ITP004-Brewster. William. ITP003-Carroll. Douglas. ITP002-Smith. Deidre	04/17/00	04/19/00	ITP007	TBA		03/29/01	MF LG
0002000	Supplemental Petition for Judicial Review	03/24/00	03/28/00	PET001	TBA		03/29/01	DR LG
0003000	Amended Certificate of Notice	03/29/00	03/31/00	ITP001	TBA		03/29/01	DR LG
0004000	*Transcript of Record from Adm Agency	05/17/00	05/19/00	ITP001	TBA		03/29/01	DR LG
0005000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP001	TBA		05/19/00	DR DR
0006000	Notice of Transcript of Record Sent	05/19/00	05/19/00	ITP002	TBA		05/19/00	DR DR
0007000	Notice of Transcript of Record Sent	05/19/00	05/19/00	PET001	TBA		05/19/00	DR DR
0008000	*Memorandum of Law	06/16/00	06/20/00	PET001	TBA		06/20/00	DR DR
0008001	Protestants' Response to Petitioner's Memorandum of Law with exhibits Filed by ITP002-Smith. Deidre. ITP003-Carroll. Douglas. ITP004-Brewster. William. ITP005-Immelt. Susan C. ITP006-Immelt. Stephen J. ITP007-The Valleys Planning Council. Inc..	07/05/00	07/06/00	ITP002	TBA		03/29/01	AR LG
0009000	Scheduling Order	06/23/00	06/23/00	000	TBA		06/23/00	KLS KLS
0010000	Scheduling Order	06/27/00	06/27/00	000	TBA		06/27/00	CF CF
0011000	Memorandum	07/11/00	07/12/00	ITP008	TBA		07/12/00	PH PH
0012000	Petitioner's Reply Memorandum of Law	07/24/00	07/26/00	PET001	TBA		07/26/00	AR AR
0013000	Repply Memorandum	07/31/00	08/01/00	PET001	TBA		08/01/00	PH PH
0014000	Open Court Proceeding September 28. 2000. Hon. John O. Hennegan. Hearing had in re: Opinion to be filed.	09/28/00	09/28/00	000	JOH		03/29/01	NLR LG
0015000	Memorandum Opinion and Order affirming decision	03/20/01	03/20/01	000	JOH	Granted	03/20/01	LG LG

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0016000	Docket entries sent to Worker's Compensation Commission	03/23/01	03/23/01	000	TBA		03/29/01	CAM LG
0017000	*Notice of Appeal to COSA (11/182)	03/28/01	03/28/01	PET001	TBA		03/29/01	PH LG
0018000	Pre Trial Hearing Letter Issued	03/28/01	03/28/01	000	TBA		03/28/01	AJ AJ
0019000	*Notice of Appeal to COSA 11/185 ENTERED IN ERROR	04/05/01	04/05/01	PET001	TBA			AR AR
0020000	Pre Trial Hearing Letter Issued	04/05/01	04/05/01	000	TBA		04/05/01	FG FG
0021000	Order to proceed w/out prehearing conf. * (James R. Eyler, Judge).	05/03/01	05/04/01	000	TBA			DFF DFF
0022000	Original Record sent to COSA of Maryland by certified mail #7099-3220-0003-8139-7986. 1 volume, 1 transcript, and 1 box of exhibits.	07/09/01	07/09/01	000	TBA			FG FG

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	03/16/01	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	03/27/00	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	03/27/00	0	yes	yes	1ANS	T	001	001
EXPU	Exhibit Pickup Notic	CLOSED	05/28/01	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 Baltimore County Board Of App								
000		B	BOX 210/CBA APPEAL		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 06/23/00 Order Date : 06/23/00
Start Date : 06/23/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		07/08/00	03/29/01	CLOSED
All Motions (excluding Motions in Limine		08/12/00	03/29/01	CLOSED
TRIAL DATE is	09/28/00	09/21/00	09/28/00	REACHED

3/28/01

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
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ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

March 28, 2001

Via Hand Delivery

Clerk of the Circuit Court
Attn: Civil Department
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, MD 21285-6754

Re: In The Matter of Edgar Lucas
Case #: 03-C-00-002648

Dear Sir/Madam:

Enclosed please find an original and one copy of the Appellants' Notice of Appeal for filing in the above-referenced matter. Please date stamp the copy and return the copy to the courier.

Should you have any questions or need any additional information, please contact me. Thank you for your cooperation in this matter.

Sincerely yours,

Jennifer R. Busse

JRB:sll
Enclosures
cc: Mr. Dale Lucas
G. Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Board of Appeals

203109

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

September 14, 1998

G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, MD 21204

Dear Mr. Nelson:

RE: Petitions for Special Hearing and Special Exception, Case No.: 98-294-SPHX, 901 Greenspring Valley Road, District: 3c3, Edgar Lucas - Petitioner

Please be advised that an appeal of the above referenced case (special exception only) was filed in this office on September 8, 1998 by G. Scott Barhight, Esquire on behalf of Helmore Farm and Edgar Lucas. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Ms. Lynne Ellis
Mr. Jorgen Jensen
People's Counsel

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98 SEP 17 PM 2:50
COUNTY BOARD OF APPEALS

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8/14/98

G. MACY NELSON
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TOWSON, MARYLAND 21204

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(410) 296-8166

FACSIMILE
(410) 825-0670

AUG 17
ZONING COMMISSIONER

August 13, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I have enclosed for your review the Protestants' Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration.

Very truly yours,

G. Macy Nelson

GMN/tll

Enclosure

cc: G. Scott Barhight, Esquire

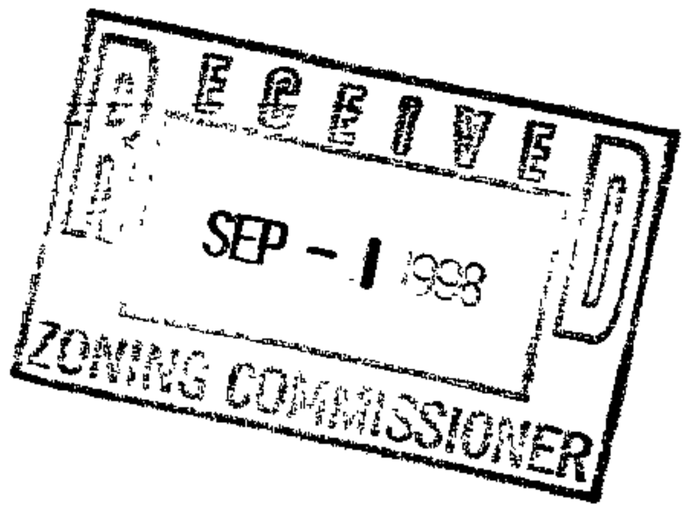
G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

August 31, 1998



The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I have enclosed for your review the Protestants' Opposition to Petitioner's Motion for Reconsideration.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosure

cc G. Scott Barhight, Esquire

IN RE: Petition For Special Hearing and For Special Exception	:	Before the Hearing Officer/Deputy Zoning Commissioner of Baltimore County
Edgar Lucas, Petitioner	:	Case #98-294-SPHX

PROTESTANTS' OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION

Protestants, Deirdre Smith, Douglas Carroll, M.D., William Brewster, Susan C. Immelt, Steven J. Immelt, Laura J. Robertson, David B. Gorzsas, and The Valleys Planning Council, Inc., by their attorney, G. Macy Nelson, oppose Petitioner's Motion For Reconsideration. The Deputy Zoning Commissioner's decision was premised on his conclusion that the helicopter would have limited effect on the Protestants if the helicopter followed certain flight restrictions. If Petitioners refuse to accept those restrictions, the entire premise of the decision is eliminated. Therefore, if the Deputy Zoning Commissioner concludes that the restrictions are invalid, he should reconsider his decision to grant the Special Exception and deny the Petition For Special Exception.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 31st day of August 1998, a

copy of the foregoing was mailed to: **G. SCOTT BARHIGHT, ESQUIRE, Whiteford, Taylor & Preston, L.L.P.**, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515.

G. Macy Nelson

In re:

PETITIONS FOR SPECIAL HEARING
AND SPECIAL EXCEPTION

Edgar Lucas
Petitioner

* BEFORE THE

DEPUTY ZONING

COMMISSIONER

OF BALTIMORE COUNTY

Case No.: 98-294-SPHX

* * * * * * * * * * *

26
ING COMMISSIONER

RESPONSE TO PROTESTANTS' MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., responds to Protestants' Motion for Reconsideration. The Protestants request that the Deputy Zoning Commissioner reconsider three points; namely,

(1) whether the Deputy Zoning Commissioner should apply BCZR Section 101;

(2) whether the Deputy Zoning Commissioner should require the Petitioner to purchase an appropriate fixed wing aircraft to be based at Helmore Farm before any helicopter be allowed to land or take off there;

(3) whether the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

All of Protestants' requests for reconsideration should be denied.

1. THE DEPUTY ZONING COMMISSIONER GRANTED SPECIAL EXCEPTION APPROVAL FOR AN AIRPORT, NOT FOR A HELISTOP.

Protestants assert that the Deputy Zoning Commissioner granted approval for a helistop at Helmore Farm. The clear language of the Deputy Zoning Commissioner's Order is that a Special Exception for an airport was granted. The Deputy Zoning Commissioner correctly found that a Special Exception for an airport should be granted for the site pursuant to BCZR Section 502.1 and BCZR Section 1A01.2C.1, which permits airports as a Special Exception use in the RC-2 zone. BCZR Section 1A01.2C.1 does not have any conditions attached to it regarding the operation of the airport use.

Protestants are attempting to reassert their argument that the proposed use for the property is a helistop as opposed to an airport. Clearly, the Deputy Zoning Commissioner correctly held that the proposed use, which was granted, was for a Special Exception for an airport. The Deputy Zoning Commissioner did not grant approval specifically for a helistop and the helistop conditions need not be met. Protestants are simply attempting to reargue a point which the Deputy Zoning Commissioner ruled contrary to their position in the original Order. Therefore, the Protestants' Motion for Reconsideration on point (1) should be denied.

2. THE LUCAS FAMILY ALWAYS HAS INTENDED TO USE THEIR PROPERTY FOR AN AIRPORT AND WILL CONTINUE TO USE THEIR PROPERTY AS AN AIRPORT.

The Protestants suggest that the Lucas family has never used their property for an airport and if they do not purchase a fixed wing aircraft to be based at Helmore

Farm, the Lucas family will never use the property for an airport. The Protestants assertion is contrary to the clear evidence and the findings of the Deputy Zoning Commissioner. The Deputy Zoning Commissioner found that:

> "Mr. Lucas testified that as far back as 1955 and 1956, capital improvements were made to Helmore Farm in order to facilitate the landing and take off of aircraft from the subject site. These improvements involved the installation of underground piping to eliminate a swale that ran through the property, which interfered with the smooth take off and landing of airplanes. Mr. Lucas testified that he personally landed airplanes on the property from 1972 to 1978 when he was a student at the University of Maryland at College Park. Furthermore, Mr. Lucas indicated that in addition to himself, several other individuals have landed fixed wing aircraft on the property over the years." *Opinion at Page 3*.

The Deputy Zoning Commissioner further found that Mr. Lucas testified:

> "That it is common for horse breeders, trainers, and owners to visit racetracks in New York, New Jersey, Kentucky and other states to observe horses to compete in races. The most efficient means of travel to those racetracks in these mid-Atlantic states is by way of aircraft, be it fixed wing airplane or helicopter. Furthermore, Mr. Lucas indicated that the thoroughbred racing industry and the syndication of horses now involves out-of-state investors who, from time to time, come to Helmore Farm, by way of airplane and/or helicopter. ... Mr. Lucas envisions, given the complexity of investing thoroughbred horses and the syndication of same, that investors coming to Helmore Farm by way of aircraft will increase over the years. Mr. Lucas believes that the number of investors in the Baltimore area is limited and, therefore, must expand the marketing of Helmore Farm into other financial markets, such as New York City. He therefore believes that the airport operation at Helmore Farm to be an integral part of the horse breeding operation." *Opinion at Pages 4-5.*

The Deputy Zoning Commissioner further found that:

"In the instant case, there does exist a viable airstrip on Helmore Farm. Not only did I personally observe a fixed wing airplane land and take off from the property, testimony established that Mr. Lucas, himself, is a pilot and has landed airplanes on the property many times. Furthermore, others have landed airplanes on this airstrip on this property." *Opinion at Page 11*.

Finally, the Deputy Zoning Commissioner found that:

"The testimony and evidence clearly show that the property has been used for over forty years, although very sporadically, for the landing and taking off of aircraft. No one ever complained over the fact that an airport has existed on this property for the past forty years." *Opinion at Page 14.*

The Deputy Zoning Commissioner correctly found that an airport has existed on the property for the past forty years and that there had been capital improvements made to accommodate such an airport. Further, the Deputy Zoning Commissioner found that the continued agricultural use of Helmore Farm is dependent upon the clients' ability to fly in and out by aircraft, whether it be fixed wing aircraft or helicopter use.

The granting of a Special Exception for an airport at Helmore Farm should not be conditioned upon the purchase of a fixed wing aircraft. Clearly, the Lucas family needs the airport for its operation of its business, as is evidenced by the capital improvements invested in the property over forty years ago to permit the use of an airport at the property. The Lucas family has always used their property as an airport and intend to continue the use of their property as an airport, whether they purchase a

fixed wing aircraft for themselves or not. The findings in the Deputy Zoning Commissioner's Opinion rightly find that the use of the airport is paramount for the continued viability of the agricultural use at Helmore Farm. Therefore, the Petitioners respectfully request that the Deputy Zoning Commissioner deny Protestants' Motion for Reconsideration on point 2.

3. THE DEPUTY ZONING COMMISSIONER'S CONDITION AND RESTRICTION NUMBER 11 IS CORRECT AND SHOULD NOT BE DISTURBED.

The Protestants assert that the Deputy Zoning Commissioner erred in not permitting Avery Harden, the County landscape architect, to determine what type of tree would create the most effective buffer. Respectfully, the Deputy Zoning Commissioner has the expertise to determine the type of tree which would provide an adequate buffer. The Deputy Zoning Commissioner in condition number 11 states, "Along these lines, Petitioners shall submit for review and approval by Mr. Avery Harden, the landscape architect for Baltimore County, a landscape plan depicting this double row of pine trees along the western property line of the subject property in the area described above."

Petitioners assert that the Deputy Zoning Commissioner correctly ruled in providing for a certain type of buffer. However, if Protestants' argument is taken to its logical conclusion, since there was no evidence in the record regarding the type of buffer, the Deputy Zoning Commissioner does not have the ability to rule on an issue before him. Regardless, the Petitioners assert that the Deputy Zoning Commissioner's condition

number 11 should be disturbed and that the Protestants' Motion for Reconsideration on point 3 should be denied.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 1998, a copy of the foregoing Response to Protestants' Motion for Reconsideration was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

David K. Gildea

145132

In re:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	DEPUTY ZONING
	*	COMMISSIONER
Edgar Lucas Petitioner	*	OF BALTIMORE COUNTY
	*	Case No.: 98-294-SPHX

* * * * * * * * * * *

RECEIVED
AUG 26
ZONING COMMISSIONER

PETITIONER'S MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., files this Motion for Reconsideration of the Order dated August 5, 1998 and the Amended Order dated August 6, 1998 and requests that the Deputy Zoning Commissioner reconsider restrictions number 3, 4, 5, and 13.

WHEREFORE, Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider his Order of August 5, 1998 and Amended Order of August 6, 1998.

Respectfully submitted,

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

In re:	*	BEFORE THE
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	DEPUTY ZONING
	*	COMMISSIONER
Edgar Lucas Petitioner	*	OF BALTIMORE COUNTY
	*	Case No.: 98-294-SPHX

* * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

Edgar M. Lucas, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., files this Motion for Reconsideration of the Order dated August 5, 1998 and the Amended Order dated August 6, 1998 and requests that the Deputy Zoning Commissioner reconsider restrictions number 3, 4, 5, and 13.

I. THE RESTRICTIONS PLACED BY THE DEPUTY ZONING COMMISSIONER ON AIRCRAFT FLIGHT OPERATIONS AT THE AIRPORT ARE CLEARLY PRE-EMPTED BY FEDERAL STATUTE.

Restrictions numbers 3, 4, 5 and 13 limit the flight operations of aircraft at the approved Helmore Farm airport. The Court of Appeals of Maryland in *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528 (1990) directly addressed the issue of conditions placed by Zoning Appeals Board limiting the frequency of take-off and landing of aircraft. The Court of Appeals ruled that conditions limiting the frequency of take-offs and landings of aircraft were pre-empted by Federal law.

The *Harrison* court stated:

> "When the Carroll County Board of Zoning Appeals granted a conditional use for a privately owned airport in 1982, it attached to the granting several conditions. One of them limited the frequency of take-offs of glider towing aircraft; another established a curfew for the operation of those aircraft. Both conditions were designed to reduce effective aircraft engine noise on residential properties near the airport. ***Both are invalid***. They trespass upon a field that has been impliedly

preempted by Federal Law." *City of Burbank v. Lockhead Air Terminal, Inc.*, 411 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973).

After discussing the facts and extensively discussing the preemption issue, the *Harrison* court concluded that:

> "Both the Board's condition 3 -- the curfew -- falls directly in the preemption rules of *City of Burbank* as well as that of other cases we have cited. It is plainly an attempt to limit aircraft noise by regulating the operation of aircraft in applicable airspace over which the FAA has control. Condition 2 is a less direct effort to control noise by controlling aircraft operations, but it is one, nevertheless... We hold that both conditions are preempted under *City of Burbank* and, therefore, ***unconstitutional.***"

The *Harrison* court addressed and ruled on the very issue raised in conditions 3, 4, 5 and 13. The court clearly held that zoning authorities may not attempt to regulate the operation of aircraft in navigable space over which the FAA has control. More plainly, zoning authorities do not have the authority to regulate aircraft flight operations, whether it be fixed wing or rotary, at airports. The Court of Appeals of Maryland has spoken directly on this issue and has found that limitations of flight operations by a zoning authority would be unconstitutional. The court also makes clear that the regulation of operation of aircraft in navigable space is an FAA issue and zoning authorities are preempted from attempting to regulate flight operations. The *Harrison* court recognized that it is not within the purview of a land use decision maker to regulate the use of navigable airspace. The conditions regarding flight paths are a clear attempt to regulate airspace, an area which the FAA exclusively regulates, and are clearly improper restrictions. The operations of the aircraft need the flexibility of several alternate flight paths to ensure the safety of the aircraft and its passengers. It is also customary for helicopters to have unlimited flight paths as long as they are at altitudes in excess of 500 feet. The Petitioner is willing to direct all helicopter flight

paths eastward from the site in order to avoid the more sensitive areas of Greenspring Valley. But in order to provide a safe flight path to the east, the pilot needs the flexibility to vary his path. Perhaps an appropriate restriction would be to require the Petitioner to (1) have an easterly flight path for helicopter operations, (2) obtain a height of 500 feet before reaching the residential communities east of the commercial developments at Greenspring Station, and (3) to avoid flying over the dense residential communities to the east as much as possible. The basic interest is to follow the road system as a flight path guide, but some flexibility will need to be incorporated into actual flight operations.

Petitioner initially voluntarily restricted the airport to eight events a day for both fixed wing and rotary aircraft operations. Petitioner would agree to sixty (60) helicopter events a month and sixty (60) fixed wing operations a month. The present restrictions do not provide enough flexibility to adequately use the airport to promote the thoroughbred horse operation. There may be circumstances where a number of potential purchasers may fly in the same day to view a horse. There may be a concern that a monthly measurement would be too difficult to monitor. However, all proposed helicopter operations will be recorded via FAA flight logs. The Director of Permits and Development Management can request a particular log for a particular month and count the flights to ensure compliance. It is suggested that your Order be modified to permit the monthly operation described above and provide a mechanism for the Director of Permits and Development Management to obtain the logs from time to time, in his discretion, to confirm compliance.

Petitioner is concerned that the current restrictions on the flight paths does not give the operator of aircraft the flexibility to operate according to the FAA guidelines. Petitioner understands the neighbors concerns and will make every effort to avoid flying over their

property; however, the operators of the aircraft must abide by the FAA guidelines. Instead of placing Petitioner in that position of choosing between two contrary laws, Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider his conditions that limit the flight paths.

Therefore, the Petitioner respectfully requests that the Deputy Zoning Commissioner reconsider its decision in light of *Harrison v. Schwartz*, 319 Md. 364, 572 A.2d 528 (1990) as there is direct controlling authority from the Court of Appeals on the placement of restrictions on flight operations as was done in restrictions numbers 3, 4, 5 and 13.

WHEREFORE, for the aforegoing reasons, the Deputy Zoning Commissioner should reconsider restrictions numbers 3, 4, 5 and 13 in his Order of August 5, 1998 and Amended Order of August 6, 1998.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 1998, a copy of the Petitioner's Motion for Reconsideration and Memorandum in Support Thereof was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803, 401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

David K. Gildea

145359

8/5/98

AUG 17
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In re:	*	**BEFORE THE**
PETITIONS FOR SPECIAL HEARING	*	**DEPUTY ZONING**
AND SPECIAL EXCEPTION	*	**COMMISSIONER**
Edgar Lucas	*	**OF BALTIMORE COUNTY**
Petitioner	*	**Case No.: 98-294-SPHX**

* * * * * * *

MOTION FOR RECONSIDERATION

Protestants, ~~by their~~ attorney, G. Macy Nelson, file this Motion for Reconsideration of the Order dated August 5, 1998 with supporting memorandum and request that the Deputy Zoning Commissioner reconsider three points:

(1) the Deputy Zoning Commissioner should apply B.C.Z.R. § 101;

(2) the Deputy Zoning Commissioner should require Petitioner to purchase an appropriate fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there; and

(3) the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

Wherefore, Protestants respectfully request that the Deputy Zoning Commissioner reconsider his Order of August 5, 1998.

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

In re:	*	**BEFORE THE**
PETITIONS FOR SPECIAL HEARING	*	**DEPUTY ZONING**
AND SPECIAL EXCEPTION	*	**COMMISSIONER**
Edgar Lucas	*	**OF BALTIMORE COUNTY**
Petitioner	*	**Case No.: 98-294-SPHX**

* * * * * * *

MEMORANDUM IN SUPPORT MOTION FOR RECONSIDERATION

Protestants, by their attorney, G. Macy Nelson, submit this Memorandum in Support of their Motion for Reconsideration of the Order dated August 5, 1998. Protestants seek reconsideration of three points: (1) the Deputy Zoning Commissioner should apply B.C.Z.R. § 101; (2) the Deputy Zoning Commissioner should require Petitioner to purchase an appropriate fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there; and (3) the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

(1) The Deputy Zoning Commissioner should apply B.C.Z.R. § 101.

The Order permits "no more than two helicopter events" per day in certain circumstances. The edge of the enclosed area where the helicopter will land and take off is approximately ten to twenty feet from the nearest property line. (Testimony of Kevin Miller). In their Memorandum in Opposition to Petition for Special Hearing and Petition for Special Exception, filed April 30, 1998, Petitioners argued that the proposed use would violate B.C.Z.R. § 101. The Order is silent, however, with respect to that section.

Protestants request that the Deputy Zoning Commissioner reconsider his Order because the proposed use of the helicopter violates B.C.Z.R. § 101 in two major ways. That section prohibits the use of a helicopter at a location less than five hundred feet from any property line unless the use is authorized by the Director of Public Safety and unless there are no more than 50

helicopter operations per month. In this case, the proposed "airport and/or helicopter operation" is approximately ten to twenty feet from the nearest property line. (Testimony of Kevin Miller). First, the Petitioner presented no evidence that the Director of Public Safety has authorized any helicopter events at Helmore Farms. Second, the Deputy Zoning Commissioner has permitted two helicopter operations per day which exceeds the B.C.Z.R. § 101 limit of fifty per month. Thus, the proposed helistop is illegal because it has not been authorized by the Director of Public Safety and the number of flights per month exceeds fifty.

Protestants respectfully request that the Deputy Zoning Commissioner reconsider the applicability of B.C.Z.R. § 101

(2) The Deputy Zoning Commissioner should require Petitioner to purchase a fixed-wing aircraft to be based at Helmore Farms before any helicopter be allowed to land or take off there.

The Deputy Zoning Commissioner ruled that an airport is for the "landing or taking off of aircraft" and that an "aircraft" includes a helicopter. The Deputy Zoning Commissioner also recognized that the relevant zoning regulation prohibit a helistop if there is no airport for fixed-wing aircraft. In reaching his decision, the Deputy Zoning Commissioner relied on Dale Lucas' testimony that he intended to purchase a fixed-wing aircraft, such as a Maule, which would be based at Helmore Farms. (Opinion at 4). Therefore, the Deputy Zoning Commissioner should impose a condition that the Petitioner purchase such an airplane **before** the Petitioner has the right to allow any helicopter to land at or take off from Helmore Farms.

Protestants suggest that the Petitioner will not purchase any airplane now that the Deputy Zoning Commissioner has issued this opinion. If the Petitioner fails to purchase an airplane to be based at Helmore Farms, the premise for the ruling is absent: there will be no airport for a fixed-

wing aircraft. If there is no airport for a fixed-wing aircraft, this case will be like the *Robert J. Smith* case, and the use of the helicopter will be illegal.

Protestants respectfully request that the Deputy Zoning Commissioner reconsider his decision and add a condition that no helicopter may land or take off at the proposed airstrip until the Petitioner purchases an appropriate fixed-wing aircraft which will be based at Helmore Farms.

(3) The Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer.

The Deputy Zoning Commissioner has ordered Petitioner to "install a double row of white pine trees" in certain locations. Protestants' counsel has no memory of any evidence with respect to the type of trees that should be planted as a buffer. Protestants respectfully suggest that the Deputy Zoning Commissioner should defer to the professional judgment of the County landscape architect, Avery Harden, and allow him to determine what type of tree would create the most effective buffer. Protestants request that the Deputy Zoning Commissioner reconsider his ruling that the trees must be white pines.

Respectfully submitted,

G. Macy Nelson
Suite 803
401 Washington Avenue
Towson, Maryland 21204
(410) 296-8166

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of August, 1998, a copy of Protestants' Motion for Reconsideration and supporting Memorandum was mailed by first-class mail, postage pre-paid, to G. Scott Barhight, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515.

G. Macy Nelson

8/6/98

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District

Edgar Lucas
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-294-SPHX
*

* * * * * * * * * * *

AMENDED ORDER

WHEREAS, this matter came before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire, seeking approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requested a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.).

A public hearing was held on April 6th and 7th, 1998, during which testimony and evidence was presented both in support of and in opposition to the Petitioners' request. By Order issued August 5, 1998, I denied the Petitioners' special hearing request, but granted the special exception for an airport, subject to certain terms and restrictions.

Subsequent to the issuance of said opinion, I felt it necessary to add an additional restriction to limit the flight path of the helicopters using the subject airport.

THEREFORE, IT IS ORDERED by this Deputy Zoning Commissioner for Baltimore County this 6th day of August, 1998 that the Order issued August 5, 1998 in the above-captioned matter, be and the same shall hereby be AMENDED to add the following restriction:

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"13) All helicopters coming and going from the subject property shall be required to fly over I-83 and Falls Road when arriving/departing the airport. No helicopters shall be permitted to fly over Greenspring Station and the adjacent community of Heatherfield at any time. Multiple violations of this provision shall result in a revocation of the special exception granted herein."

All other terms and restrictions of the Order issued August 5, 1998 shall remain in full force and effect.

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: G. Scott Barhight, Esquire and David K. Gildea, Esquire
WT&P, 210 W. Pennsylvania Ave., 4th Flr., Towson, Md. 21204

Messrs. Edgar and Dale Lucas
901 Greenspring Valley Road, Brooklandville, Md. 21022

G. Macy Nelson, Esquire, 401 Washington Ave., Suite 803, Towson, 21204
Ms. Susan Immelt, P.O. Box 714, Brooklandville, Md. 21022
Mr. Stephen Howard, P.O. Box 48, Stevenson, Md. 21153
Ms. Deirdre Smith, P.O. Box 945, Brooklandville, Md. 21022
Ms. Lynne Ellis, 11044 Greenspring Avenue, Lutherville, Md. 21093
Mr. Jorgen Jensen, 8216 Tally Ho Road, Lutherville, Md. 21093
Mr. Douglas Carroll, 1117 Greenspring Valley Rd, Lutherville, 21093
Mr. Jack Dillon, Valleys Planning Council
212 Washington Avenue, Towson, Md. 21285-5402
People's Counsel; Case Files

8/5/98

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District

Edgar Lucas
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-294-SPHX
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire. The Petitioner seeks approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requests a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plans submitted which were accepted and marked into evidence as Petitioner's Exhibit 1, 2A and 2B.

Appearing at the hearing on behalf of the Petitions were Dale Lucas, a representative of Helmore Farms, James Matis, Professional Engineer with Matis Warfield, Inc., the consulting firm which prepared the site plan for this property, Charles Lamb with Delta Airport Consultants, an expert in airport design and engineering, Kevin Miller with Miller Henning Associates, consultants in acoustical engineering, and Counsel for the Petitioners, G. Scott Barhight, Esquire and David K. Gildea, Esquire. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Susan Immelt, Stephen Howard, Deirdre Smith, Lynne Ellis, Harold Burns, Jorgen Jensen, Douglas Carroll,

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and Jack Dillon, Director of the Valleys Planning Council. The Protestants were represented by G. Macy Nelson, Esquire.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel consisting of a gross area of approximately 87 acres, more or less, zoned R.C.2. The property has frontage on Greenspring Valley Road and abuts Hillside Road to the rear, and is located just west of the intersection of Falls Road and Greenspring Valley Road in Brooklandville. The property is a horse breeding farm, known as Helmore Farms, and is improved with a principal residence, several tenant dwellings, stables and outbuildings. Midway towards the rear of the property along its western boundary is a 150' x 150' paddock which is proposed to be improved with a 20' x 20' helicopter touchdown pad. In addition, the Jones Falls waterway runs through the property, just south of the proposed helicopter pad. It is the rear half of this property which is the subject of the special hearing/special exception requests. This area is approximately 1270' x 1426' in dimension.

This portion of the property consists of approximately 45-acres in area and is improved with only a farm outbuilding, 40' x 23' in dimension, in the northwest corner. Mr. Lucas uses this portion of his property as a grazing area for the thoroughbred horses which are boarded on his property. Also in this area, as noted above, is the paddock area used by Mr. Lucas as a helicopter touchdown area. The subject paddock area is enclosed with a wire mesh and wood fence. In addition, an area has been set aside as an airstrip for the take-off and landing of fixed-wing aircraft.

Testimony and evidence was offered by Dale Lucas, who operates Helmore Farms. Mr. Lucas testified that he has lived on Helmore Farms since 1969. Helmore Farms, and particularly, the Lucas family, have been

in the business of raising, training and racing thoroughbred horses since 1958. In fact, the business was started by Edgar Lucas in 1958. Over the years, the operation included a 129-acre farm in Howard County and a 600-acre horse farm in Paris, Kentucky. Testimony indicated that as a result of tax law changes in 1986, the Maryland horse farm became their central operation. Dale Lucas testified that at the time of the hearing, he had 37 thoroughbred horses at Helmore Farms.

As to the request for approval of an existing airport as a legal, nonconforming use, Mr. Lucas testified concerning the airport operation at Helmore Farms. Mr. Lucas testified that as far back as 1955 and 1956, capital improvements were made to Helmore Farms in order facilitate the landing and take-off of aircraft from the subject site. These improvements involved the installation of underground piping to eliminate a swale that ran through the property which interfered with the smooth take-off and landing of airplanes. Mr. Lucas testified that he personally landed airplanes on the property from 1972 to 1978 when he was a student at the University of Maryland at College Park. Furthermore, Mr. Lucas indicated that in addition to himself, several other individuals have landed fixed-wing aircraft on the property over the years. Mr. Lucas testified that helicopters were also landed at Helmore Farms from time to time.

Mr. Lucas was the only witness called by the Petitioners to testify concerning the historical use of the subject property for airport operations. His testimony was insufficient to satisfy the burden imposed upon the Petitioners to establish the existence of an airport or helicopter operation as a nonconforming use. Therefore, I am compelled to deny the special hearing request.

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As alternative relief, the Petitioner requested a special exception for an airport. Along those lines, Mr. Lucas testified as to the airport operations that currently take place on the property. Mr. Lucas specifically testified regarding Mr. Martin Grass' use of the airport, which precipitated the Petitions filed in this case. Mr. Grass owns and operates an Augusta A-109 helicopter and has utilized the helicopter landing area on the subject site for approximately the past year. In addition, there are fixed-wing aircraft which have occasionally used the airstrip on the property for landing and taking off. Moreover, Mr. Lucas indicated that Helmore Farms intends to purchase its own fixed-wing aircraft in the near future for use in connection with its horse farm operation. In particular, they are considering a Maule aircraft, a brochure of which was submitted into evidence as Petitioner's Exhibit 6. Mr. Lucas testified that the survivability of Helmore Farms as a thoroughbred horse farm is dependent upon their ability to bring investors to the property. In addition, it is necessary to travel to various racetracks along the east coast. Mr. Lucas testified that it is common for horse breeders, trainers, and owners to visit racetracks in New York, New Jersey, Kentucky and other states to observe horses compete in races. The most efficient means of travel to those racetracks in these mid-Atlantic states is by way of aircraft, be it a fixed-wing airplane or helicopter. Furthermore, Mr. Lucas indicated that the thoroughbred racing industry and the syndication of horses now involves out-of-state investors who, from time to time, come to Helmore Farms, by way of airplane and/or helicopter. Mr. Lucas specifically identified a New York investor who travels to Helmore Farms by way of a helicopter. This investor takes off from the helipad atop the Pan Am building in Manhattan and lands at the helicopter landing area at Helmore

Farms. Mr. Lucas envisions. given the complexity of investing in thoroughbred horses and the syndication of same, that investors coming to Helmore Farms by way of aircraft will increase over the years. Mr. Lucas believes that the number of investors in the Baltimore area is limited and therefore, he must expand the marketing of Helmore Farms into other financial markets, such as New York City. He therefore believes the airport operation at Helmore Farms to be an integral part of his horse breeding operation.

Along those same lines, Mr. Lucas testified that Mr. Grass, who commutes to his business in Harrisburg, Pennsylvania by way of his helicopter, is an investor in eight horses on Helmore Farms. Mr. Lucas believes that this constitutes a sufficient nexus between Mr. Grass' use of the airstrip and Helmore Farms, given his investment in those eight horses. Furthermore, he believes that this distinguishes Mr. Grass' use of the airport from that of a mere commuter coming and going to work.

Also testifying as to the airport operation was Mr. Charles Lamb, who is an expert in designing and engineering airports. Mr. Lamb is employed by Delta Airport Consultants and was hired by the Petitioner to offer his opinion as to the airport in this particular case. Mr. Lamb testified that an airport runway with a length of 1200 feet, which is the length of the airstrip in this case, is sufficient to accommodate several types of aircraft. Mr. Lamb indicated that a 2,000-foot length would be a safer design; however, the 2,000-foot length would allow additional types of aircraft to land over and above that which can safely land on a 1200-foot strip. Therefore, he opined the length of the strip merely dictates the type of aircraft that can land safely on that particular airstrip and identified several types which could safely land at this location. In

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addition, he offered the opinion that the Maule fixed-wing aircraft, which is proposed to be purchased by Mr. Lucas in the future, is one category of aircraft which can safely land on a 1200-foot length airstrip. Furthermore, Mr. Lamb testified that the helicopter landing area at the subject airport can safely accommodate the landing and taking off of helicopters.

Mr. Kevin Miller from Miller Henning Associates, also appeared and testified on behalf of the Petitioner. Mr. Miller was accepted as an expert in acoustics. Mr. Miller performed a study concerning the noise generated by a typical fixed-wing aircraft as well as a helicopter when it utilizes the airport and airstrip at the subject site. Mr. Miller measured the decibel levels from various locations around the subject property. In addition, he offered testimony regarding the decibel levels of other more familiar types of mechanical equipment, such as tractors, combines, automobiles, and heavy trucks. Mr. Miller concluded that the amount of noise generated by the fixed-wing aircraft and helicopters utilizing the subject airport are below the national sound levels applicable to this type of use. It was his opinion that the sound generated by these aircraft would not adversely affect the surrounding community.

Mr. James Matis, the Professional Engineer who prepared the site plan of this property, also appeared and testified on behalf of the Petitioner. Mr. Matis testified relative to the exhibits prepared by his office and introduced those exhibits into evidence. Mr. Matis testified that in his opinion the proposed use of the subject property as an airport would not have any adverse effects above and beyond those normally associated with this type of use anywhere else within the R.C.2 zone.

As noted above, several residents from the surrounding community appeared and testified in opposition to the Petitioner's request, includ-

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ing among them, Mr. Jack Dillon, Director of the Valleys Planning Council. Mr. Dillon, who was formerly associated with the Office of Planning, testi fied that based on his expertise and experience in zoning, helistops and heliports are not a permitted use in the R.C.2 zone. He testified regarding his experience when employed with the Office of Planning and the controversial zoning case in 1979 involving Mr. Buzz Berg and his landing of a helicopter on his property in the Greenspring Valley. As a result of the battle that ensued with Mr. Berg, helistop/heliport operations were deleted from the R.C.2 zones. Therefore, Mr. Dillon does not believe that such a use is now permitted in the R.C.2 zone, and that the Petitioner's special exception request should be denied.

Ms. Susan Immelt, an adjacent property owner, also appeared and testified in opposition to the Petitioner's request. Ms. Immelt grew up on her property in the home in which she presently resides. She testified that in addition to her present home, she is permitted to build another dwelling on her property and indicated on the site plan where that future house might be located. Ms. Immelt testified that while road noise from Greenspring Valley Road is loud on the front portion of her property, it is quite quiet in the lower portion of her property near the Jones Falls waterway. Ms. Immelt testified that she originally noticed the landing of a helicopter at Helmore Farms in October, 1997. She approached Mr. Dale Lucas to inquire as to what was taking place on the property at that time. Ms. Immelt testified that she indicated to Mr. Lucas that she would not object to a helicopter landing on his property if it was sporadic; however, she told him that she would strongly object to such landings if they were an everyday occurrence. She testified that at the present time, a helicopter is landing on the property every day at 8:00 AM and returning between

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5:00 PM and 7:30 PM each evening. On weekends, this helicopter will arrive later in the morning and return at various times in the evening. Ms. Immelt stated that the take-off and landing of this helicopter does not take place every weekend. She described the noise of the helicopter as sounding like a chain saw in her back yard, even with the windows in her house closed. She indicated that the helicopter has awakened her at different times when it has landed. She further testified that at dinner time when the helicopter lands, she and her family will have to raise their voices at the dinner table in order to hear one another in the normal course of conversation.

Mr. William Brewster, who resides on Hillside Road on the south side of the property, also appeared and testified in opposition to the Petitioner's request. Mr. Brewster overlooks the Greenspring Valley from his property. Although he is unable to see the helicopter where it sits on the ground, he is able to see it as it rises into the air. Mr. Brewster testified as to his knowledge of the history of the use of Helmore Farms, given that he has lived on his property since 1961. He indicated that he has never seen any aircraft land on the subject property until recently and that he finds the landing of a helicopter at this site very offensive. Thus, he is opposed to the granting of a special exception.

Mr. Harold Burns appeared in his individual capacity and also as a representative of the Falls Road Community Association and the Greenwood Community Association wherein he lives. He indicated that he enjoys sleeping in the evening with the windows open and that from his house he is able to hear road noise from the surrounding road systems. He testified that he is bothered by the noise generated by this helicopter and that any noise generated in this area, be it automobiles or aircraft, is magnified,

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given the configuration of the valley itself and the quiet nature of the surrounding community. Thus, he, too, is opposed to the granting of a special exception to allow the subject airport.

Mr. Douglas Carroll, who owns land adjacent to the subject property, also appeared and testified in opposition to the request. Mr. Carroll offered similar testimony as to the history and frequency of aircraft landing at Helmore Farms. However, given that I have already denied the special hearing request, it is not necessary to recount that testimony at this point. Mr. Carroll did object to the continued landing of aircraft at Helmore Farms and stated that the noise generated by this particular helicopter is very offensive to him and his family. He compared the noise generated by this helicopter to be second only to thunder. Mr. Carroll asked that the special exception request be denied.

Also appearing and testifying in opposition to the Petitioner's request were Stephen Howard, Jorgen Jensen, Dierdre Smith and Lynne Ellis. The cumulative testimony of all of these Protestants was that they are strongly opposed to the special exception request for an airport. These individuals object to the noise generated by the helicopter itself as well as the effect that such an operation would have on the rural character of the surrounding community.

At the conclusion of the hearing, I arranged a site visit to the property to observe the arrival/departure of a helicopter as well as a fixed-wing aircraft. The demonstration was provided by the Petitioners on the subject property in the location proposed as the special exception area. In attendance was Mr. Lucas, along with his attorney, David Gildea. Mr. Carroll and his attorney, Macy Nelson, also attended. The demonstration consisted of the arrival/departure of both a fixed-wing aircraft and the

Augusta A-109 helicopter, which is the helicopter that uses the airport on a daily basis. The fixed-wing aircraft was able to safely land and take off from the subject property. In addition, the Augusta A-109 helicopter landed and took off at six different times, affording me the opportunity to witness the effects of its arrival/departure from six different vantage points. I observed such landings from as far away as the Douglas Carroll home and as close as immediately adjacent to the helicopter landing area. This demonstration provided me with a greater understanding of the effects of this helicopter on the surrounding community. On my own, I attempted on several occasions, to observe the helicopter prior to this demonstration. However, I was unsuccessful in capturing the event, given the brevity of the occurrence.

The Protestants argue by way of the Memorandum submitted by their attorney, G. Macy Nelson, that the landing of helicopters in the R.C.2 zone is strictly prohibited by the B.C.Z.R. They argue that as a result of the matter involving Mr. Buzz Berg operating a helicopter in Greenspring Valley the zoning regulations were modified to prohibit heliports in the R.C.2 zones. I agree with the position of the Protestants that the operation of a heliport and/or helistop in an R.C.2 zone is not a permitted use, either as of right or by special exception. In addition, the Protestants reminded this Deputy Zoning Commissioner of a similar case involving Mr. Robert J. Smith who was landing a helicopter in the Long Green Valley. I am very familiar with the Smith helicopter case in that as an Assistant County Attorney with the Baltimore County Law Office, I prosecuted Mr. Smith in both the District Court and Circuit Court of Baltimore County for landing a helicopter on his property. Mr. Smith came before the then Deputy Zoning Commissioner, Ann M. Nastarowicz, on Petitions for Special Hearing and

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Special Exception to obtain permission to land his helicopter on his property. Deputy Commissioner Nastarowicz denied Mr. Smith's Petitions, finding that a heliport/helistop is not a permitted use in the R.C.2 zones. She further found that Mr. Smith did not in any manner have an airstrip on his property to support his request for an airport. Furthermore, Mr. Smith testified that he never owned an air- plane, had no airplane flying experience, nor had any knowledge as to air- craft weight and the length of runway necessary to land a plane. Deputy Commissioner Nastarowicz quickly saw through Mr. Smith's attempt to disguise what basically was a heliport/helistop operation on his property as that of an airport. She then denied the special exception and special hearing requested by Mr. Smith. Having been closely involved in the Smith case, I agreed entirely with Ms. Nastarowicz' findings and rulings. However, the case before me poses a different scenario.

In the instant case, there does exist a viable airstrip on Helmore Farms. Not only did I personally observe a fixed-wing airplane land and take off from the property, testimony established that Mr. Lucas, himself, is a pilot and has landed airplanes on this property many times. Furthermore, others have landed airplanes on the airstrip on this property. What sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the Smith case is not directly applicable to the special exception request before me.

As to the subject case before me, prior to ruling upon the special exception request for an airport, it must first be determined what an actual airport use entails. The B.C.Z.R., specifically, Section 101 thereof, defines an airport as follows: "Any area of land or water designated and set aside for landing or taking off of aircraft." The key

word contained within that definition is, of course, "aircraft". The zoning regulations do not specifically define "aircraft". Therefore, it is necessary to review Webster's Third New International Dictionary, Unabridged for a definition. Webster's defines aircraft as follows: "A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces - used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats."

As to the special exception request, an airport is specifically listed as a use permitted by special exception in the R.C.2 zones, which includes the landing and taking off of aircraft. The definition as found in Webster's includes helicopters in its category of aircraft. Having reviewed the applicable language contained within Webster's and the B.C.Z.R., I find that helicopters would, in fact, be included within the special exception request for an airport operation. Having so ruled, it must now be determined whether the Petitioner has met the burdens imposed upon him to justify the granting of the special exception request.

In order to fully understand the nature of this proceeding, it is imperative that the decision-maker personally observe the arrival/departure of aircraft from the subject property. When this case is heard by the Board of Appeals, I would strongly urge that panel to have the same demonstration performed for them, as was performed for me. It is the only way to be able to accurately rule on this issue.

The effects of an airport at this location are very limited in duration. The arrival of an airplane takes only seconds. The sound of an airplane arriving was not offensive, even when standing on the edge of the

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runway. The departure of an airplane takes longer. The Pilot must accelerate the engine in order to build enough thrust to generate sufficient take-off speed. The noise of the engine at its peak RPM was offensive; however, even considering this, I found that given the brevity of the event (10 - 15 seconds), it was not sufficient enough to deny the special exception request.

The same application holds true for the arrival/departure of a helicopter. Standing directly aside the landing area, I found the noise from the helicopter to be offensive, but only for about 10 - 15 seconds, when the helicopter was preparing to touch down. When departing, the noise was louder and more offensive, apparently due to the fact that more power is necessary to generate lift than to descend. From one vantage point (the Carroll home), I was unable to hear the helicopter land, but could hear it when it departed. I will say that the wind conditions on the day of my observations helped to mitigate the noise. In addition, the foliage on the trees also helped to mitigate the noise. However, with appropriate restrictions, I believe a limited airport operation can exist at this location without detriment to the surrounding neighborhood. If arrival and departure were constantly occurring, then my feelings would be different. For the great majority of the day, Helmore Farms will remain quiet and peaceful, the only noise being that emanating from nearby I-83 and the Baltimore Beltway and other metropolitan noises.

I believe longer periods of noise will be generated by the development of the Elder tract, located adjacent to this site, into recreation fields by Baltimore County; the low drone of traffic on I-695 and I-83; the newly acquired traffic and news helicopters put into service by Channels 11 and 13, which frequently fly over this traffic hot spot; the heavy

farm equipment that is used in the farming of adjacent properties; and traffic in general on Greenspring Valley Road, then the limited operation of this airport at this location.

After reviewing all of the testimony and evidence presented, I am persuaded to grant the special exception with certain restrictions as more fully described below. These restrictions will insure that the use of the property as an airport does not become too excessive or burdensome on the surrounding community. The testimony and evidence clearly showed that the property has been used for over 40 years, although very sporadically, for the landing and taking off of aircraft. No one ever complained over the fact that an airport has existed on this property for the past 40 years. What has precipitated most of the concern of the surrounding community is the intensification of the use of this airport a this time, given its daily use. Therefore, appropriate restrictions and conditions shall be imposed upon the granting of this special exception to insure that no further intensification of this airport use takes place. In addition, restrictions shall be imposed in an attempt to mitigate the use that is currently taking place.

The Petitioner in his Memorandum indicated that this Deputy Zoning Commissioner is without authority to impose conditions and restrictions on the use of the subject property as an airport. I disagree with the argument contained in Counsel's Memorandum and would suggest that an appeal be filed in the event the Petitioner disagrees with the conditions and restrictions imposed.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner

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has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing shall be denied and the special exception shall be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 5th day of August, 1998 that the Petition for Special Hearing to approve that an airport and/or helicopter operation on the subject property is a legal, nonconforming use, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception seeking alternative relief to permit an airport on the subject property, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibits 1, 2A and 2B, be and is hereby GRANTED, subject to the following terms and restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The special exception granted herein is limited to the current owners and operators of Helmore Farms, specifically, the Lucas family. It shall not be transferable to any third party. In the event that this property is sold or the Helmore Farms thoroughbred horse farm operation ceases to do business at this

location, then the special exception granted herein shall cease and terminate.

3) The airport operation shall be limited to one (1) landing and take-off of a fixed wing aircraft per week. This restriction shall not apply to Mr. Lucas' personal aircraft, such as the proposed Maule fixed-wing aircraft, the brochure of which was submitted into evidence as Petitioner's Exhibit 6. In the event Mr. Lucas purchases this private fixed-wing aircraft, he may come and go from his property as is necessary. However, this restriction pertains to the landing of aircraft by those other than the Petitioner. Furthermore, this restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness and Belmont Stakes. The Petitioner shall be permitted to have multiple fixed-wing landings and take-offs on those weekends, only.

4) There shall be no more than two helicopter events on any given day. A helicopter event consists of an arrival and a departure. Said landings and take-offs shall occur between the hours of 7:00 AM and 10:00 PM as stated heretofore. There shall be no helicopters permitted to land at this airport that exceed the decibel level generated by the Augusta A-109. This restriction is imposed upon the Petitioner in order to limit the size and type of helicopters which will be permitted to utilize this airport. The noise level of the Augusta A-109 helicopter was acceptable to this Deputy Zoning Commissioner; however, there are many other helicopters whose noise levels may not be acceptable. Therefore, it is necessary to restrict to the extent possible the type of helicopter permitted to land on the subject property. This restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness, and Belmont Stakes. The Petitioner shall be permitted to have multiple helicopter landings during those weekends.

5) All helicopters shall be prohibited from landing and taking off in a direction that would carry the helicopter in a westerly direction over the lands owned by the Immelt or Carroll families. All landings and take-offs of helicopters shall proceed in the direction of Falls Road, thereby flying over the Meadowwood, Inc. property, currently owned by Baltimore County for use by its Department of Recreation and Parks.

6) There shall be no landing or taking off of aircraft from the subject property prior to 7:00 AM on any given day, or after 10:00 PM on any given evening.

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7) There shall be no fueling of any type of aircraft on the subject property.

8) The storage of aircraft not owned by the Petitioner shall not be permitted on the subject property for any more than 14 consecutive days.

9) There shall be no aircraft repair of any kind taking place on the subject property, except for emergency repairs.

10) There shall be no sale of aircraft from the subject property.

11) The Petitioner shall be required to install a double row of white pine trees along the western boundary of his property from the northern boundary of the special exception area, south along the western property line and terminating at the existing tree line which buffers the Jones Falls waterway from the subject property. This double row of white pine trees is an attempt to further mitigate the noise levels generated by the aircraft that come and go from the subject site. Along these lines, the Petitioner shall submit for review and approval by Mr. Avery Harden, the Landscape Architect for Baltimore County, a landscape plan depicting this double row of pine trees along the western property line of the subject property in the area described above. The existing tree line in this area is mostly deciduous, wherein the ability of those trees to buffer the sound generated from this airport would be significantly reduced during the winter months Therefore, it is necessary to supplement this existing vegetation by way of these additional plantings.

12) When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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By BJS

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

August 5, 1998

G. Scott Barhight, Esquire
David Gildea, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
S/S of Greenspring Valley Rd, N/S Hillside Road, W of Falls Road
(901 Greenspring Valley Road)
3rd Election District - 3rd Councilmanic District
Edgar Lucas- Petitioner
Case No. 98-294-SPHX

Dear Messrs. Barhight and Gildea:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied and the Petition for Special Exception granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Messrs. Edgar and Dale Lucas
901 Greenspring Valley Road, Brooklandville, Md. 21022
G. Macy Nelson, Esquire, 401 Washington Ave., Suite 803, Towson, 21204
Ms. Susan Immelt, P.O. Box 714, Brooklandville, Md. 21022
Mr. Stephen Howard, P.O. Box 48, Stevenson, Md. 21153
Ms. Deirdre Smith, P.O. Box 945, Brooklandville, Md. 21022
Ms. Lynne Ellis, 11044 Greenspring Avenue, Lutherville, Md. 21093
Mr. Jorgen Jensen, 8216 Tally Ho Road, Lutherville, Md. 21093
Mr. Douglas Carroll, 1117 Greenspring Valley Rd, Lutherville, 21093
Mr. Jack Dillon, Valleys Planning Council
212 Washington Avenue, Towson, Md. 21285-5402
People's Counsel; Case Files

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4/30/98

IN RE: Petition For Special Hearing and For Special Exception	:	Before the Hearing Officer/Deputy Zoning Commissioner of Baltimore County
	:	Case #98-294-SPHX

PROTESTANTS' MEMORANDUM IN OPPOSITION TO PETITION FOR SPECIAL HEARING AND PETITION FOR SPECIAL EXCEPTION

Protestants, Deirdre Smith, Douglas Carroll, M.D., William Brewster, Susan C. Immelt, Steven J. Immelt, Laura J. Robertson, David B. Gorzsas, and The Valleys Planning Council, Inc., by their attorney, G. Macy Nelson, file this Memorandum in Opposition to the Petition for Special Hearing and Petition For Special Exception.

I. INTRODUCTION

The Petitioner has constructed a helicopter landing pad in the southwestern portion of Helmore Farm ("Helmore"). Helmore is a commercial horse farm and is zoned RC2. Helmore is in the Maryland Agricultural Land Preservation Easements Program. The distance between the edge of the helicopter pad and the nearest property line is ten to twenty feet. (Testimony of Kevin Miller).

Petitioner now seeks a "special hearing to approve a legal non-conforming use for an airport and/or helicopter operation. Special exception for an airport." Petitioner has proposed to use such an airport for "no more than eight (8) fixed-wing

aircraft events per day and eight (8) helicopter events per day. An event consists of landing, idling, takeoff and fly-by." This is the first time an owner of Helmore has sought official approval to land airplanes or helicopters at Helmore. (Tr. at 59-60, attached as **Exhibit 1**).

Petitioner is seeking permission to operate what amounts to a commercial "helistop" for a helicopter operated on behalf of Martin Grass. The price for Mr. Grass' daily use of the helistop is a substantial financial investment in Helmore. Mr. Grass will only invest in Petitioner's horse farm if he can commute to work by helicopter from Helmore. (Tr. at 494-497, attached as **Exhibit 2**). In October, 1997, Mr. Grass invested in eight horses owned by Dale Lucas' father. (Tr. at 70-71, attached as **Exhibit 1**).[1] Petitioner's representative, Dale Lucas wants access to Mr. Grass twice a day to persuade him to continue to invest in Helmore.

Mr. Grass is seeking to use his commuting activity from Helmore for tax purposes. Mr. Lucas explained, "There are constraints beyond [Mr. Grass'] control that would not allow him to take ordinary losses against ordinary income if he doesn't have access to the operation of a certain number of hours." (Tr. at 498, attached as **Exhibit 2**).

The ability of Mr. Grass to commute by helicopter from Helmore is inextricably linked to this Petition. Mr. Lucas would not agree to any condition on any special exception which would

---

[1] Baltimore County first cited the Petitioner for violating the zoning regulations on October 17, 1997.

prohibit Mr. Grass from commuting to work by helicopter from Helmore. (Tr. at 493-495, attached as **Exhibit 2**).

The Petitioner failed to meet its burden that it has a legal non-conforming use or that it is entitled to a special exception for an airport.

II. ARGUMENT

A. THE ZONING COMMISSIONER SHOULD GIVE NO WEIGHT TO THE TESTIMONY OF DALE LUCAS BECAUSE HE CONTRADICTED HIS EARLIER SWORN TESTIMONY ON IMPORTANT FACTUAL ISSUES AFTER HE REALIZED THE CONSEQUENCES OF THAT TESTIMONY.

Mr. Lucas' testimony on April 7, 1998 in his rebuttal case about the use of airplanes at Helmore flatly contradicts his prior sworn testimony on the same issue on both February 20, 1998 and on April 6, 1998. The Zoning Commissioner should give no weight to Mr. Lucas' testimony on any subject because he contradicted himself on important factual issues when it was in his economic interest to do so.

Prior to the hearing before the Deputy Zoning Commissioner, Protestants sought to enjoin the illegal use of the helicopter at Helmore. The Honorable Lawrence R. Daniels conducted a hearing on the request for an injunction on February 20, 1998. At that hearing, Dale Lucas testified under oath as follows:

> Q. Can you tell this Court, please, each year that an <u>airplane</u> landed at Helmore Farm since 1972?
>
> A. I don't have a list of when planes or helicopters landed, no, just on an as-needed basis.
>
> Q. So you agree, sir, will you not, that you cannot testify under oath

that a fixed-wing airplane landed each year between 1972 and the present?

A. Not with certainty, no.

(Emphasis added). (Tr. at 108-109, attached as **Exhibit 3**).

* * *

Q. Would you please tell this court under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present?

A. 1972, 1978. From approximately '78 until I don't know when, until approximately '89. There were some years we landed in there, but there are some gaps in there. Now I know in approximately '89 up to the current, that it's been every year except that I can't — I don't know about '93, if we landed in there in approximately '93.

(Emphasis added). (Tr. at 110, attached as **Exhibit 3**).

Mr. Lucas' testimony on the first day of the zoning hearing, April 6, 1998, was consistent with his testimony at the injunction hearing in January 1998. On April 6, 1998, he testified as follows:

Q. ... [Y]ou will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at Helmore Farm?

A. No.

Q. With respect to the helicopter, it's true, is it not, that you can't say under oath that a helicopter landed there every year since 1989?

A. Every year, except '93 I'm not sure. And I have contacted Jim

Platt to fly in and out of there for fifteen years to pick people up, and he doesn't have records that would let him know one way or the other.

Q. So I understand you to say, sir, that you cannot say that a helicopter has landed there every year since 1989; is that right?

A. That's correct.

(Emphasis added). (Tr. at 63-64, attached as **Exhibit 1**).

Counsel for the Petitioner recalled Mr. Lucas to the witness stand in Petitioner's rebuttal case on April 7, 1998. Mr. Lucas had apparently realized that he had presented insufficient evidence during the hearing on the injunction and during his primary case on the non-conforming use issue because he had been unable to say that an airplane landed each year at Helmore. Counsel for the Petitioner asked Mr. Lucas: "Have there been aircraft operations at Helmore Farm during the decades of the '70's, the '80's and the '90's?" (Tr. at 467-468, attached as **Exhibit 2**). Counsel for the Protestants then objected and articulated the basis for his objection as follows:

MR. NELSON: ... We went through this very carefully. He testified to this. I cross-examined the man. There is no new matter that we produced in our defense. He's seeking to repeat what he said, <u>perhaps change what he said</u>, because at the conclusion of the evidence, I'm going to move for judgment today on the non-conforming use because they haven't made out a *prima facie* case. And you cannot just repeat your case and fill in the holes that you left in your primary case. There is nothing new about our defense that they didn't know about. It's not proper rebuttal. (Emphasis added).

(Tr. at 468, attached on **Exhibit 2**).

After the Commissioner overruled the objection, Mr. Lucas testified that there were aircraft operations at Helmore during the 1970's, the 1980's and the 1990's. (Tr. 470-471, attached as **Exhibit 2**). He also dramatically changed his testimony.

> Q. We can agree, can we not, that since 1971, through 1997, you cannot state under oath that an airplane landed every year at Helmore Farm?
>
> A. Well, an aircraft has....
>
> ***

(Tr. at 502, attached as **Exhibit 2**).

> Q. So, would you list for me, under oath, the years, every year, year-by-year, that a plane landed there?
>
> A. You want me to state the year, every year?
>
> Q. Yes, sir. Tell me every year.
>
> A. '71, '72, '73, '74, '75, '76, '77, '78, '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90, '91, '92, '93, '94, '95, '96, and the Scout last week, '98.
>
> Q. (Mr. Kotroco) You skipped '97? Did you include that?
>
> A. I said '97.

(Tr. at 505, attached as **Exhibit 2**).

Counsel for the Protestants then cross-examined Mr. Lucas about his inconsistent statements concerning his ability to list the years in which an airplane landed at Helmore. Mr. Lucas tried to reconcile his absolutely inconsistent statements by

stating:

> A. ...[I]t also states in here in my answer to the questions about that, that from '89 to the current as I was going up to that point, the only year I don't know about is '93. And we checked, and I can say that now because Dave Good did come down in '93.
>
> Q. Oh, I see, so your explanation now is that you told me two pages later that the only year you didn't know about was 1993, therefore you checked with Mr. Good so you can say that you've flown an aircraft every year since 1972, fixed wings; is that right?
>
> A. Yes.

(Tr. at 508, attached as **Exhibit 2**).

When counsel for Petitioners pointed out to Mr. Lucas that the reference to 1993 was about <u>helicopters</u>, not about fixed-wing aircraft, Mr. Lucas refused to accept that self-evident fact. He stated: "No, '93 we're talking about fixed-wing." (Tr. at 508, attached as **Exhibit 2**). At no point prior to his rebuttal testimony did Mr. Lucas refer to 1993 as being the year he did not know whether a fixed-wing aircraft landed at Helmore. In contrast, he unequivocally stated that he did not know if a helicopter landed in 1993. (Tr. at 63-64, Tr. at 508, attached as **Exhibit 3**).

Furthermore, Mr. Lucas testified in rebuttal that he researched whether a fixed-wing airplane landed in 1993 before the start of the zoning hearing on April 6, 1998. (Tr. at 510, attached as **Exhibit 2**). The results of that research allowed

him, he claimed, to state under oath that an airplane landed at Helmore every year since 1971. In fact, Mr. Lucas had testified on April 6, 1998, allegedly <u>after</u> he completed his investigation, that he could <u>not</u> testify that an aircraft had landed every year on the strip at Helmore since 1979. (Tr. at 511, attached as **Exhibit 3**). When confronted with that inconsistency, he attempted to explain:

> Well, also at that point we're in 1998. Aircraft, Fix-winged aircraft had not landed there at that point. We hadn't done the sound test for '98.

(Tr. at 512. attached as **Exhibit 2**).

Counsel for the Petitioners then cross-examined Mr. Lucas on that point and established that that testimony was also incorrect.

> Q. You said that you were unable to say that an aircraft had landed at Helmore Farm every year since '79 because you hadn't yet done the test in '98. Is that right?
>
> A. Yeah. We just did that test.
>
> Q. When did you do that test?
>
> A. Just did the test a couple of weeks ago.
>
> Q. ... What month, what year?
>
> A. I think it was in March '98.
>
> Q. Well, isn't it true that the testimony we read from the transcript was yesterday, not six weeks ago. But yesterday you told this court under oath that fixed-wing aircraft had not landed there every year since '79, and that was after this so-called test you did

in March of 1998? Do you want me to read that transcript again?

(Tr. at 515, attached as **Exhibit 2**).

Mr. Lucas then claimed that he had not understood the question.

Protestants suggest that the dramatic inconsistencies in Mr. Lucas' testimony require the Zoning Commissioner to disregard all of his testimony because Mr. Lucas simply was not credible. Mr. Lucas' testimony deserves no weight.

B. PETITIONER IS NOT ENTITLED TO A NON-CONFORMING USE BECAUSE THE PETITIONER FAILED TO PRESENT ANY EVIDENCE THAT THE ALLEGED PRIVATE AIRSTRIP WAS USED AT HELMORE AT LEAST ONCE A YEAR EVERY YEAR SINCE 1944.

1. Non-conforming Use.

A non-conforming use is "[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such use." B.C.Z.R. § 101. A legal non-conforming use is a use that predates any prohibition to that particular use. County Council Prince George's County v. E.O. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982). "A non-conforming use ... may continue ... provided that upon... discontinuance of such non-conforming use for a period of one year or more, ... the right to continue or resume such non-conforming use shall terminate...." B.C.Z.R. § 104.1.

2. Zoning History of Helmore.

Jack Dillon described the history of the zoning at Helmore. Baltimore County's first zoning regulations were adopted pursuant to an enabling act of the General Assembly of Maryland, Session

of 1941, Chapter 247. The effective date of the Zoning Regulations and Restrictions for Baltimore County was January 2, 1945.

The zoning regulations divided Baltimore County into seven (7) zones:

"A" Residence Zone----------Cottage

"B" Residence Zone----------Semi-detached

"C" Residence Zone----------Apartment

"D" Residence Zone----------Group

"E" Commercial Zone

"F" Light Industrial Zone

"G" Heavy Industrial Zone

Any areas not zoned "B", "C", or "D" Residence Zones were considered "A" Residence Zones. The "A" zone contained all of the land that is now referred to as "RC" zoned land, including Helmore. (See, Section II - Zones). Under Section XIII — Powers Relative To Special Exceptions and Special Permits A.#3, airports were listed as one of the land uses permitted by special exception. There was no reference to heliports or helistops in the 1945 regulations. These regulations remained in effect until the zoning code was amended in accordance with Title 30, Section 532(c) of the code of Public Local Laws of Baltimore County (1955 Edition). These regulations were adopted March 30, 1955.

With the adoption of these new regulations, an entire new set of regulations was developed. The residential zones were changed from the "A", "B", "C" & D" Residence Zones to a minimum

lot size classification system. The new residential zones were identified in the following manner — R.40 Zone - Residence, One - Family; R.20 Zone - Residence, One Family; R.10 or R.6. The number following the "R" described the size of the lot. For example, the R.40 zone contained 40,000 square feet lots and the R.20 zone contained 20,0000 square feet lots.

As with the earlier classifications, there were no special zones for land outside of the Urban Rural Demarcation Line ("URDL"). Because new zoning maps had not been adopted for all parts of the county, particularly in the rural areas, the 1945 zoning maps continued in use and areas formerly classified as the "A: Residence zone" were now considered the "Residual R.6" zone. Helmore fell into this category until the area was rezoned to R.40 on January 16, 1957. The property was described as 3-R40-20 in the description books in the Zoning Office.

The 1955 Zoning regulations allowed an airport by special exception in the R.40 zone and specifically restricted it from the R.20 zone. An airport was not listed in the R.10 or R.6 zone special exception list. There was no reference to helicopters or a helistop in any of these zones until a 1963 amendment when "Helistop" was added to the R.40 and R.10 special exception list. These regulations remained in effect until 1970 when Bill 100, 1970 was adopted.

Bill 100, 1970 again changed the zoning classifications. The "DR" (Density Rural) zones inside the URDL replaced the "R" zones. Two new rural zones were developed: The "RDP" (Rural

Deferred Planning) and "RSC" (Rural Suburban Conservation) zones. The majority of the rural land outside of the URDL was RDP. Land adjacent to the reservoirs and major streams flowing to the reservoirs was RSC. Both the RDP and RSC zones permitted an airport and helistop by special exception. Helmore was zoned RDP.

In 1975, the County Council approved Bill 98-78, which established the "RC" zones. These four new rural zoning classifications divided the rural part of Baltimore into preferred land-use categories. The RC2 (Agriculture) Zone was placed on 119,000 acres with the intended purpose of protecting and promoting the continuation of agriculture. The RC3 (Deferral of Planning) Zone was intended to discourage development until a future time when more specific zoning classifications would be applied. The RC4 (Watershed Protection) Zone was established to provide some basic protection to the reservoirs and their tributaries. The RC5 (Rural Residential) Zone was designed to accommodate residential development in a rural setting. Airports were permitted in the RC2 and RC3 zones by special exception; helistops were also permitted in these zones by special exception. Helmore was zoned RC2.

In 1979, Bill 178-79 modified the RC2 Zone in two fundamental respects. First, it significantly lowered the density of RC2 land. Secondly, in direct response to the Zoning Commissioner's decision in the Gerald Berg case, the bill removed the special exception use for a "helistop" from the RC2

classification.

Today, the RC2 and RC3 zones permit a special exception for an airport and the RC3 zone permits a special exception for a helistop. RC2, which includes Helmore, does not permit a special exception for a helistop.

3. Petitioner's evidence of alleged non-conforming use was insufficient to approve non-conforming use.

The Baltimore County Zoning Regulations have not permitted the use of an airplane or a helicopter at the site of Helmore as a matter of right at any time. Thus, the Petitioner has the burden to prove that it used Helmore as an airport or for a helicopter at least once every year going back to 1944.

Dale Lucas admitted that he had no personal knowledge about a plane landing at Helmore prior to 1971.

> Q. Now, we can agree, sir, can we not, that you have no personal knowledge, meaning you didn't witness with your own eyes, a plane landing at Helmore Farm prior to 1972?
>
> A. In '71, the one that came in with Jan flying the plane yes that was just one time.
>
> Q. Prior to that?
>
> A. Prior to that, no.

(Tr. at 63, attached as **Exhibit 1**).

Mr. Lucas confirmed this fact during his rebuttal testimony. There, he testified as follows:

> Q. *** We can agree, can we not, that prior to '71, you, with your own

eyes, never saw any aircraft or any helicopter land at Helmore Farm?

A. Prior to '71, no.

(Tr. at 502, attached as **Exhibit 2**).

Petitioner presented no evidence that a helicopter landed at Helmore prior to 1989. (Tr. at 63-64, attached as **Exhibit 1**). This evidence requires the Zoning Commissioner to deny the request for a legal non-conforming use. Even if the Zoning Commissioner were to ignore the contradictions inherent in Mr. Lucas' testimony, and were to ignore the economic motivation in Mr. Lucas' variable testimony, the Petitioner has presented inadequate evidence as a matter of law to permit the grant of a non-conforming use. At most, Mr. Lucas has testified that Helmore was used for an airplane at least once a year only going back to 1971.

Protestants respectfully request that the Zoning Commissioner rule that the Petitioner does not have a legal non-conforming use at Helmore.

C. THE TEST FOR A SPECIAL EXCEPTION.

The Petitioner has the burden of proving that the proposed private airport will be (1) consistent with the purposes of the property's zoning classification, (2) 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. B.C.Z.R. § 502.1. The Petitioner must also 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 failed to meet this burden.

1. The Zoning Commissioner should reject Petitioner's Petition For a Special Exception because the proposed use is inconsistent with the purposes of the property's zoning classification.

The spirit and intent of the RC zones in general and the RC2 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 "the 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." B.C.Z.R. 1A01.1A. "It is the purpose of the Resource Conservation Zones to ... protect both natural and man-made resources from the comprising effects of specific forms and densities of development." B.C.Z.R. 1A00.2C. The purpose of the RC2 zone specifically is "... to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County." B.C.Z.R. 1A01.1B.

The primary use of the proposed use is a commercial helistop. The overwhelming evidence is that the Petitioner seeks

permission to allow Mr. Grass to commute to work by helicopter on a daily basis from Helmore. There can be no debate that it is Mr. Grass' use of Helmore which is driving this petition. Dale Lucas admitted that he was not prepared to restrict the use to a helistop in such a way that Mr. Grass would not be permitted to commute to work from Helmore:

> Q. Mr. Lucas ... one of the things we're here on is a special exception, and the Zoning Commissioner has the authority and discretion to impose certain conditions on the special exception, in the event that he grants it.
>
> You've shared with us, sir, the fact that you are considering buying an airplane, a Maule, which is one of these light, slow, single engine airplanes that can take off, according to Mr. Lamb, on this purported airstrip. Now, if you buy this aircraft, and if you get the special exception, would you be willing to accept the condition from Commissioner Kotroco that you not fly helicopters there?
>
> A. No, because, as I've told you, there are certain weather conditions that — when the horse is going to run, the horse is going to run and we've got to be able to get there. If we can't safely fly the Maule, then we need to take the helicopter to accomplish what we're trying to do. And also, there are clients of ours in New York who would be coming down to us. They have their own helicopters. They have helicopter service that operates from the center of the city right at the PanAm building, several other locations, where they can just go there from Wall Street,

come down here, see what they've got to do, come down here, land at our place, and we'll take them down to Pimlico, and then they can go back on their own helicopter to New York.

Q. So, as I understand your testimony, the reason you cannot agree to that condition is that there are certain weather conditions in which you need a helicopter to fly to a racetrack, or you need one of your important clients to fly to you?

A. That's correct.

***

Q. Now, would you agree to the following condition? And I'm not suggesting to Commissioner Kotroco that he do this, but this is just purely hypothetical. If Commissioner Kotroco would grant you this extraordinary special exception, would you agree to these conditions: You can fly your Maule there in safe weather conditions, and if the weather conditions are dangerous, you can use a helicopter, but only you and only when you are flying to a racetrack, or if one of your customers is flying to you. And not to put too fine a point on it, a special condition that says no neighbor may use this helistop to commute to his or her place of business. Would you agree to that condition?

A. No, because I think it also knocks out one of my primary friends who has been flying a Maule in here, David Good from Michigan; knocks out Bobby Kirchner, one of our partners who has been doing touch and goes here since back in the '70's. I mean, it's too much.

Q. (Mr. Kotroco) The $64,000

question, I think, is would you be willing to live with the condition that excludes Mr. Grass from flying his helicopter in there?

Q. (Mr. Nelson) That's precisely the question.

A. Well, Mr. Grass has, since we started all of this, become a client, and there's reason for him to fly in and out of here on business of the horse industry.

Q. May I rephrase the question?

A. That's the problem.

Q. All right. Would you agree to a condition, Mr. Lucas, that prohibits Mr. Martin Grass from commuting to work in Harrisburg, Pennsylvania, or wherever else he moves his enterprise, from your property? Would you agree to that special condition?

Q. (Mr. Nelson) And I'm not suggesting you [Mr. Kotroco] grant the exception. It's purely hypothetical to explore this man's motives.

Q. Would you agree to that, sir?

A. The problem we find, I find with that is that at Mr. Grass's current level of involvement with our horse operation, it's just in on partnership on eight horses we currently have. I've already currently laid out to him a major program for becoming involved in the breeding operation of the farm. To implement that major program, I need almost daily access to him, because it's going to become a major Maryland horse operation. To do that, to exclude me from having access to him on a daily basis would really throw a major, major

> monkey wrench in that. I wouldn't have the access to him to go over, be able to review our plans and stuff. It basically bars him from being there to do what we're trying to do. *** Maybe Mr. Grass becomes our major customer as far as the horse operation. Well, to be able to run that type of operation, the number of dollars we're talking about possibly having involved in the operation at that point, to say that I can't have access to him on a daily basis would just kill us.

(Tr. at 491-495, attached as **Exhibit 2**).

The bottom line is that Mr. Lucas wants access to Mr. Grass twice a day: "Twice a day, that means I know where he is twice a day and I can get to him. Our operation can get to him twice a day." (Tr. at 497, attached as **Exhibit 2**). Mr. Lucas has attempted to meet his burden of proving that Mr. Grass' commuting activities to the Rite-Aid corporate offices are consistent with the agricultural purposes of the land by testifying that Mr. Grass will only meet with him if he can fly from Helmore. By that reasoning, any condition that Mr. Grass places on his investment, even conditions benefitting a non-agricultural business, such as Rite-Aid, would be deemed agricultural. Such an interpretation does not comport with the zoning regulations.

The Protestants request that the Zoning Commissioner reject the Petition for Special Exception because the proposed use is for Mr. Grass' commuting convenience and is inconsistent with the purpose of an RC2 zone.

2. The Petitioner has failed to meet its burden that an airport 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 RC2 zone.

The Petitioner must prove that the proposed airport will not have any adverse effects on property in the neighborhood which are uniquely different from those inherently associated with such a use irrespective of the airport's location within the zone. The evidence was uncontradicted that there are many other potential sites in the RC2 zone for a private airstrip which are better and safer than the proposed site at Helmore. Petitioner's expert witness, Charles Lamb, testified that a longer airstrip is always preferable to a shorter airstrip. Petitioner's engineer, Carl Mettes, testified that there are many sites in RC2 zones which are big enough to have an airstrip that is at least 2000 to 3000 feet long. Mr. Lamb was not aware of any private airstrip in the nine states in which his company has worked that had an airstrip that was 1200 feet or less. The proposed airstrip is approximately 1200 feet long. Petitioner's only evidence on this issue was the submission of a list from the Maryland Aviation Administration which revealed that only two private airstrips in the State of Maryland are less than 1200 feet long. One of those airstrips has an approach over water. The other has an approach over a highway or over sparse trees. The Maryland Aviation Administration is not aware of any helicopter traffic either into or out of either airport. See, letter of Bruce F. Mundie dated April 13, 1998 attached as **Exhibit 4.**

Although the Protestants do not have the burden of proof, they proved that the use of an airport at Helmore would, because of the shortness of the proposed airstrip, adversely affect the neighborhood more than the construction of a private airstrip on other RC2 lands in the County where the airstrip could be longer. The use of an airstrip at Helmore would be detrimental to the health, safety or general welfare because the use of an airstrip at this farm will not be as safe as the use of a longer airstrip elsewhere in an RC2 zone.

Protestants respectfully request that the Zoning Commissioner deny the request for special exception because the Petitioner has failed to meet its burden.

D. THE PETITIONER IS NOT ENTITLED TO A SPECIAL EXCEPTION FOR AN AIRPORT. EVEN IF THE PETITIONER IS ENTITLED TO A SPECIAL EXCEPTION FOR AN AIRPORT, THAT SPECIAL EXCEPTION WILL NOT ALLOW THE USE OF THAT AIRPORT FOR A HELICOPTER.

The Zoning Commissioner was presented with an identical case in 1989, Petition for Special Hearing and Special Exception, Robert J. Smith, Petitioner, Case No. 990-1-SPHK. (opinion attached as **Exhibit 5**). In the Smith case, the petitioner requested "a special hearing for a finding that the landing and taking off of a helicopter is permitted under the special exception requirements for an airport in an RC2 zone, and a special exception to approve the use of the subject property as an airport ..., to include the landing of a helicopter...." **(Exhibit 5 at 1)**. The Deputy Zoning Commissioner rejected the petition, and stated:

The threshold issue regarding the requested special hearing is whether the term "airport," as that term is defined in the Baltimore County Zoning Regulation (B.C.Z.R.), is sufficiently broad enough in scope to provide, by special exception, the landing and taking off of a helicopter in a R.C. 2 zone. Section 101 of B.C.Z.R. defines separately the following: airport; helicopter, helicopter operation; heliport, Type I, heliport, Type II and helistop. While an airport is permitted by special exception in the R.C. 2 zone, pursuant to Section 1A01.1c of the B.C.Z.R., neither a heliport, Types I and II, nor a helistop are permitted, either as right or by special exception.

****

Petitioner's argument fails since the B.C.Z.R. specifically defines helicopter operation and the use of same in its definition of helicopter/helistop. A cursory examination of the B.C.Z.R. will glean the drafters' clear intent regarding the specific placement of airports, heliports and helistops within the various zones of Baltimore County. For example, in the D.R. zone, helistops are permitted as a special exception and airports excluded. In the B.L. zone, a helistop is permitted as of right; a heliport, Type II, by special exception; and airports are excluded. The C.T. zone permits only a heliport, Type I and II by special exception. In the M.R. zone, a heliport, Type II is permitted if located at least 200 feet from a residential area; a helistop is permitted without such restriction. The R.C. regulations contain like specificity regarding the placement of airports, helistops and heliports within the R.C. zones. The R.C. 4 and R.C. 5 zones prohibit the subject uses either as of right or by special exception where the R.C. 3 zone permits airports and helistops by special exception. **The subject zone, R.C.2, permits an airport by special exception, but excludes both helistops and heliports both as of right and by special exception.** (Emphasis added).

The Deputy Zoning Commissioner denied the petition and

ordered that the petitioner "shall cease permitting the landing and taking-off of helicopters from the subject property...." **(Exhibit 5 at 5-6).** The B.C.Z.R.'s prohibition of the use of a helicopter in the RC2 zone takes precedence over any definition in any dictionary.

The Office of Planning for Baltimore County submitted two comments with respect to the use of Mr. Grass' helicopter in an RC2 zone. The first comment was with respect to property located at 10714 Greenspring Avenue owned by Hillside Realty L.L.C. Mr. Martin Grass had originally petitioned for a Special Exception at that property. With respect to that petition, the Office of Planning stated:

> Section 101 of the B.C.Z.R. establishes definitions of three different types of Helicopter operations. They are, Heliport, Type I, Heliport, Type II, and Helistop. They seem to vary according to the intensity of the proposed use.
>
> The DR zones and the RC3 zone list helistop as a use permitted by special exception. It appears that a deliberate legislature decision was made to include helistop as a permitted use in those zones. Therefore, the absence of helistops, as a listed permitted use in the RC2, RC4 and RC5 zones indicates a similar, deliberate decision to exclude helicopter operations from these zones.
>
> In addition, please find a copy of Case No. 90-1SPHX, which addressed issues common to the instant case. [Case No. 90-1SPHX is the Robert J. Smith decision].

The second comment from the Office of Planning pertains to the subject property. In those comments, the Office of Planning deferred to the requirements of the zoning regulations.

G. MACY NELSON
ATTORNEY AT LAW

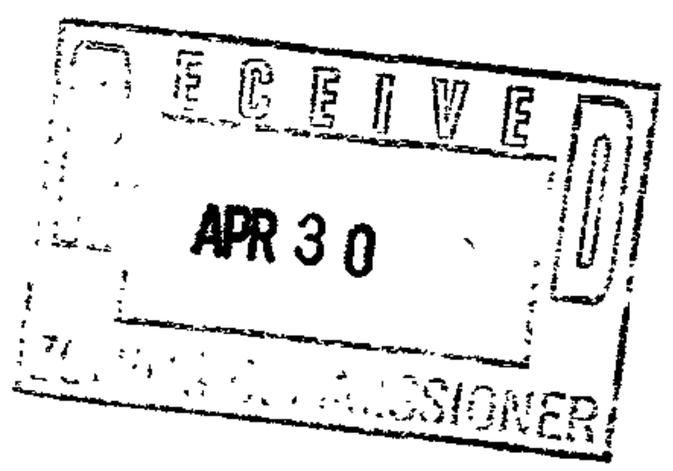
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

April 30, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204



Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I am enclosing a copy of Protestants' Memorandum In Opposition to Petition For Special Hearing and Petition For Special Exception.

Very truly yours,

G. Macy Nelson

GMN/jlr
Enclosure

cc G. Scott Barhight (with encl.)

294

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned 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

Legal non-conforming use for an airport and/or helicopter operation.

63

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/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Legal Owner(s):

(Type or Print Name) Edgar Lucas

x Edgar Lucas

Signature

(Type or Print Name)

Signature

901 Greenspring Valley Road
~~Brooklandville, MD 21022~~
Address Phone No.

City State Zipcode
Name, Address and phone number of representative to be contacted.

Attorney for Petitioner:
Whiteford, Taylor & Preston, L.L.P.
G. Scott Barhight, Esquire
(Type or Print Name)

Signature

210 W. Pennsylvania Ave, 4th Floor
Address Phone No.

Towson, MD 21204
City State Zipcode

G. Scott Baright, Esquire
Name
210 W. Pennsylvania Ave., 4th Floor
Address Phone No.
Towson, MD 21204 (410)832-2000

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

Zoning Administration & Development Management

98-294-SPHX

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned RC-2

This Petition shall be filed with the Department of Permits & 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 herein described property for

an airport.

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 Barright, Esquire
Whiteford, Taylor & Preston L.L.P.
(Type or Print Name)

Signature

210 W. Pennsylvania Ave. 832-2000
Address Phone No.

Towson, MD 21204
City State Zipcode

Revised 9/5/95

Legal Owner(s):

(Type or Print Name) ~~Edgar Lucas~~

Signature

(Type or Print Name)

Signature

901 Greenspring Valley Road
Brooklandville, MD 21022 410-821-5125
Address Phone No.

City State Zipcode

Name, Address and phone number of representative to be contacted.

G. Scott Barhight, Esquire
Name

210 W. Pennsylvania Ave. 832-2000
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

DROP-OFF
NO REVIEW
2/11/98
LCR

98-294-SPHX

MATIS WARFIELD
CONSULTING ENGINEERS

Description to Accompany Zoning
Petition for Special Hearing
901 Greenspring Valley Road
3rd Election District
RC-2 Zoning

February 3, 1998

Beginning for the same at a point distant South 53° 21'West 1835 feet +/- from the intersection of the centerlines of Greenspring Valley Road and Falls Road, running thence:

1. South 02° 45' East 1426 feet +/-
2. North 86° 30' West 290.4 feet +/-
3. South 90° West 742.5 feet +/-
4. South 85° West 186.45 feet +/-
5. South 80° West 102.3 feet +/-
6. North 83° West 143.55 feet +/-
7. North 05° East 1459 feet +/- and
8. North 90° East 1270 feet to the place of beginning.

Containing 45 acres +/-



This description is intended for zoning purposes only. The metes and bounds referred to herein are not based on a boundary survey of the property and are approximate only.

98-294-SPHX

MATIS WARFIELD, INC.
6600 York Road · Suite 209 · Baltimore, Maryland 21212
Tel: 410-377-7596 · Fax: 410-377-7657

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 in Towson, Maryland on the property identified herein as follows:

Case: #98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District
3rd Councilmanic District
Legal Owner(s): Edgar Lucas

Special Hearing: to approve a legal non-conforming use for an airport and/or helicopter operation.

Hearing: Thursday, March 5, 1998 at 2:00 p.m., in Room 106, County Courts Bldg., 111 West Chesapeake Avenue AND Friday, March 13, 1998 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

2/232 Feb. 12 C206741

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-12, 19 98

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2-12, 19 98.

THE JEFFERSONIAN,

A. Henderson

LEGAL AD. - TOWSON

THE BALTIMORE SUN

BALTIMORE, MARYLAND 21278-0001

2/18 19 98

WE HEREBY CERTIFY, *that the annexed advertisement of*

Whiteford Taylor & Preston

was published in "THE BALTIMORE SUN" *a daily newspaper printed and published in the City of Baltimore* 2/17/98

The Baltimore Sun Company,

By J. Appleton

7122

98-294 SP HX

LEGAL NOTICES 265

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 in Towson, Maryland on the property identified herein as follows:

Case No. 98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District
3rd Councilmanic District
Legal Owner: Edgar Lucas
Hearing: Thursday, March 5, 1998 at 2:00 p.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue and Friday, March 13, 1998 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland

SPECIAL HEARING to approve a legal non-conforming use for an airport and/or helicopter operation

SPECIAL EXCEPTION for an airport

LAWRENCE SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are handicapped accessible, for special accommodations please call 410 887-3353

(2) For information concerning the file and/or hearing, contact this office at 410-887-3391.

BALTIMORE COUNTY, MAR AND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 04871

DATE 2/11/98 ACCOUNT 001-6150

AMOUNT $ 250.00 (WCR)

RECEIVED FROM: Whiteford, Taylor & Preston

FOR: Special Exception - #050

Case #98-294-SPHX 901 Greenspring Valley Rd
Drop-Off - No Review

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
2/13/1998 2/12/1998 14:44:11
REG W503 CASHIER UNIL ULM DRAWER 3
5 MISCELLANEOUS CASH RECEIPT
Receipt # 035622
CR NO. 048717
250.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MA LAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

294 JLL **No.** 04677

DATE 2/5/98 ACCOUNT R001150

AMOUNT $ 250.00

RECEIVED FROM: Whiteford Taylor Preston

FOR: Non Res SPH

98-294-SPHX

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
2/05/1998 2/05/1998 10:42:40
REG W503 CASHIER UNIL ULM DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 034769
CR NO. 046727
250.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 056216

DATE 9/4/98 ACCOUNT R001-6150

AMOUNT $ 285.00

RECEIVED FROM: C. MACY NELSON

FOR: Appeal SPECIAL EXCEPTION ONLY 98-294-SPHX

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
9/08/1998 9/08/1998 10:16:30
REG WS02 CASHIER JRIC JMR DRAWER 2
5 MISCELLANEOUS CASH RECEIPT
Receipt # 062168
CR NO. 056216
285.00 CHECK
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 056216

DATE 9/4/98 ACCOUNT R001-6150

AMOUNT $ 285.00

RECEIVED FROM: C. MACY NELSON

FOR: Appeal SPECIAL EXCEPTION ONLY 98-294-SPHX

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 050847

DATE 9/9/98 ACCOUNT R-001-6150

AMOUNT $ 460.00

RECEIVED FROM: David K. Gilbert, Esq

FOR: Appeal - Case #98-294-SPHX

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
9/14/1998 9/11/1998 16:04:57
REG W802 CASHIER JRTC JNR DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 043141
CK NO. 050847
460.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 050847

DATE 9/9/98 ACCOUNT R-001-6150

AMOUNT $ 460.00

RECEIVED FROM: David K. Gilbert, Esq

FOR: Appeal - Case #98-294-SPHX

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
9/14/1998 9/11/1998 16:04:57
REG W802 CASHIER JRTC JNR DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 043141
CK NO. 050847
460.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No. 98-294-SPHX
Petitioner/Developer:
(Edgar Lucas)
Date of Hearing/~~Closing~~:
(Mar. 5&13, 1998)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

901 Greenspring Valley Road Baltimore, Maryland 21093

The sign(s) were posted on Feb. 17, 1998
(Month, Day, Year)

Sincerely,

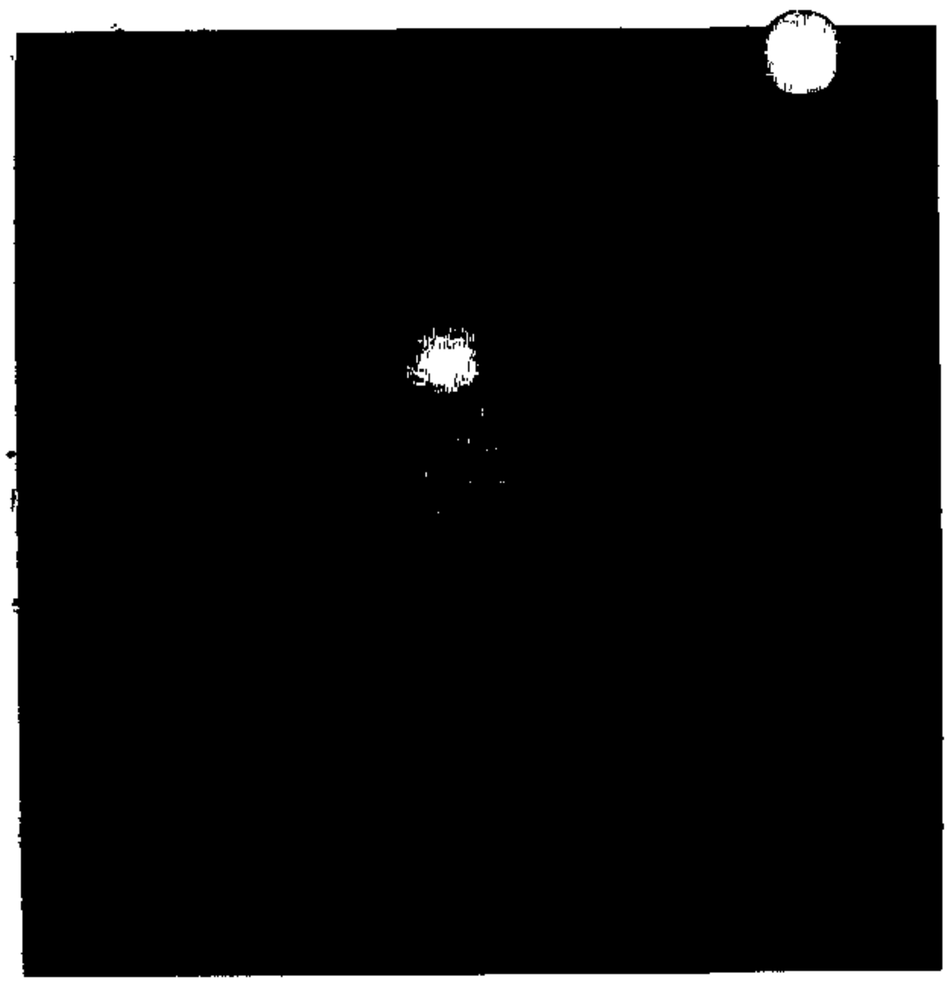
2/17/98
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)



98-294-SPHX

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 2, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Special Hearing to approve a legal non-conforming use for an airport and/or helicopter operation. Special Exception for an airport.

HEARING: Monday, April 6, 1998 AND Tuesday, April 7, 1998 AND Tuesday, April 14, 1998 AND Thursday, April 16, 1998, all beginning at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

(S)
Arnold Jablon
Director

c: G. Scott Barhight, Esquire
G. Macy Nelson, Esquire
Edgar Lucas

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MARCH 22, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
March 19, 1998 Issue - Jeffersonian

Please forward billing to:
G. Scott Barhight, Esquire 410-832-2000
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
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HEARING: Monday, April 6, 1998 AND Tuesday, April 7, 1998 AND Tuesday, April 14, 1998 AND Thursday, April 16, 1998, all beginning at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

Lawrence E. Schmidt

scs

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 294

Petitioner: EDGAR M. LUCAS

Location: 501 GREENSPRING VALLEY ROAD

PLEASE FORWARD ADVERTISING BILL TO:

NAME: G. SCOTT Barbright, Esquire C/o Whiteford Taylor & Preston

ADDRESS: 210 W. Pennsylvania Avenue
Towson MD 21204

PHONE NUMBER: 410-832-2000

AJ:ggs

98-294-SPHX

(Revised 09/24/96)

Printed with Soybean Ink
on Recycled Paper

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than *.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 98-294-SPHX

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: *

DATE AND TIME: *

REQUEST: A SPECIAL HEARING TO APPROVE A LEGAL NON-CONFORMING USE FOR AN AIRPORT AND/OR HELICOPTER OPERATION LOCATED ON THE SOUTHERN MOST 45 ACRES OF THIS PROPERTY.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN POSTER.

TO: PATUXENT PUBLISHING COMPANY
February 12, 1998 Issue - Jeffersonian

Please forward billing to:
G. Scott Barhight, Esquire 410-832-2000
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Special Hearing to approve a legal non-conforming use for an airport and/or helicopter operation.

HEARING: Thursday, March 5, 1998 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue AND Friday, March 13, 1998 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

Lawrence E. Schmidt

Lawrence E. Schmidt
305

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 13, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Special Hearing to approve a legal non-conforming use for an airport and/or helicopter operation. Special Exception for an airport.

HEARING: Thursday, March 5, 1998 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue AND Friday, March 13, 1998 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

Arnold Jablon
Director

c: G. Scott Barhight, Esquire
Edgar Lucas

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 18, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 5, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Special Hearing to approve a legal non-conforming use for an airport and/or helicopter operation.

HEARING: Thursday, March 5, 1998 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue AND Friday, March 13, 1998 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

Arnold Jablon
Director

c: G. Scott Barhight, Esquire
Edgar Lucas

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 18, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 25, 1998

G. Scott Barhight, Esq.
Whiteford, Taylor, & Preston, L.L.P.
210 W. Pennsylvania Avenue, 4th Floor
Towson, MD 21204

RE:

Item No.: 294
Case No.: 98-294-SPHX
Petitioner: Edgar Lucas
Location: 901 Greenspring Valley Rd

Dear Mr. Barhight:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on February 11, 1998.

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 (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 Gwendolyn Stephens in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR:ggs
Attachment(s)

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Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 2/13/98
Item No. 294 JLL

Dear Ms. Eubanks:

We have reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance(s) onto MD/~~US~~ 130 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions. Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: March 2, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for March 2, 1998
Item No. 294

The Bureau of Developer's Plans Review did not receive a plan for the subject zoning item.

RWB:HJO:jrb

cc: File

ZONE0302.294

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: February 24, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for February 23, 1998
Item Nos. 287, 289, 292, 293, 294, 296, 297, and 298

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE0223.NOC

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

FEBRUARY 23, 1998

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: EDGAR LUCAS

Location: DISTRIBUTION MEETING OF FEBRUARY 17, 1998

Item No.: 294 Zoning Agenda:

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.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

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TERRENCE B. SHERIDAN
Chief of Police

Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

Integrity . . . Fairness . . . Service

To Mr. Carl Richards, Jr.
Department of Permits and
Development Management

February 19, 1998

Sir:

As per your departments request, I have inspected the property located at 901 Greenspring Valley Road. This property meets all the requirements as established by the Federal Aviation Adv :ory Circular for the type of aircraft being operated.

If you have any other questions, please feel free to call me at the Baltimore County Police Aviation Unit (410)887-0279.

Sincerely;

Officer Roy R. Taylor, Jr.
Chief Pilot

cc:
Sergeant Ron Wines
Captain Don Roby

98-294-SPHX

Nationally Accredited Since 1984

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

DATE: February 24, 1998

To: Arnold L. Jablon

From: Bruce Seeley BS/GP

Subject: Zoning Item #294

Lucas Property, 901 Greenspring Valley Road

Zoning Advisory Committee Meeting of February 17, 1998

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code.)

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code), if the property is being subdivided according to the Development Regulations.

_____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Also see attached comments from Wally Lippincott and Jerry Siewierski.

GP:sp

RECEIVED FEB 25 1998

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon DATE: February 24, 1998

FROM: Wally Lippincott

SUBJECT: Zoning Petition #294

This property is under a Maryland Agricultural Land Preservation Foundation easement. The easement precludes uses that are not agricultural in nature. There is no recognition in the easement document or other documents in the file of an existing airport or helicopter use. In conversation with Mr. Lucas on 10/10/97, he indicated there was an existing air strip that preceded the easement. I was unable to confirm this information. Although, improvements are not to be evaluated in determining the easement value, one of the appraisals listed improvements and did not reference an air strip, (attached). I have inquired of the Maryland Agricultural Foundation as to any documentation they may have on this issue.

WL:sp

ZonPet.doc

To: Bruce Seeley

From: J. Siewierski

Subj: Lucas Property
Helicopter

Date: Feb 20,1998

As per your request, please be advised that there are no local noise regulations in Baltimore County with the exception of those dealing with loud noise after dark, which are enforced by the Police Dept. There are state noise regulations, dealing primarily with industrial sources, which are enforced by the Maryland Dept of the Environment. The contact person with MDE is Mr. David Jarinko, who can be reached at 410 333-2950

Please let me know if you need additional information

cc Gayle Perkes

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 13, 1998

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No. 98-294-SPHX
901 Greenspring Valley Road

Dear Mr. Barhight:

This letter is to confirm my conversation with David Gildea, of your office, on February 12, 1998 concerning the above referenced case.

As I told Mr. Gildea on the telephone, we received the additional petition for special exception too late to have it advertised in the Jeffersonian. The issue date for the Jeffersonian would have been yesterday, as it is only published once a week. Mr. Gildea agreed that your office would publish the hearing in the Sun newspaper. I informed him that the hearing must be advertised by February 18, 1998 (15 days before the hearing on March 5, 1998). A certificate of publication must be delivered to this office at least five days before the scheduled hearing.

If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

Sophia C. Jennings
Zoning Review

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 27, 1998

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case Number 98-294-SPHX
Petitioner: Edgar Lucas
901 Greenspring Valley Road.

Dear Mr. Barhight:

The above matter, previously assigned to be heard on March 5 and March 13, 1998 has been postponed at your request.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so.

If the property has been posted with notice of the hearing date, as quickly as possible a notice of postponement should be affixed to the sign(s). Then, upon notification of the new hearing date, such sign(s) must be changed to give notice of the new hearing date.

Very truly yours,

Arnold Jablon
Director

AJ:scj

c: Edgar Lucas

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Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 17, 1998

David K. Gildea, Esquire
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

RE: Case No. 97-8566
10714 Greenspring Avenue
Case No. 97-9444
901 Greenspring Valley Road

Dear Mr. Gildea:

As per your request, please be advised that the referenced cases have been postponed by Hearing Officer Stanley Schapiro, pending the decision of the Zoning Commissioner for the Special Hearing.

If there are any questions, please do not hesitate to contact me.

Sincerely,

Lavette Bannerman

Lavette Bannerman
Code Inspections and
Enforcement Officer
410-887-3351, Ext.7281

/LB

Post-it® Fax Note 7671 | Date 02/17/98 | # of pages ▶ 1
To DAVID GILDEA | From LAVETTE BANNERMAN
Co /Dept. | Co BALTO. CO.
Phone # | Phone # 410-887-3351
Fax # 410-823-2015 | Fax # 410-887-2824

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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 26, 1999

99 APR 26 PM 2:

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Special Exception
901 Greenspring Valley Road,
EDGAR LUCAS , Petitioner
Case No.: 99-294-SPHX

Dear Chairman Marks:

Enclosed for filing please find People's Counsel for Baltimore County's Entry of Appearance and Hearing Memorandum for filing in the Board proceedings and to express our interest as a party in land use issues of great public interest.

We do not anticipate calling or questioning any witnesses at the trial beginning April 27. In effect, we will submit on brief. We request the opportunity, however, to supplement our initial Memorandum, as necessary and appropriate, in the event that the Board accepts Post-Hearing Memoranda.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure

cc: G. Scott Barhight , Esq. and David K. Gildea, Esq., Attorneys for Petitioners
G. Macy Nelson, Esq., Attorney for Protestants

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
901 Greenspring Valley Road, S/S Greenspring Valley Rd, 2000' W of Falls Rd 3rd Election District, 3rd Councilmanic	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
Edgar Lucas Petitioner	*	CASE NO. 98-294-SPHX

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

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 9th day of March, 1998, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 901 Greenspring Valley Road, S/S Greenspring Valley Rd, N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
EDGAR LUCAS Petitioner	*	Case Number: 98-294-SPHX

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

99 APR 26 PM 2 57

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 of 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
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of April, 1999, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq. and David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

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

May 6, 1999

99 MAY -7 PM 2:08

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petitions for Special Hearing and Special Exception
Edgar Lucas, Petitioner
Case No.: 98-294-SPHX

Dear Chairman Marks:

Consistent with the proceedings on May 4, 1999, we are transmitting Rule 8 materials for The North County Coalition, Inc. and the Maryland Line Area Association, Inc. These supplement the testimony of Dr. Richard McQuaid, president of both organizations.

Dr. McQuaid is available for further cross-examination at the next hearing date on May 18. We propose that the Rule 8 materials be identified and accepted as People's Counsel's Exhibit Nos. 7 and 8.

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, Esq.
G. Macy Nelson, Esq.

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

September 8, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 SEP -9 AM 11:0

Lawrence M. Stahl, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: **EDGAR LUCAS, Petitioner**
Case No.: 99-294-SPHX

Dear Chairman Stahl:

For the Board's convenience, we are enclosing copies of the following out-of-state and federal court decisions cited in our prehearing memorandum:

1. ***Riggs v. Burson***
2. ***Gustafson v. City of Lake Angelus***
3. ***Guillot v. Brooks***
4. ***Faux-Burhans v. County Comm'rs. of Frederick County***
5. ***Garden State Farms, Inc. v. Bay***

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosure
cc: G. Scott Barhight, Esq. and David K. Gildea, Esq., Attorneys for Petitioners
G. Macy Nelson, Esq., Attorney for Protestants

CLM

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

RECEIVED
COUNTY BOARD OF APPEALS
'99 SEP -2 PM 3:26

September 2, 1999

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petitions for Special Hearing and Special Exception
Edgar Lucas, Petitioner
Case No.: 98-294-SPHX

Dear Chairman Stahl:

Enclosed is the posthearing Memorandum of People's Counsel for Baltimore County.

We also enclose a copy of the Board's 1987 decision in Meadowcliff, Case No. 85-132-X There, contrary to Hayfields, the Board found that onsite impacts should be considered (along with offsite impacts) in an RC-2 special exception case. This supports our separate argument in Section VIII of the Memorandum as to onsite impacts.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/caf
Enclosure

cc: G. Scott Barhight, Esq. and
David K. Gildea, Esq.
G. Macy Nelson, Esq.

#70-472-SPHX

County Board of Appeals of Baltimore County

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

July 14, 1987

RECEIVED
JUL 14 1987

S. Eric DiNenna, Esquire
Suite 600, 409 Washington Avenue
Towson, MD 21204

RE: Case No. 85-132-X
Meadowcliff, A New Covenant Church

Dear Mr. DiNenna:

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

Sincerely,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Pastor C. Albert Meyers
David L. Bowers, Esquire
Ms. Judy Baer
Andrew Radding, Esquire
John Willis, Esquire
F. K. Caporale
Mr. Harry C. Pullen
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

IN THE MATTER OF
THE APPLICATION OF
MEADOWCLIFF, A NEW COVENANT CHURCH
FOR A SPECIAL EXCEPTION TO PERMIT
A CHURCH AND ACCESSORY PARSONAGE
N/s OF BELFAST ROAD, 340' EAST OF
OLD BELFAST ROAD
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

CASE NO. 85-132-X

FILMED
JUL 1 '87

OPINION

This case comes before this Board on appeal from a denial of a special exception by the Deputy Zoning Commissioner for a church and accessory parsonage in an R.C. 2 zone. Testimony and evidence received in this case consumed two full days of hearings.

Petitioner presented three witnesses, Mr. Albert Meyers, Petitioner and pastor of the proposed church; Mr. Wesley Guckert, traffic expert; and Frederick Walker, surveyor and land planner. Protestants presented eight witnesses, each of whom testified individually their reasons for the opposition to the granting of this special exception. People's Counsel presented one witness, Mr. Paul Solomon of the Office of Planning & Zoning for Baltimore County, an expert in agricultural purposes. All of this lengthy testimony and evidence is contained within the record produced at these two hearings and is accurately detailed in the memorandums received in this case.

From the testimony and evidence presented by Petitioner, the following statistics evolved. The proposal under the special exception is for a church building ultimately of some 20,000 square feet; a septic drainage area of 17,500 square feet; some 85,000 square feet of paved parking; a two- to three-acre storm water management area; a five- to six-acre area designated for a parsonage; and some 1,400 feet of paved driveway, all of which are to be constructed and used on a parcel of some 51 acres that is now a working farm.

Baltimore County Zoning Regulations (B.C.Z.R.) 1A01.2.A states:

> "...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 R.C. 2 zones."

B.C.Z.R. 1A01.2.C states:

> "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...." (emphasis added)

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, as reflected in Bill No. 178-79, mandates that uses proposed within an R.C. 2 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, but rather would dissect a working farm into several small parcels that may not lend themselves to profitable agricultural use and furthermore possibly disrupt the adjoining agricultural uses within the vicinity.

Section 502, B.C.Z.R., which designates the conditions for the granting of a special exception, states in 502.1.g 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 B.C.Z.R. as stated in the above sections. 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.

O R D E R

It is therefore this 14th day of July, 1987 by the County Board of Appeals of Baltimore County ORDERED that the special exception for a church and accessory parsonage be and the same is DENIED.

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

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

William T. Hackett, Chairman

Lawrence E. Schmidt

Patricia Phipps

TERRENCE B. SHERIDAN
Chief of Police

Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

2/24/98

Integrity . . . Fairness . . . Service

To Mr. Carl Richards, Jr.
Department of Permits and
Development Management

February 19, 1998

Sir:

As per your departments request, I have inspected the property located at 901 Greenspring Valley Road. This property meets all the requirements as established by the Federal Aviation Advisory Circular for the type of aircraft being operated.

If you have any other questions, please feel free to call me at the Baltimore County Police Aviation Unit (410)887-0279.

Sincerely;

Officer Roy R. Taylor, Jr.
Chief Pilot

cc:
Sergeant Ron Wines
Captain Don Roby

RECEIVED
FEB 24 1998
98-764
PDM

98-294-SPHX

Nationally Accredited Since 1984

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

March 20, 2000

G. Scott Barhight, Esquire
David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, LLP
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: Civil Action No. 3-C-00-002648
EDGAR LUCAS

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 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
Legal Secretary

c: Mr. Dale Lucas
P.R. for Edgar Lucas

Enclosure

Printed with Soybean Ink
on Recycled Paper

PARRIS N. GLENDENING, *Governor*
LEWIS R. RILEY, *Secretary*
HENRY A. VIRTS, D.V.M., *Deputy Secretary*

The Wayne A. Cawley, Jr. Building
50 HARRY S. TRUMAN PARKWAY
ANNAPOLIS, MARYLAND 21401
Baltimore/Annapolis (410) 841-5700
Washington (301) 261-8106
Facsimile (410) 841-5914
MD Relay 1-800-735-2258
Home Page: http://www.state.md.us

STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
March 2, 1998

Mr. Lawrence E. Schmidt, Zoning Commissioner
Zoning Commissioner's Office
Baltimore Court Courts Building
401 Bosley Avenue
Baltimore, MD 21204

Re: Use of Easement Property for Helicopter Landing

Dear Mr. Schmidt:

As a result of the attention that has been drawn to the landing of a helicopter on the easement property of Mr. Lucas in Baltimore County, the Foundation wishes to offer the following information which will, hopefully, assist the Commission in its review of this issue.

The Foundation has, in the past, approved the use of an existing airstrip for personal and recreational use on other properties which were in existence prior to entering the property into the Maryland Agricultural Land Preservation Program. The airstrip was grassed and did not change the agricultural use of the land. With regard to the Lucas property, we have reviewed our files and find that there was no correspondence or indication of an existing airstrip at the time of district establishment, nor did the appraisals reflect that an airstrip was present at the time that we purchased the easement. However, that is not to say that an airstrip was not there, as appraisers may not include that as part of their review.

I hope this information is useful to the Zoning Commission in your efforts to determine whether this use should be allowed.

Should you require further assistance, please feel free to contact me at (410) 841-5860.

Sincerely,

Paul W. Scheidt
Executive Director

MAR 4 1998

PWS:CSC

cc: Wally Lippincott, Program Administrator
Mark Danneker

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

3/4/98
S
TO C & R
File

March 2, 1998

Arnold Jablon, Director
Department of Permits &
Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: CASE NUMBER: 98-294-SPH
901 Greenspring Valley Road
S/S Greenspring Valley Road, 2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Dear Mr. Jablon:

Please enter my appearance on behalf of:

Deirdre Smith
Douglas Carroll
1117 Greenspring Valley Road
Brooklandville, MD 21022

William Brewster
P.O. Box 433
Brooklandville, MD 21022

Susan C. Immelt
Stephen J. Immelt
P.O. Box 714
Brooklandville, MD 21022

Laura J. Robertson
David B. Gorzsas
10628 Falls Road
Lutherville, MD 21093

Jack Dillon, Executive Director
The Valleys Planning Council, Inc.
212 Washington Avenue
P.O. Box 5402
Towson, MD 21285-5402

RECEIVED
MAR - 3 1998
98-868
PDM

Please send to me any notice with respect to any hearing in the above-captioned case.

Very truly yours,

G. Macy Nelson

GMN/jlr

cc G. Scott Barhight

G. MACY NELSON
ATTORNEY AT LAW

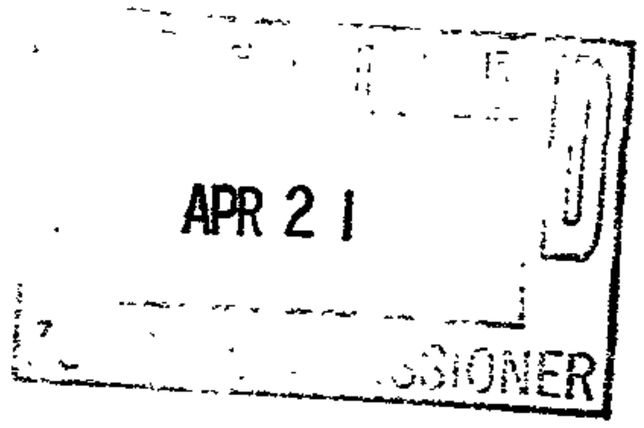
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

April 20, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204



Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I have enclosed a copy of a letter dated April 13, 1998 from Bruce F. Mundie. As you can see, Mr. Mundie is the Director of Regional Aviation Assistance. I am offering this letter as further evidence with respect to the two private airstrips that are less than 1200 feet in length.

I faxed a copy of that letter to Mr. Barhight on April 15, 1998.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosure

cc G. Scott Barhight (with encl.)

Parris N. Glendening
Governor

David L. Winstead
Secretary

Maryland Aviation Administration

*"To provide services to our customers and the air transportation industry
To foster and develop aviation in Maryland • To develop and empower our employees."*

Theodore E. Mathison Executive Director

April 13, 1998

C. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson MD 21204

Dear Mr. Nelson:

Thank you for the opportunity to comment upon the two airports you have properly identified as those less than 1,200 feet in length registered in the State of Maryland. As Director of Regional Aviation Assistance, I am responsible for the inspection and certification that the airports do not pose a risk to aircraft operating from the airports and the people in those aircraft and on the ground.

The first airport, Recompense Farm Airport is located in southern St. Mary's County. It is in a mostly agricultural setting with some large acreage residences nearby. The airport's runway is 1,100 feet in length and is used by the owner and his Ryan Navion aircraft which has the capability to safely operate from that length of runway.

Approaches to the runway ends are, for Runway 27, essentially over water and, for Runway 09, over trees and a road running across the close-in approach. As far as I know, no helicopters operate from the airport.

The second airport, Stol Crest Airport is near Ijamsville in Frederick County. It has a runway 600 feet in length. The area is similar in nature as stated above, but appears more agricultural with fewer large acreage residences. Approaches to the ends of this airport are, for Runway 04, over a highway, and for Runway 22, over sparse trees. The aircraft used at this airport is a Maule, manufactured for its short take-off and landing capabilities and well suited for use in short fields. As far as I know, there is no helicopter traffic into or out of this airport.

If you have any further questions, please contact me at (410) 859-7064.

Sincerely,

Bruce F. Mundie, Director
Regional Aviation Assistance

FAXED 4-14-98

APR 15 1998

P.O. Box 8766, BWI Airport, Maryland 21240-0766 (410) 859-7100
TOLL FREE: 1 (800) I-FLY-BWI • FAX: (410) 850-4729 • TDD for the hearing impaired: (410) 859-7227

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
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TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

May 14, 1998

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

MAY 1 8

Re: Helmore Farms
Case No. 98-294-SPHX

Dear Mr. Kotroco:

I write now to make a proposal with respect to the demonstration now scheduled for May 19, 1998 at 9:45 a.m. You previously advised counsel that you had no objection if counsel were present, but you did not want the clients to be present. You stated that you did not feel comfortable being in a position where the clients might in good faith lobby their positions.

My recommendation is that Doug Carroll and Dale Lucas be permitted to be present with the express understanding that they not communicate anything of substance to you concerning the case. I think it would be helpful for each of them to be there because each of them will be able to direct you to certain places during the demonstration. I have discussed this issue with David Gildea and he has told me that he will instruct his client not to communicate directly with you on anything of substance. I have just spoken with Doug Carroll. He has confirmed that he will not speak to you about anything of substance.

I feel strongly that Doug Carroll ought to be there. He can very easily direct you to certain locations which we believe are relevant. For example, it is our hope that you will go to the footbridge at a time when no aircraft are flying overhead. This is an extraordinarily quiet location. Furthermore, if you are interested in seeing where the Immelts have the right to build a house, Doug Carroll can direct you to that location.

My memory of the evidence is that there are no limitations on how either an airplane or a helicopter can approach the site.

The pilot emphasized, as I recall, that he thought that should be in the discretion of the pilot for safety reasons. That being the case, I think the pilot of both the fixed-wing aircraft and the helicopter should utilize several flight patterns. Of course, they should use the standard patterns that Martin Grass has been using. Furthermore, since the pilots are not restricted to those patterns, I request that the pilots also fly over, for example, the Carroll residence, the Immelt residence and the footbridge.

If you are not comfortable with these recommendations, please let me know and I will convey your views to my clients. I am sending a copy of this letter to Doug Carroll so he is aware of the parameters of his role (assuming you do not object to his presence).

Very truly yours,

G. Macy Nelson

GMN/jlr

cc David K. Gildea
Douglas Carroll
Jack Dillon

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE
(410) 296-8166

FACSIMILE
(410) 825-0670

September 4, 1998

VIA HAND-DELIVERY

Arnold Jablon, Director
Department of Permits &
Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: CASE NUMBER: 98-294-SPHX
901 Greenspring Valley Road
S/S Greenspring Valley Road, N/S of Hillside Road,
2000' W of Falls Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Edgar Lucas

Dear Mr. Jablon:

Please enter an appeal on behalf of The Valleys Planning Council, Inc., c/o Jack Dillon, P.O. Box 5402, Towson, Maryland 21285-5402, Deirdre Smith and Douglas Carroll, P.O. Box 945, Brooklandville, MD 21022, William Brewster, P.O. Box 433, Brooklandville, MD 21022, Mr. and Mrs. Stephen Immelt, P.O. Box 714, Brooklandville, MD 21022, and Laura J. Robertson and David B. Gorzsas, 10628 Falls Road, Lutherville, MD 21093, to the County Board of Appeals from the portion of the Order dated August 5, 1998 and Amended Order dated August 6, 1998 of the Baltimore County Deputy Zoning Commissioner granting the Special Exception in the above-entitled case. I am counsel for the parties identified in this paragraph.

Enclosed please find my law firm's check for the filing fee. Please date-stamp the extra copy of this appeal letter and return it to me.

Please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

G. Macy Nelson

GMN/jlr

Enclosures

cc G. Scott Barhight

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

---

30 COLUMBIA CORPORATE CENTER
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G. SCOTT BARHIGHT
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2029522@mcimail.com

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

September 8, 1998

Via Hand Delivery
Arnold Jablon, Director
Zoning Administration and
Development Management Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal in *Case No: 98-294-SPHX*
Petition for Special Exception and Special Hearing
In the Matter of: Helmore Farm

Dear Mr. Jablon:

Please enter an appeal on behalf of the Petitioner, Helmore Farm and Edgar Lucas, 901 Greenspring Valley Road, to the County Board of Appeals from restrictions numbered 2, 3, 4, 5 of the Deputy Zoning Commissioner's Order dated August 5, 1998 in case number 98-294-SPHX, and condition number 13 in the Deputy Zoning Commissioner's Order dated August 6, 1998, in case number 98-294-SPHX.

Enclosed please find a check in the amount of $460.00 for the filing fee.

Please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

G. Scott Barhight

RECEIVED
SEP - 8 1998
PDM

GSB:bhb
cc: People's Counsel for Baltimore County
G. Macy Nelson, Esquire
144794

WHITEFORD, TAYLOR & PRESTON
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210 WEST PENNSYLVANIA AVENUE
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FAX 410 752-7092

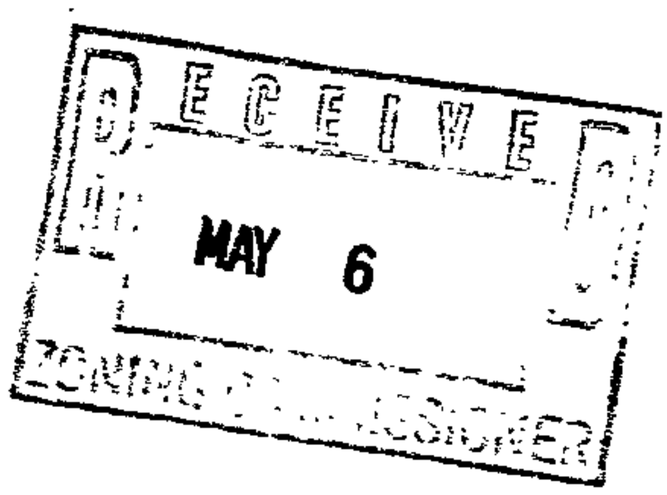
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FAX 703 836-0265

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@ wtplaw com

May 5, 1998



Deputy Zoning Commissioner Timothy M. Kotroco
Office of the Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farm
Case No.: 98-294-SPHX
Our File No.: 06197/00001

Dear Deputy Zoning Commissioner Kotroco:

This letter will confirm that the demonstration of the proposed airport at Helmore Farm will occur on Tuesday, May 19, 1998, at 9:45 a.m. I will arrange for both fixed wing and rotary aircraft to land and take off at Helmore Farm.

Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,

David K. Gildea

DKG:bhb
CC: G. Macy Nelson, Esquire
Mr. Dale Lucas
G. Scott Barhight, Esquire
135477

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

April 17, 1998

VIA FACSIMILE ONLY (410-887-4386)
The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
County of Baltimore
401 Bosley Avenue
Towson, Maryland 21204

Re: Helmore Farms
Case No. 98-294-SPHX
Our File: 6197/1

Dear Deputy Zoning Commissioner Kotroco:

Pursuant to your request, we have been attempting to arrange a demonstration for you of the proposed airport on Helmore Farms. It is my understanding that you are available on May 13, May 19, and May 20, 1998 in the morning for the demonstration.

These dates have been given to Macy Nelson and he is currently checking with his clients as to which dates are convenient.

Upon discussion with my client, we suggest that the demonstration occur on May 19, 1998, with May 20, 1998 being a backup date should there be conditions which would preclude the demonstration on the 19th.

It is my understanding that you would like the demonstration to begin at approximately 9:30 a.m. to 10:00 a.m. It is also my understanding that you want counsel only at the demonstration and that there be no clients in close proximity who would have an opportunity to speak with you. Obviously, the parties would not be precluded from being present on the property; however, your request is that the parties not speak with you during the demonstration.

Counsel will attempt to contact you to further finalize the planning for the demonstration. I will coordinate with Macy Nelson to arrange that teleconference.

Sincerely,

G. Scott Barhight

GSB:lb

cc: G. Macy Nelson, Esquire (via facsimile)
Mr. Dale Lucas (via facsimile)
Mr. Martin L. Grass (via facsimile)

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

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FAX 410 884-0719

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DIRECT NUMBER
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gbarhight@wtplaw.com

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TELEPHONE 703 836-5742
FAX 703 836-0265

3/2/98
P V
WCR
file

February 27, 1998

Via Hand Delivery

Mr. Arnold Jablon, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
MAR -2
98-850
PDM

Re: Helmore Farm
Case No.: 98-294-SPHX
Petitioner: Edgar Lucas
901 Greenspring Valley Road
Our File No.: 06197/00001

Arnold
Dear Mr. Jablon:

I am in receipt of your letter dated February 27, 1998 which postpones the above referenced matter. Although I understand that the matter has been postponed and counsel is arranging for available dates to hear this matter, I want to clarify that the postponement request was not at our client's request. Macy Nelson, counsel for the Protestants, requested the postponement.

Thank you for this opportunity to clarify the record. Should you have any questions or comments, please contact me.

Sincerely,

G. Scott Barhight

GSB:bhb
CC: Macy Nelson, Esquire (w/enclosure)
Messrs. Edgar & Dale Lucas (w/enclosure)
James E. Matis (w/enclosure)
David K. Gildea, Esquire

98-294-SPHX

SEVEN SAINT PAUL STREET
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FAX 410 884-0719

DAVID K. GILDEA
DIRECT NUMBER
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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
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FAX 703 836-0265

February 19, 1998

DELIVERY BY HAND

Ms. Sophia C. Jennings
Department of Permits &
Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case #98-294-SPHX
901 Greenspring Valley Road

Dear Sophia:

As you requested, enclosed please find theCertificate of Publication from *The Baltimore Sun* certifying that the Notice of Hearing was published in *The Sun* on February 17, 1998.

Should you have any questions or need any additional information, please feel free to contact me.

Very truly yours,

David K. Gildea

David K. Gildea

DKG:sll
Enclosure

120578

98-29-SPHX

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

February 6, 1998

Via Hand Delivery

Mr. Arnold Jablon, Director
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No.: 98-294-SPH
901 Greenspring Valley Road
Edgar Lucas, owner
Our File No.: 06197/00001

Dear Arnold:

Enclosed please find a Petition for Special Exception and a $250.00 filing fee. Please consolidate the Petition for Special Exception for an airport with the Petition for Special Hearing in case number 98-294-SPH as the property is the same and the issues are substantially similar. You have instructed Jim Matis that the case will be heard on March 5 and March 13, 1998. Please consolidate the Petition for Special Hearing with the Petition for Special Exception so that both cases can be heard on the March 5 and March 13 hearing dates. Please also create a Notice which shows both Petitions so that we can properly post the property in the requisite time.

Thank you in advance for your kind consideration to this matter. Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,

David K. Gildea

David K. Gildea

DKG:bhb
CC: Mr. Edgar Lucas (w/enclosures)
Mr. Dale Lucas (w/enclosures)
Mr. James E. Matis, P.E. (w/enclosures)
G. Scott Barhight, Esquire

98-294-SPHX

February 25, 1998

Mr. Lawrence Schmidt,
Zoning Commissioner
401 Bosley Ave.
Towson, Md. 21204

MAR – 4

Re: Variance on Helicopter landings

Dear Mr. Schmidt,

I felt it necessary to write this letter to let you know of yet another opinion concerning the helicopter issue facing the Greenspring Valley.

Over the last fifteen years I have lived and worked here in Green Spring Valley. I am amazed at how many people feel they can come into this area that is clearly zoned RC2 and then try to change it to suit their needs. Mr. Grass is one of the more recent individuals to do this. I know important executives may feel it necessary to get to the office in a timely manor. But it would seem to me that if it were so important to be able to get to the office quickly then maybe you would want to live a little closer to the office.
Mr. Grass should have looked into this possibility before he settled into the Green Spring Valley. He has been a very generous man to the local community and we would like to see him continue, but not at the expense of the rural and long-standing agricultural area.

The repeated take offs and landings on Mr. Lucas' farm are a clear disregard of the RC2 zoning. He seems to feel that since Mr. Lucas has an airstrip on his property that this makes it legal for him to take off and land there. The airstrip may have been there for a long time but to the best of my knowledge it hasn't been used. Another point here is that Mr. Lucas also has the property on the market to sell. Has anyone considered what will happen then? If the new owner doesn't want the helicopter landing there is Mr. Grass going to find yet another field to land in?

Another fear I have concerning this issue is that Mr. Grass may decide to allow others to use his landing pad for their use if he is granted this variance. Will there be any limitations on time or schedules of take offs and landings for this area? A ruling in his favor may encourage other busy important executives to want to do the same on their properties. How many helipads are allowed in one rural setting? Safety for the community is also an issue. Does Mr. Grass follow the FAA rules, or does he feel they need changing also? I remember one foggy morning I was not sure if the helicopter would be able to find the landing pad, much less land it without hitting a house.

It makes me wonder if Mr. Grass will enjoy living in this peaceful, quiet rural setting if helicopters are taking off and landing whenever the mood strikes. It seems to me, he'll probably decide it's too noisy and move away. I don't think that would be fair to citizens who are opposing this now.

I hope Mr. Schmidt, the zoning board will continue to look into this and come up with an appropriate decision that will be fair to all concerned. Mr. Grass has been looking into other areas to land his helicopter other than the Green Spring Valley; perhaps he will find an area that will be more suited to his needs.

Sincerely,

Lynne Ellis

Lynne Ellis
Farm Manager
Waverly Farms

BOX 947
831 HILLSIDE ROAD
BROOKLANDVILLE, MARYLAND 21022

Sep
4 | 2
98-294-X

January 28, 1998

Dear Mr. Schmidt,

I want to express my strong opposition to Mr. Grass's landing a helicopter within the residential areas of the Valleys. As is the case of my neighbors, my family came to the area seeking its tranquility, wildlife and green fields. Like othe residents, we, too, are looking to place our land in a trust to ensure the future of this special area.

To place the contrived right of one person above an entire community is wishes is too preposterous to contemplate. Surely you recognize this and will act accordingly.

Sincerely yours,

Barbara Wilson Schweiger

cc: Valley Planning Council

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
[illegible]rmelt	P.O.Box 5-14, Brooklandville MD
Stephen Howard	PO Box 48 Stevenson MD 2153
Deirdre Smith	Po Box 945 Brocklandville 21022
Lynne Ellis	11044 Greenspring Ave Lutherville, MD 13
Jorgen Jensen	8216 Talky Ho Rd Lutherville 21093
[redacted]	
Douglas Carroll	1117 Greenspring Valley Rd 21093
JACK D.L.	[illegible]

ate_____ Time_____ ☐AM ☐PM

WHILE YOU WERE OUT

M_____

of_____

Phone Numbers

Office Area Code Number Ext.

Voicemail

FAX Mike Ruby

Pager

Mobile

e-mail

☐ Telephoned
☐ Please call
☐ Returned your call
☐ Called to see you
☐ Wants to see you
☐ Will call again
☐ URGENT

Message

Helicopter Chase
(410) 494 1822
Copy 9

Operator

Reorder #23-000

AMPAD EFFICIENCY®

1K,
975-9782
x #
975 9788
-lot News

3 Time 1:45 ☐AM ☐PM

WHILE YOU WERE OUT

Mr Matthews
of News

Phone Numbers

☐ Telephoned
☑ Please call
☐ Returned your call
☐ Called to see you
☐ Wants to see you
☐ Will call again
☐ URGENT

75-
9782

Message

Helicopter
Chase
410
Ct St 17011
PA

Operator

Reorder

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
1 Dale Lucas	P.O.Box 1248, Brooklandville MD 210
JAMES MATIS	6000 YORK ROAD SUITE 209 BALTO MD 2121
Charles Lamb	7333 Whitepine Road, Richmond, VA 232
Kevin Miller	6731 whittier Ave McLean VA, 2210
G. Scott Burbright	Whiteford, Taylor + Preston
David K. Gildea	210 W. Penn. Ave, Towson Md 21204

Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Dale Lucas	P.O.Box 1248, Brooklandville MD 21022
JAMES MATIS	6000 YORK ROAD SUITE 209 BALTO MD 21212
Charles Lamb	7333 Whitepine Road, Richmond, VA 23225
Kevin Miller	6731 whittier Ave McLean Va, 22101
G. Scott Burbright	Whiteford, Taylor & Preston
David K. Gildea	210 W. Penn. Ave., Towson Md 21204

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on Recycled Paper

Maryland Line Area ASSOCIATION Inc.

RESOLVED: That at the General meeting of the Maryland Line Area Association held on December 9, 1998, it was decided by the Association that responsibility for review and action on all zoning matters for the period Dec 1, 1998 - Dec 1, 1999 be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members:

Dr. Richard W. McQuaid
Robert Leonard
Richard Jiranek
Mary Wallace
LuAnn Ensor
Christine Plettenberg
Walter K. Gettle
Bruce Guthrie

AS WITNESS OUR HANDS AND SEAL THIS 9 day of December, 1999.

ATTEST:

Maryland Line Area Association Inc.

LuAnn Christine Plettenberg
Secretary

Richard W. McQuaid
President

Maryland Line Area ASSOCIATION Inc

RESOLVED: That the position of the Maryland Line Area Association as adopted by the (Board of Directors) ~~(Zoning Committee)~~ on the zoning matter known as:

Helicopter Landing Site in Green Spring Valley

is that:

See attached

AS WITNESS OUR HANDS AND SEAL THIS 5 day of April, 19 99.

ATTEST:

Maryland Line Area Association Inc

Secretary

President

RESOLUTION

BY THE BOARD OF DIRECTORS OF THE MARYLAND LINE AREA ASSOCIATION, INC.

Whereas: It has come to our attention that a petition has been filed for a Special Exception to permit the use of land zoned RC 2 in the Green Spring Valley for take off and landing of a helicopter on a daily basis.

Whereas: The noise of helicopter take off, landing and flight is sufficient to endanger the health, safety and welfare of residents in the area of helicopter operation.

Whereas: Helicopter operation and its accompanying noise is incompatible with agricultural and livestock operations in the area.

Whereas: There are sites within the geographic limits of the Maryland Line Area Association that m;might be possible for helicopter operations.

Whereas: Granting the Special Exception will establish a precedent to allow a Special Exception for helicopter operation on a regular basis in any agricultural area in Baltimore County with its accompanying deleterious effects.

Therefore, Be It Resolved: That the Maryland Line Area Association, I:;;n;c. will oppose any and all petitions for Special Exception to permit helicopter operation except for emergency use in any agricultural zone (RC 2 or RC 4) ;i;n Baltimore county The Maryland Line Area Association, Inc. authorizes its President, Dr. Richard W. McQuaid or his designee to testify on its behalf to express its opposition in the strongest possible terms.

Passed unanimously by a quorum of Directors of the Maryland Line Area Association, Inc. this 5th day April, 1999

Christine Plettenberg
Secretary

Richard W. McQuaid
President

MARYLAND LINE AREA ASSOCIATION, INC.

The Maryland Line Area Association, Inc. has a paid member ship of 229 families. The Organization 's geographic limits are:

North --Mason-Dixon Line
East -- Harford County
South -- Belfast Road
West -- Carroll County

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 Maryland Line Area Association, Inc.

Richard W. McJunkin

ATTEST: Maryland Line Area Association Inc.

Roxanne Christine Potteiger
Secretary

Richard W. McJunkin
President

DATE: April 5, 1999

North County Coalition Inc ASSOCIATION

RESOLVED: That at the March 22, 1999 meeting of the North County Coalition, Inc. Association held on March 22, 1999, it was decided by the Association that responsibility for review and action on all zoning matters for the period March 22, 1999 - March 22, 2000 be placed in the (Board of Directors) ~~(Zoning Committee)~~ consisting of the following members:

Sterling Leese
Mike Rerer
Foster Nichols
George Harman
Martha Lessner
Douglas Behr
Charlotte Pine
Dr. Richard McQuaid
Harold Lloyd
Janet Rittenhouse
Rebecca Riegel
Tom Hourihan
Sharon Thieleke
Ron Pradis
George Neubeck
Brad Kunhard
Jodie Kronsberg
George McCeney
Mark Habecht
David Boyd

AS WITNESS OUR HANDS AND SEAL THIS 22 day of March, 1999.

ATTEST:

Rebecca Riegel
Secretary

North County Coalition Inc Association

Richard W. McQuaid
President

North County Coalition Inc ASSOCIATION

RESOLVED: That the position of the North County Coalition, Inc. Association as adopted by the (Board of Directors) (~~Zoning Committee~~) on the zoning matter known as:

Helicopter Landing Site in Green Spring Valley

is that:

See attached

AS WITNESS OUR HANDS AND SEAL THIS 22 day of March, 19 99.

ATTEST:

North County Coalition, Inc Association

Rebekah Riegel
Secretary

Richard W. McInnis
President

NORTH COUNTY COALITION



The membership of the North County Coalition, Inc. (NCC) is limited to those organizations within the limits of NCC's geographic area with more than twenty-five members. The meetings consists the president and one or two representatives from each member organization, with each organization having one vote. These are the "general meetings" referred to in the charter and are currently being held monthly.

There are currently twenty organizations representing nearly all civic minded residents in Northern Baltimore County.

:Member Organizations:

Citizens' Alliance of North Baltimore Co.
Glen Arm Comunity Assoc
Glyndon Community Assoc
Hanover Road Assoc.
Hunt Cup Hill Improvement Assoc.
Kingsville Assoc.
Long Green Valley Assoc.
Maryland Line Area Assoc.
Mason-Dixon Watchdog Assoc.
Monkton Preservation Assoc.
Northwest Reisterstown Assoc
Outpost Community Assoc.
Piney Run Assoc.
Powers Ave. Community Assoc.
Ravenhurst Community Assoc.
Seminary Springs HOA
Greater Sparks-Glencoe Comm. Assoc.
Locksley Conserve Neighborhood Assoc.
Weisburg Community Assoc.

The Organization's geographic limits are:

North--Mason-Dixon Line
East --Haroford County Line
South-Hunt Valley, Shawan Rd.
West --Carroll County Line

NORTH COUNTY COALITION, INC
1501 Harris Mill Road
Parkton, Maryland 21120
410 343-1089

NORTH COUNTY COALITION



RESOLUTION BY

THE BOARD OF DIRECTORS OF THE NORTH COUNTY COALITION INC.

Whereas: It has come to our attention that a petition has been filed for a Special Exception to permit the use of land zoned RC 2 in the Green Spring Valley for take off and landing of a helicopter on a daily basis.

Whereas: The noise of helicopter take off, landing and flight is sufficient to endanger the health, safety and welfare of residents in the area of helicopter operation.

Whereas: Helicopter operation and its accompanying noise is incompatible with agricultural and livestock operations in the area.

Whereas: Granting the Special Exception of this case will establish a precedent to allow a Special Exception for helicopter operation on a regular basis in any agricultural area in Baltimore County with its accompanying deleterious effects.

Therefore, Be It Resolved That: the North County Coalition Inc. will oppose any and all petitions for Special Exception to permit helicopter operation except for emergency use in any agricultural zone (RC 2 or RC 4) in Baltimore county. The Maryland Line Area Association, Inc. authorizes its President, Dr. Richard W. McQuaid or his designee to testify on its behalf to express its opposition in the strongest possible terms.

Passed unanimously by a quorum of , Directors of the North County Coalition, Inc. this 22 day :March 1999

President

Secretary

NORTH COUNTY COALITION INC
1501 Harris Mill Road
Parkton, Maryland 21120
410 343-1089

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) (~~Committee~~) of the North County Coalition, Inc. Association.

Richard W. McLeod

ATTEST: North County Coalition, Inc. Association

Rebecca Roegel
Secretary

Richard W. McLeod
President

DATE: March 22, 1999

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - E/S Long Green Pike, 580' N of the c/l of Hydes Road (13035 Long Green Pike) 11th Election District 6th Councilmanic District

Robert J. Smith
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-1-SPHX
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) is permitted under the special exception requirements for an airport in an R.C. 2 zone, and a special exception to approve the use of the subject property as an airport (private grass landing strip), to include the landing of a helicopter, as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified, and was represented by G. Warren Mix, Esquire. Also appearing on behalf of the Petition were: Joseph J. Riedlbauer, Calvin Carr, Betty Carr Grant, Lawrence Dulin, Michael DiRuggierio, Abraham Kline, Nicole Kline and Howard J. Kline. Michael Millemann, Esquire, appeared and testified on behalf of the Protestants. Appearing as Protestants in the matter were: Philip Klein, William Anderson, Melvin McDonald, Thomas Engelke, and Martin Wirtz. The following individuals appeared and signed as "speakers": Nancy L. Boyce, Ed Ilgenfritz, Denise Shapiro, Robert Oehrli, Dr. Walter Hepner, Nancy Hastings, Katherine Tyler, R. Bayly Buck, Richard Shapiro, Esquire, Daniel Denham, Elizabeth Hartline, and Elizabeth Lambert. Appearing on behalf of People's Counsel was Phyllis Freidman, Esquire.

ORDER RECEIVED FOR FILING
Date 8/3/89
By Robert J. Smith

Testimony indicated that the subject property, known as 13035 Long Green Pike, consists of 40.148 acres more or less zoned R.C. 2 and is improved with a single family dwelling, attached garage and in-ground swimming pool. Testimony and evidence produced indicated that Petitioner is desirous of constructing a "helistop/heliport" adjacent to a grass landing strip on the subject property zoned R.C. 2 as more particularly described on Petitioner's Exhibit 1. Petitioner testified he and his flight instructor have landed and taken off in a helicopter from the subject site on more than one occasion.

The threshold issue regarding the requested special hearing is whether the term "airport", as that term is employed in the Baltimore County Zoning Regulations (B.C.Z.R.), is sufficiently broad in scope to provide, by special exception, the landing and taking off of a helicopter in an R.C. 2 zone. Section 101 of the B.C.Z.R. defines separately the following: airport; helicopter; helicopter operation; heliport, Type I, heliport, Type II and helistop. While an airport is permitted by special exception in the R.C. 2 zone, pursuant to Section 1A01.2C of the B.C.Z.R., neither a heliport, Types I or II, nor a helistop are permitted, either as of right or by special exception. Counsel for Petitioner argued at great length, albeit unconvincingly, that the term "airport", which he more or less broadly defined as an area of land set aside for the taking-off and landing of aircraft, incorporates a helistop/heliport for purposes of the B.C.Z.R. Petitioner's argument fails since the B.C.Z.R. specifically defines helicopter operation and the use of same in its definition of heliport/helistop. A cursory examination of the B.C.Z.R. will glean the drafters' clear intent regarding the specific placement of airports, heliports and helistops within the various zones of Baltimore County. For

ORDER RECEIVED FOR FILING
Date 8/3/84
By [signature]

MICROFILMED

example, in the D.R. zone, helistops are permitted as a special exception and airports are excluded. In the B.L. zone, a helistop is permitted as of right; a heliport, Type II, by special exception; and airports are excluded. The C.T. zone permits only a heliport, Type I and II by special exception. In the M.R. zone, a heliport, Type II is permitted if located at least 200 feet from a residential zone; a helistop is permitted without such restriction. The R.C. regulations contain like specificity regarding the placement of airports, helistops and heliports within the R.C. zones. The R.C. 4 and R.C. 5 zones prohibit the subject uses either as of right or by special exception where the R.C. 3 zone permits airports and helistops by special exception. The subject zone, R.C. 2, permits an airport by special exception, but excludes both helistops and heliports both as of right and by special exception.

In Creswell vs. Baltimore Aviation Service, Inc., 257, Md. 712 (1970), (regarding an airport owner's Petition requesting a zoning reclassification), the Court ruled "there cannot be a scintilla of doubt that in Baltimore County, as generally, there cannot be a grant of a special exception unless the zoning statutes provide that the conditional use sought is permissible in the zone in which the land involved is situated..." In view of the specificity the drafters afforded the regulations regarding the inclusion or exclusion of airports, heliports and helistops within particular zones, it is the Deputy Zoning Commissioner's opinion, based on the legislative history, case law, and clear language of the pertinent zoning regulations, that neither a heliport, helistop, or as called by Petitioner, a "helipad" is permitted by special exception or otherwise in an R.C. 2 zone, nor is the operation of a helicopter a permitted primary,

ORDER RECEIVED FOR FILING
Date 9/3/80
By

accessory, conditional or temporary use in the R.C. 2 zone by special exception or in conjunction with an airport (grass landing strip).

Petitioner's Counsel argued that even if the request for Special Hearing was denied, Petitioner's request for Special Exception for an airport (private grass landing strip) in an R.C. 2 zone should be granted. Mr. Smith was the only witness called to testify that Petitioner's proposed use was as an airport and/or that an airport was appropriate. Testimony indicated that Petitioner did not prepare the site plan marked Petitioner's Exhibit 1, and demonstrated that he was otherwise unfamiliar with its content. He was unable to lucidly describe the specifications of the proposed landing strip, aircraft landing and departure patterns from the landing strip, minimum runway and aircraft requirements in view of the surrounding topography, runway requirements relative to aircraft weight, existing aircraft traffic in the area, and/or types of aircraft the site could accommodate, if any. Mr. Smith candidly admitted that aside from approximately 40 hours of helicopter flight lessons, he has never owned an airplane, has no experience flying an airplane, and no knowledge or expertise regarding the performance capabilities of airplanes. Petitioner failed to produce any testimony evidencing that Petitioner's Exhibit 1 was a site plan for landing of any aircraft other than a helicopter. Petitioner failed to produce any study regarding the subject site's viability to safely accommodate an airport. The Protestants contend the special exception request was a feeble attempt by Petitioner to use the site for the landing of a helicopter which is not permitted either as of right or by special exception on the property as presently zoned.

ORDER RECEIVED FOR FILING
Date 2/3/89
By Kathi Schuller

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and

requirements set forth in Section 502.1 of the B.C.Z.R. When requesting a special exception, the Petitioner must show that the proposed use will be conducted without real detriment to the neighborhood and will not adversely affect the public interest. The facts and circumstances must show that the proposed use at the particular location described by Petitioner's Exhibit 1 will have no adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

As Mr. Smith was not qualified to render an expert opinion regarding the suitability of the subject site to safely accommodate an airport, and in view of the fact that no other testimony or evidence was received which would support a finding granting the relief requested, the Petitioner has not met his burden of showing that the proposed use meets the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. As such, no testimony from the Protestants was taken. For the reasons set forth herein, the relief requested in the special hearing and special exception should be denied.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the Petitions for Special Hearing and Special Exception should be denied.

ORDER RECEIVED FOR FILING
Date 8/31/89
By Ellen Williams

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 31st day of August, 1989 that the Petition for Special Hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) is permitted under the special exception requirements for an airport in an R.C. 2 zone, and the Petition for Special Exception to approve the use of the subject property as an airport (private grass landing strip) to include the landing of a helicop-

ter, as more particularly described in Petitioner's Exhibit 1, be and are hereby DENIED; and,

IT IS FURTHER ORDERED that Petitioner shall cease permitting the landing and taking-off of helicopters from the subject property known as 13035 Long Green Pike, as more particularly described in Petitioner's Exhibit 1.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 8/23/89
By Kathleen Weidenhammer

E.T. Dolan & Associates, Inc.
2352 York Road
Lutherville, Maryland 21093
561-2044

FY90 January Cycle

October 28, 1989

Mr. Edgar M. Lucas
Helmore Farm
901 Greenspring Valley Road
Brooklandville, Maryland 21022

Re: File No. 03-03-89-17
Agricultural Preservation Easement
Baltimore County, Maryland

Dear Mr. Lucas,

Recently you requested that we estimate the market value of the development rights easement for your 87 acre farm located at 901 Greenspring Valley Road, Baltimore County, Maryland 21022.

Your appraisers have carefully investigated the subject neighborhood and surrounding environment in order to determine their impact, if any, on the subject property. We have established a market value using sales of properties which may have some potential for subdivision, and an agricultural value using sales of properties which will probably be maintained as operating farms. The difference between these two value estimates is considered the value of the development rights easement.

In completing this report, a personal inspection of the subject property was made on October 24, 1989. In addition, Mr. Paul Solomon, Baltimore County Program Administrator, was consulted on 10/20/89 regarding the subject.

By reason of our investigation and by virtue of our experience, it is our opinion that the subject property has an estimated value for the development rights easement as of October 24, 1989 as follows:

FAIR MARKET VALUE.....	$820,000
AGRICULTURAL USE VALUE.....	$164,000
DIFFERENCE-DEVELOPMENT RIGHTS EASEMENT....	$656,000

We herewith submit our appraisal report setting forth the facts upon which this valuation is predicated.

Respectfully submitted,

Earl T. Dolan, Jr. SRA/CRA
President

Paye Kimball
Associate Appraiser

3.3 Improvements

The subject is improved by five detatched dwellings, each excluded from the proposed easement with one acre, and the following farm use outbuildings also excluded from the proposed easement valuation.

Improvements		Condition
office		good
shop/equipment building	60 x 70	good
hay barn	40 x 70	good
2 barns with 13 stalls each		good
4 multiple car garages		average
hot walking building		good
2 turn out sheds		good
8 paddocks		good
3 fenced pastures		good
various outbuildings		

The improvements are in superior condition and are suitable for their current use.

As instructed by the Director, Office of Real Estate, and in departure from standard appraisal practice, both market valuation and agricultural valuation will exclude the value of all existing dwellings with associated one acre homesites, and all agricultural buildings.

3.4 Assessed Value and Annual Tax Load

Account No. 12074275

88/89 Full Cash Value

Land	$258,680
Buildings	675,700
Total	$934,380
Assessment	$398,460

The current combined County and State Tax rate is $3.105 per $100 of assessed Valuation.

R.R.

FOUNTAINHEAD TITLE GROUP
1526 YORK ROAD
LUTHERVILLE, MD 21093
583-1424
DGS FILE No. 03-03-90-15A

THIS DEED OF EASEMENT made this 13th day of August, 1991, by and between EDGAR M. LUCAS, party of the first part, Grantor, MERCANTILE SAFE DEPOSIT AND TRUST COMPANY, party of the second part, Mortgagee, and the STATE OF MARYLAND, to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation, party of the third part, Grantee, and containing covenants intended to be real covenants running with the land,

WITNESSETH:

WHEREAS, Title 2 of Subtitle 5 of the Agriculture Article, Annotated Code of Maryland, created the Maryland Agricultural Land Preservation Foundation for the purpose of preserving agricultural land and woodland; and

WHEREAS, by authority of Agriculture Article, Section 2-504(3), Annotated Code of Maryland, the Grantee may purchase agricultural preservation easements to restrict land to agricultural use; and

WHEREAS, the Grantor owns the hereinafter described tract(s) or parcel(s) of land located in an agricultural preservation district established pursuant to Agriculture Article, Section 2-509, Annotated Code of Maryland, and desires to sell an agricultural preservation easement to the Grantee to restrict the land to agricultural use.

D TRS/F 40.50
MC IMP 5.00
DEED (ESMT.) 0
TOTAL 45.50
08/23/

NOW, THEREFORE, in consideration of the sum of FIVE HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED DOLLARS ($586,800.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor for the Grantor, the successors, personal representatives and assigns of the Grantor, does grant and convey, to the State of Maryland, for the use of the Grantee, its successors and assigns, an agricultural preservation easement in, on and over the hereinafter described tract(s) or parcel(s) of land, subject to the covenants, conditions, limitations and restrictions hereinafter set forth, so as to constitute an equitable servitude thereon, that is to say:

5
40.50

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY MARYLAND
Per _____
Authorized Signature
Date 8/21/91 Sec. 33-139 (3)

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE _____ DATE 8/21/91

...PED FOR TRANSFER
... Dept of
... Taxation
8/21/91

All that certain tract(s) or parcel(s) of land situate, lying and being in the 3rd Election District of Baltimore County, Maryland and being more particularly described as follows:

Beginning for the same at a post in Dover Road standing South 85° West 2 perches from a stone marked "27" and running thence South 05° West 196¼ perches to a stone in the given line of Cockey's Trust at the distance of 275 3/4 perches from the beginning of Cockey's Trust thence binding on said given line South 83° East 90 perches to a corner of Richard Caton's land it being the property described in the deed recorded among the Land Records of Baltimore County in Liber WGCC, folio 372 running thence binding on said Caton's land North 2 3/4° West 181 perches to the centre of Dover Road and thence by a straight line to the place of beginning. Containing 90 acres more or less.

Saving and excepting out of the above described tract so much as was sold and contracted to be conveyed by John Holmes which parcel is described as follows:

Beginning for the excepted parcel at a stone now planted on a given line of Cockey's Trust and at the distance of 185 3/4 perches from the beginning of said land and running thence binding on the given line of Cockey's Trust reversely North 83° West 81 3/10 perches to the westernmost branch of the Baltimore and Susquehanna Railroad thence running and binding on said Railroad North 80° East 6 2/10 perches thence North 85° East 11 3/10 perches thence East 45 perches and South 86½° East 17 6/10 perches to a stone now planted in the line now dividing land formerly owned by John Cockey from lands of Richard Caton hereinabove referred to and thence by a straight line to the place of beginning. Containing 3½ acres more or less.

BEING the same lands which by Deed dated December 31, 1935 and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 969, folio 137 were granted and conveyed by the Suburban Finance Corporation unto Edgar M. Lucas. 86.5ac

AND the Grantor covenants for and on behalf of Grantor, the personal representatives, successors and assigns of the Grantor, with the Grantee, its successors and assigns, to do and refrain from doing upon the above described land all and any of the various acts set forth, it being the intention of the parties that the said land shall be preserved solely for agricultural use in accordance with the provisions of the Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the above described land and are to be deemed and construed as real covenants running with the land.

COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

A. Subject to the reservations hereinafter contained, the Grantor for the Grantor, the successors, personal representatives, successors and assigns of the Grantor, covenants and agrees as follows:

(1) (a) Except as otherwise provided in this instrument, the above described land may not be used for any commercial, industrial, or residential purpose.

(b) As a personal covenant only and one that is not intended to run with the land, the Grantee, on written application from the Grantor, shall release free of easement restrictions only for the Grantor who originally sold this easement, 1 acre or less for the purpose of constructing a dwelling house for the use only of that Grantor or the Grantor's child subject to the following conditions:

(i) The total number of lots allowed to be released under this paragraph may not exceed 10 lots of 1 acre or less at a maximum of not more than 1 lot for each 20 acres or portion thereof;

(ii) The Grantor shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantor for the easement;

(iii) Before any conveyance or release, the Grantor and the child, if there is a conveyance to a child, shall agree not to subdivide further any acreage allowed to be released; the agreement shall be recorded among the land records where the land is located and shall bind all future owners; and

(iv) If, while the above described land was in an agricultural preservation district, the Foundation released free of the district's restrictions for a person owning that land, 1 acre or less for the purpose of constructing a dwelling house for the use of that Grantor or the Grantor's child, the Grantee may not release free of easement restrictions for the Grantor, an additional lot for the same purpose; for each lot that the Grantor had excluded from the district's restrictions for this purpose, the number of lots that the Grantor otherwise would be entitled

to have released under paragraph (1)(b) is reduced by one.

The limitations set forth under paragraph (1)(b) that the maximum lot size be 1 acre or less is increased to 2 acres or less if the circumstances described in Agriculture Article, Section 2-513, Annotated Code of Maryland, exist.

The right reserved to the Grantor under paragraph (1)(b) belongs only to the Grantor who originally sold this easement and may be exercised only by the Grantor named in the instrument.

(c) The Grantor may construct housing for tenants fully engaged in operation of the farm, but this construction may not exceed 1 tenant house per 100 acres. The land on which a tenant house is constructed may not be subdivided or conveyed to any person, nor may the tenant house be conveyed separately from the original parcel.

(d) The land subject to this Deed of Easement may not be subdivided for any purpose unless written approval first has been obtained from the Grantee.

(e) No development rights from the above described tract(s) or parcel(s) may be transferred to another area, or to another person, or to a political subdivision.

(f) On request to the Grantee, the Grantor may exclude from the easement restrictions 1 acre per each single dwelling, which existed at the time of the sale of the easements by a land survey and recordation provided at the expense of the Grantor or Grantor's personal representatives, successors or assigns. However, before any exclusion is granted, the Grantor shall agree with the Grantee not to subdivide each acre excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(g) No rights-of-way, easements, oil, gas or mineral leases, or other similar servitude may be conveyed, or permitted to be established in the above described land without the Grantee's express permission.

(2) No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the land herein described; provided, however, the Grantor reserves the right to erect signs not exceeding 4 feet x 4 feet for each of the following purposes:

(a) to state the name of the property and the name and address of the occupant;

(b) to advertise any home or ancillary occupations consistent with the purposes of this easement subject to the approval of the Grantee; and

(c) to advertise the property's sale or rental.

(3) No ashes, sawdust, bark, trash, rubbish or any other material may be dumped on the above described land; provided, however, the Grantor reserves the right to dump any material which is for regular agricultural use.

The Grantor reserves the right to use the above described land for any farm use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the said above described land; and all other rights and privileges not hereby relinquished, including the Grantor's right of privacy.

B. And the parties, for themselves, their personal representatives, successors and assigns, further covenant and agree as follows:

(1) The above described land shall be managed in accordance with sound agricultural soil and water conservation practices so as to promote the agricultural capability of the land; also woodland shall be managed in accordance with sound forestry practices; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees which will not alter the

agricultural character of the land or diminish its productive capability.

(2) The Grantor shall implement all soil conservation and water quality practices that are contained within a soil conservation plan approved by the local soil conservation district, made or revised within the last ten years of the date of the application to sell an easement, which lists all soils conservation and water quality problem areas on the land. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within ten years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.

(3) The Grantee or its authorized representative shall have the right to enter on the above described land from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations and restrictions herein contained; provided, however, that the Grantee shall have no right to inspect the interior of any structures on the above described land.

(4) If the easement or any covenant, condition, limitation or restriction herein contained is violated or breached, the Grantee may after due notice to the Grantor, the Grantor's personal representatives, successors or assigns, institute an action in equity to enjoin, by ex parte, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such violation or breach; to recover damages; and to take such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions herein contained.

(5) If the Grantor has any doubts concerning the easement, covenants conditions, limitations or restrictions herein contained with

respect to any particular use of the said land, the Grantor may submit a written request to the Grantee for consideration and approval of such use.

(6) This easement does not grant the public any right to access or any right of use of the above described land.

(7) Nothing herein contained shall relieve the Grantor, the Grantor's personal representatives, successors or assigns of the obligation to pay real estate taxes.

(8) This easement shall be in perpetuity, or for so long as profitable farming is feasible on the Grantor's land and may be released only by the Grantee as provided by Agriculture Article, Section 2-514, Annotated Code of Maryland.

AND the Grantor further covenants that the Grantor has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that the Grantor will warrant specially the property interest hereby conveyed; and that the Grantor will execute such further assurances of the same as may be required.

Miscellaneous Provisions

A. As used herein the singular form of a word includes both the singular and plural, the plural form of a word includes both plural and singular, and reference to words of certain gender includes reference to all genders.

B. The provisions of this Deed of Easement shall be governed by the laws of the State of Maryland and the parties hereby expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies have been exhausted.

C. No determination by any court, governmental body or otherwise that any provision of this Deed of Easement is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be

construed wherever possible as being consistent with, applicable law.

SUBORDINATION PROVISIONS

Mortgage

Mercantile Safe Deposit and Trust Company hereby joins in execution of this Deed of Easement for the sole purpose of agreeing to subordinate to this Deed of Easement, and hereby does subordinate the mortgage liens from Grantor dated December 10, 1986, recorded among the aforesaid Land Records in Liber 7380, folio 297, and dated February 18, 1988, recorded among the aforesaid Land Records in Liber 7795, folio 445, and dated May 1, 1991, recorded among the aforesaid Land Records in Liber 8776, folio 471.

AS WITNESS the hands and seals of the Grantor, and the Mortgagee.

WITNESS:

Patricia L. Hinkel

Edgar M. Lucas (SEAL)
EDGAR M. LUCAS, Grantor

ATTEST

Diana Phillips

MERCANTILE SAFE DEPOSIT AND TRUST COMPANY

BY Mark C. Wagner (SEAL)
MARK C. WAGNER, Vice President

STATE OF MARYLAND, COUNTY OF Baltimore, To Wit:

I HEREBY CERTIFY that, on this 13th day of August, 1991, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared EDGAR M. LUCAS, known to me (or satisfactorily proven) to be the Grantor whose name is subscribed to the within Deed of Easement and acknowledged that Grantor executed the same for the purposes therein contained and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Patricia L. Hinkel
Notary Public

My Commission Expires: [illegible] Notary Public, State of Maryland
Baltimore County
Commission Expires Jan 1, 1993

Airport and Helicopter Uses as limited by the Baltimore County Zoning Regulations

Zone	Airport	Hehistop	Heliport I	Heliport II
DR 1 – DR-16	X	SE	X	X
R.C. 2	SE	X (178-79)	X	X
R.C. 3	SE	SE	X	X
R.C. 4	X	X	X	X
R.C. 5	X	X	X	X
R.C. 20	X	X	X	X
R.C. 50	X	X	X	X
RAE I	X	X	X	X
RAE II	X	X	X	X
R.O.	X	X	X	X
O.R. I	X	SE	X	X
O.R. 2	X	SE	X	X
O 3	X	X	X	X
SE	X	X	X	X
B.L.	X	PU	X	SE
B.M.	X	PU	SE	SE
B.R.	SE	PU	SE	SE
CB	X	X	X	X
BLR	X	X	X	X
RCC	X	X	X	X
M.R.	X	PU	X	PU (200'setback)
M.L.R.	SE(airstrips)	PU	X	SE
M.L.	SE(airstrip/airport)	PU	PU	PU
M.H.	SE	PU	PU	PU

PU – Permitted Use, X – Not permitted, SE – Special Exception

FAX TO R. ROBIN
PHZ
8/20/97

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

DATE: August 13, 1997

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 10714 Greenspring Avenue

INFORMATION

Item Number: # 37

Petitioner: *Hillside Reality L.L.C.*

Zoning: RC 2

Summary of Recommendations:

Section 101 of the BCZR establishes definitions of three different types of Helicopter operations. They are, Heliport, type I, Heliport, type II, and Helistop. They seem to vary according to the intensity of the proposed use.

The DR zones and the RC 3 zone list helistop as a use permitted by special exception. It appears that a deliberate legislature decision was made to include helistop as a permitted use in those zones. Therefore, the absence of helistop, as a listed permitted use in the RC 2, RC 4, and RC 5 zones indicates a similar deliberate decision to exclude helicopter operation from these zones.

In addition, please find a copy of Case No. 90-1 SPHX, which addressed issues common to the instant case (see attached).

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL:lsn

Attachment

A:\ITEM-37.JL

PETITIONER'S EXHIBIT NO. 2

CITATION NO. 97-9444

BALTIMORE COUNTY, MARYLAND
CITATION FOR CIVIL CODE ENFORCEMENT VIOLATION
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(410) 887-3352

NAME OF PERSON(S) CHARGED: EDGAR M. LUCAS

CURRENT ADDRESS IN FULL: 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022

OWNER (X) OR OCCUPANT ( ) RELATED CITATIONS :

IT IS FORMALLY CHARGED BY BALTIMORE COUNTY THAT THE ABOVE NAMED PERSON(S) DID VIOLATE THE PROVISIONS OF THE BALTIMORE COUNTY CODE OR CODE OF BALTIMORE COUNTY REGULATIONS AS FOLLOWS:

SECTION NUMBER(S) VIOLATED: 101- "HELICOPTER OPERATIONS", "HELISTOP"; 102.1; 1A01.2B; 1A01.2C

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.2 TO COMMIT THE FOLLOWING:

OPERATION OF A HELISTOP IN A R.C.2 (RESOURCE CONSERVATION-AGRICULTURE) ZONE, WHEREIN THE USE IS NOT PERMITTED EITHER BY RIGHT OR SPECIAL EXCEPTION.

LOCATION AND DATE(S) OF VIOLATION: 901 GREENSPRING VALLEY ROAD LUTHERVILLE, MARYLAND 21093
OCTOBER 17, 1997, OCTOBER 20, 1997, OCTOBER 21, 1997, OCTOBER 22, 1997,
OCTOBER 27, 1997, OCTOBER 28, 1997, OCTOBER 29, 1997, OCTOBER 31, 1997,
NOVEMBER 6, 1997, NOVEMBER 11, 1997, NOVEMBER 12, 1997, AND NOVEMBER 13, 1997

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) PURSUANT TO SECTION 1-8, BALTIMORE COUNTY CODE, A PENALTY OF $2400 HAS BEEN ASSESSED AS A RESULT OF THE VIOLATIONS CITED HEREIN. YOU MUST PAY THIS PENALTY BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS CITATION ALONG WITH THE PAYMENT TO: DIRECTOR, PERMITS AND DEVELOPMENT MANAGEMENT, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204.

2) IF YOU SHOULD CONTEST THIS CITATION OR PROPOSED ASSESSMENT OF PENALTY, YOU MUST FILE A WRITTEN REQUEST FOR A QUASI-JUDICIAL HEARING BEFORE THE CODE OFFICIAL OR DESIGNEE WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE OF THIS CITATION. HOWEVER, A HEARING ON YOUR CITATION HAS BEEN SCHEDULED FOR JANUARY 7, 1997 AT 9:00 A. M. IN ROOM 106.

3) THE HEARING WILL BE CANCELED IF YOU SHOULD ELECT TO PAY THE ASSESSED PENALTY OR IF YOU SHOULD FAIL TO REQUEST A HEARING IN WRITING WITHIN THE TIME REQUIRED. FAILURE TO CONTEST THE CITATION OR PROPOSED ASSESSMENT OF PENALTY, IF ANY, BY EITHER NOT PAYING THE PENALTY OR BY NOT REQUESTING A QUASI-JUDICIAL HEARING, SHALL RESULT IN THE CITATION AND ITS PENALTY BECOMING A FINAL ORDER OF THE CODE OFFICIAL.

4) IF YOU ARE THE OWNER OF THE PROPERTY FAILURE TO PAY THE ASSESSED PENALTY SHALL CONSTITUTE A LIEN ON THE PROPERTY AND SHALL BE COLLECTIBLE IN THE SAME MANNER AND TO THE SAME EXTENT AS TAXES.

I DO SOLEMNLY AFFIRM THAT THE CONTENTS STATED ABOVE ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

11/17/97
DATE

Lavette Bannerman
OFFICE OF CODE ENFORCEMENT REPRESENTATIVE

BASED ON THE STATEMENT OF LAVETTE BANNERMAN, THIS CITATION IS HEREBY ISSUED THIS 17TH DAY OF NOVEMBER, 1997.

CITATION MUST BE SERVED BY DECEMBER 2, 1997.
/lmh

DETACH AND SEND IN THE INFORMATION BELOW TO: DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT
111 WEST CHESAPEAKE AVENUE, ROOM 111
TOWSON, MARYLAND 21204

CITATION NO. 97-9444
901 GREENSPRING VALLEY RD

NOTICE OF INTENTION TO STAND TRIAL

I HEREBY ELECT TO STAND TRIAL BEFORE THE CODE OFFICIAL OR DESIGNEE FOR THE VIOLATION(S) CHARGED ON THE ABOVE CITATION.

DATE _____ SIGNATURE _____

ADDRESS _____

PROTESTANT'S EXHIBIT NO. 3

01 10

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410-887-3351, Extension 7281
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION

SERVE ON RESIDENT AGENT/CORPORATE OFFICER (IF APPLICABLE)

Citation/Case No. 97-9444A

Name (s) EDGAR M. LUCAS

Address 901 GREENSPRING VALLEY ROAD
BROOKLANDVILLE, MD 21022

Owner X Occupant ☐ Related Citations

Location and Date (s) of Violation: 901 GREENSPRING Valley Rd.
11/20/97; 11/21/97; 11/25/97; 11/26/97; 12/01/97;
12/05/97; 12/09/97; 12/15/97; 12/30/97; 12/31/97;
01/03/98; 01/05/98

Vehicle License No.: Vehicle ID:

IT IS FORMALLY CHARGED BY BALTIMORE COUNTY THAT THE ABOVE NAMED PERSON(S) DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS (CIRCLE RELEVANT ZONE BELOW, IF APPLICABLE):

§ 1B01(DR)	§ 1A01(RC2)	§ 1A02(RC3)	§ 1A03(RC4)	§ 1A04(RC5)
§ 200(RAE)	§ 202(ROA)	§ 204(RO)	§ 205(OR1)	§ 206(OR2)
§ 207(O3)	§ 210(SE)	§ 216(BMM)	§ 221(BME)	§ 229(CB)(BLR)
§ 230(BL)	§ 233(BM)	§ 238(BR)	§ 240(MR)	§ 247(MLR)
§ 253(ML)	§ 256(MH)			

1) 101, 102.1, 1A01.2B; 1A01.2C - OPERATION OF A HELISTOP
2)
3)
4)
5)
6)
7)
8)

(Unless otherwise noted, all references are to zoning regulations.)

IMPORTANT TO READ REVERSE FOR IMPORTANT INFORMATION AND DIRECTIONS

DEFENDANT

NOTICE TO DEFENDANT

1) Pursuant to Section 1-8, Baltimore County Code, a penalty has been assessed as a result of the violation cited herein in the amount indicated:

$ 2,400.00

If you do not contest this citation, you must pay this penalty by check or money order, payable to the director of finance, Baltimore County, Maryland, and return a copy of this citation with payment to:

Director of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

2) If you contest this citation or proposed assessment of penalty, you must file a written request for a quasi-judicial hearing before the code official or designee within fifteen (15) days from the date of service of this citation. A quasi-judicial hearing has been pre-scheduled for:

02/23/99 @ 9:00AM

At this hearing, you are entitled to be represented by an attorney, present witnesses and evidence, and cross-examine any witnesses against you. An attorney can be helpful to you by: (a) explaining the charges in this citation, (b) helping you at trial, and (c) helping you to get a fair penalty if found in violation.

3) This pre-scheduled hearing will be canceled if you choose to pay the assessed penalty or if you fail to request the hearing in writing within the time required. Failure to contest the citation or proposed assessment of penalty, if any, by either not paying the penalty or by not requesting the quasi-judicial hearing, shall result in the citation and its penalty becoming a non-appealable, final order of the code official. Failure to appear at the requested hearing will also result in the citation and civil penalty becoming a non-appealable, final order of the code official.

4) If you are the owner of the property, failure to pay the assessed penalty shall constitute a lien on the property and shall be collectible in the same manner and to the same extent as real estate taxes. In addition, failure to correct the violation(s) shall result in appropriate judicial action for enforcement, including civil contempt, which could result in imprisonment.

I do solemnly affirm that the contents stated above are correct to the best of my knowledge, information, and belief.

2/02/99 — C. Louise Dimmick
Date — Inspector's Signature

Citation must be served by: 01/23/99

Detach and send the completed form below to:

Director of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Citation Number:

NOTICE OF INTENTION TO DEFEND

I hereby elect to stand trial before the code official or designee for the violation(s) charged in this citation.

Date — Defendant (Please Print Your Name and Sign)

Address

Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 8, 1998

G. Scott Barhight, Esquire
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

RE: Case No. 97-9444
901 Greenspring Valley Road
3rd Election District

Dear Mr. Barhight:

As a result of the referenced case being held in abeyance pending a petition filing on February 5, 1998, at 10:30 a.m., as per Arnold Jablon, Director, Department of Permits and Development Management, Baltimore County is requiring that all helistop operations cease immediately at the subject property. Furthermore, this use must not resume at 10714 Greenspring Avenue. If this directive is violated, new citations will be issued imposing additional monetary fines.

Should your firm not be successful in establishing a legal non-conforming use before the zoning commissioner, the end result could be a substantial monetary penalty imposed on Edgar M. Lucas, Martin and Jody Grass, NLS Aviation, Hillside Realty L.L.C., and/or James T. Fanjoy. Hopefully, every effort will be made to bring this activity to an immediate halt; otherwise, fines will be imposed!

Sincerely,

Lavette Bannerman

Lavette Bannerman
Code Inspections and
Enforcement Officer
410-887-3351, ext. 7281

/LB

Printed with Soybean Ink on Recycled Paper

Lavette Bannerman
Code Enforcement
County Office Building
111 W. Chesapeake Ave.
Towson, MD 21204

Susan Immelt
P. O. Box 714
1019 Greenspring Valley Rd.
Brooklandville, MD 21022
November 12, 1997

Dear Lavette,

Here is a list of the dates and times of helicopter landings or lift offs I have personally witnessed at Hellmore Farms, 901 Greenspring Valley Rd. These are not the only landings by any means, but I did not record the ones I did not eyewitness. As you know, I am not able to see the helicopter touch ground, because there is a line of trees and a corn field between me and the site, however I can see it come down to the line of the cornfield and disappear. Some of these landings were in the dark, so I only saw landing lights.

Oct.	11	5:30PM	9:25PM
	13	7:55AM	
	14	8:55AM	7:45PM
	15	7:55AM	
	17	8AM, 8:10AM (two different helicopters, one was white and blue)	
	20	7:45AM	
	21	7:30AM	
	22		4:15PM
	27		7PM
	28	8AM	7PM
	29	8AM	
	31	6:15PM	
Nov.	8	9:30AM	1:20PM
	11	10:05AM	
	12	7:58AM	

Please keep me informed of when I can testify about these landings, and if there is any further information you need. I will continue to record these landings until the hearing.

Thank you for your concern and attention to this matter

Sincerely,

Susan Immelt

Lavette Bannerman
Code Enforcement
County Office Building
111 W. Chesapeake Ave.
Towson, MD 21204

Susan Immelt
P. O. Box 714
1019 Greenspring Valley Rd.
Brooklandville, MD 21022
January 3, 1998

Dear Lavette,

Here is a list of the dates and times of helicopter landings or lift offs I have personally witnessed at Hellmore Farms, 901 Greenspring Valley Rd, since November 12. These are not the only landings by any means, but I did not record the ones I did not eyewitness.

Nov. 21	8AM
Nov. 25	8AM
Nov. 26	8AM
Dec. 5	8:15 AM
Dec. 9	8:00AM
Dec. 15	8:00 AM
Dec. 30	7:20 PM
Dec. 31	8:00 AM
Jan. 3	9:00 AM

Thank you for your concern and attention to this matter

Sincerely,

Susan Immelt

Addendum (2/19/1998): helicopter landings since Jan 3.:

Jan. 5 (heavy fog) attempted landing	8AM;		10AM	6:50PM
1/6	8AM	6:15 PM		
1/8		5:30 PM		
1/12	8AM			
1/14		6:30PM		
1/17	9:30AM	6:30PM		
1/19	8AM			
1/27	7:45AM			
2/9	10AM	7:30PM		
2/12	9AM			
2/16	7:20AM			
2/17	9AM	12:30PM	2:20PM	5:20PM
2/19	8AM			

PROTESTANTS
EXHIBIT NO. 5A

GREENWOOD INC.

The undersigned hereby acknowledge and attest that on November 5, 1997 the Board of Directors of Greenwood Inc., a Maryland corporation (the "Association"), in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That the Association opposes the Petition for Special Exception in 10714 Greenspring Avenue in the Valley, *Hillside Realty L.L.C. Hearing on Special Exception for Airport Exception and Special Hearing re Interpretation*, Case No. 98-37-SPHX.

AND FURTHER RESOLVED: That the Board empowers and instructs its President, Harold H. Burns, Jr., to appear for Greenwood at any hearing before the Zoning Commissioner of Baltimore County in the case known as Case No. 98-37-SPHX in connection with the said Petition and make known to the Commissioner Greenwood's position in this matter, to wit, that:

Greenwood treasures the quiet atmosphere of its heavily wooded environment. Occasionally although rarely helicopters fly low over Greenwood. When they do so, the tremendous noise they produce profoundly disturbs our community. Greenwood opposes, therefore, any ruling by the Commissioner that would permit a helicopter to land in the Greenspring Valley and thereby disturb the quiet of the Greenwood community.

AS WITNESS OUR HANDS THIS 17th day of November, 1997.

ATTEST:

Jacquelyn Slavney

Jacquelyn Slavney, Secretary

GREENWOOD INC.

BY: Harold H. Burns, Jr.

Harold H. Burns, Jr., President

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS

TO WIT:

I swear upon penalty of perjury that I am currently the duly elected President of the Board of Directors of Greenwood Inc.

Harold H. Burns Jr., President

ATTEST:

Jacquelyn Slavney, Secretary

GREENWOOD INC.

BY: Harold H. Burns, Jr., President

PETITIONER'S EXHIBIT NO. 3B

FALLS ROAD COMMUNITY ASSOCIATION, INC.

The undersigned hereby acknowledge and attest that on November 5, 1997 the Board of Directors of the Falls Road Community Association, a Maryland corporation (the "Association"), in accordance with Section 2-408 of the Maryland Corporations and Associations Code and its Charter and By-Laws, approved the Resolution set forth herein:

RESOLVED: That the Association opposes the Petition for Special Exception in 10714 Greenspring Avenue in the Valley, *Hillside Realty L.L.C. Hearing on Special Exception for Airport Exception and Special Hearing re Interpretation*, Case No. 98-37-SPHX.

AND FURTHER RESOLVED: That the Board empowers and instructs its Director, Harold H. Burns, Jr., to appear for the Association at any hearing before the Zoning Commissioner of Baltimore County in the case known as Case No. 98-37-SPHX in connection with the said Petition and make known to the Commissioner the Association's position in this matter, to wit, that:

The Falls Road Community Association is opposed to the granting of a Special Exception which would permit the landing of a Helicopter on Baltimore County land zoned for Resource Conservation (RC).

AS WITNESS OUR HANDS THIS 11TH day of December, 1997.

ATTEST:

~~John Meredith, Vice-President~~
ROB JENSEN, SECRETARY

FALLS ROAD COMMUNITY ASSOCIATION

BY: _____
Harry B. Turner, President

AFFIDAVIT

STATE OF MARYLAND

COUNTY OF BALTIMORE

TO WIT:

I swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Falls Road Community Association, Inc.

Harold H. Burns

Harold H. Burns, Jr., Director

ATTEST:

~~John Meredith,~~ Vice-President
ROB JENSEN, SECRETARY

BY: Harry B. Turner

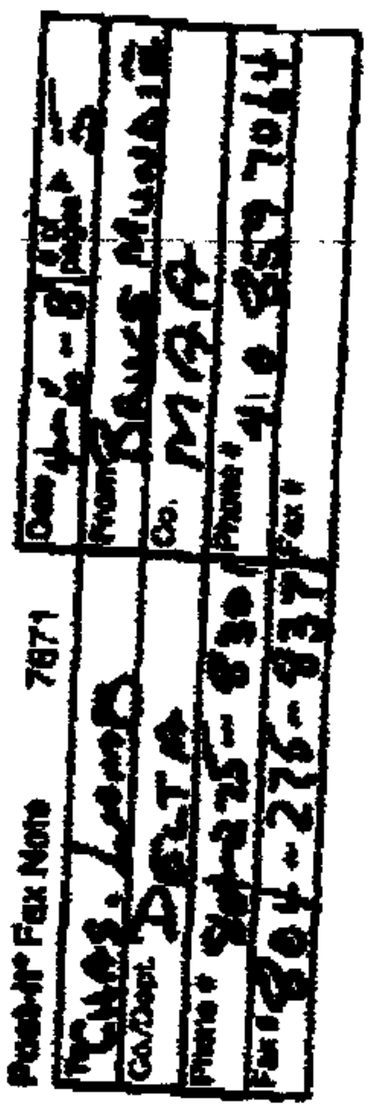
Harry B. Turner, President

PRIVATE AIRPORT RUNWAY LENGTHS

Albrecht Airstrip	2100'
Anderson Airport	2150'
Armacost Farms Airport	2206'
Ashland Landing Farm	2250'
Barnes Airport	2450'
Bell Airport	2100'
Beverly Airport	2950'
Big Oak Farm Airport	1600'
Bluemel Field	2200'
Boomers Field	2000'
Bower Field	1660'
Bud's Ferry Airport	2200'
Burgess Field	2300'
Carey Field	1775'
Carmean Field	2000'
Castle Marina Airport	2668'

PRIVATE AIRPORT RUNWAY LENGTHS

Chandler Airport	1950'
Cherry Field	2000'
Chesapeake Ranch Airstrip	2500'
Church Hill Airport	2700'
Clements Field	1700'
Cromwell Farm (Talbot County)	2400'
D'Angelo Airport	2450'
Deale Airport	2000+
Duley Farm Airport	1850'
Ennis Aerodrome	2100'
Ewing Airport	3400'
Fair's Airport	1910'
Fairview Airstrip	1700'
Flying Acres Airport	2360'
Flying W Farm Airport	3000'
Garey Field	1835'



PRIVATE AIRPORT RUNWAY LENGTHS

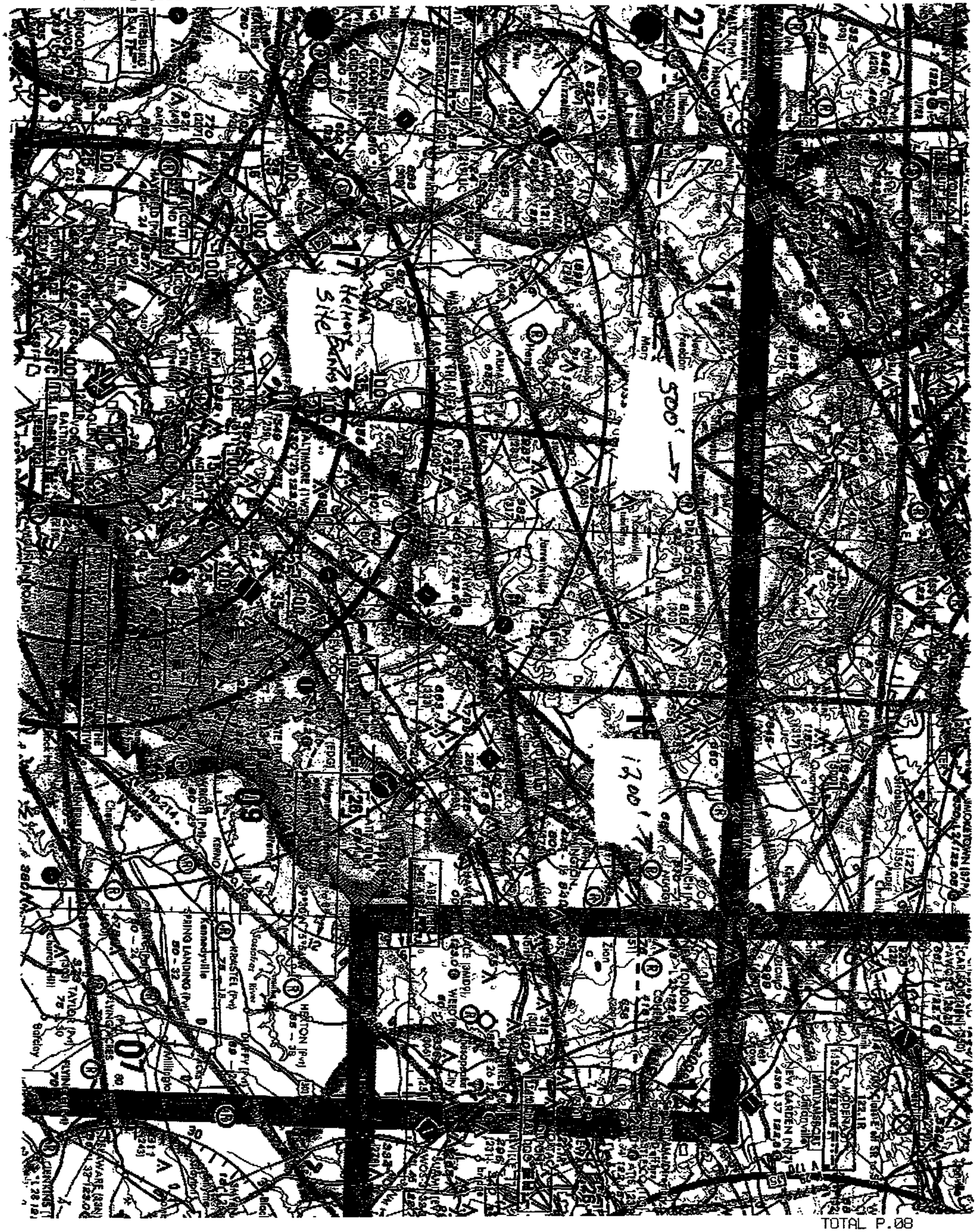
Glenair Airport	2315'
God's Acres Farm	1900'
Good Neighbor Farm Airport	1850'
Greer Airport	1600'
Hale Seaplane Base	3000'
Hampton Airport	2500'
Harris Airport	1800'
Hexton Farms Airport	3800'
Hidden Hills Airport	2500'
Hochmuth Field	2400'
Holly Springs Farm Airport	2300'
Horn Point Env. Lab Airfield	2650'
Houghton Airport	2475'
Hybarc Airport	2400'
Ijamsville Airport	2800'
Kennersley Airport	2400'

PRIVATE AIRPORT RUNWAY LENGTHS

Kent Fort Manor Airport	2226'
Keymar Airpark	1900'
Krastel Farm Airport	1800'
Lanseair Farm Airport	2860'
Loblolly Landing Airport	3500'
MacKinnis Airstrip	2400'
Magennis Farm	2500'
Martin Airstrip	1450'
Mayberry Run Airport	1500'
Mears Creek Airfield	1600'
Moran Field	4045'
Moxley's Airport	2000'
Mylander's Airstrip	1860'
Nyce Airport	1925'
Pilot's Cove Airport	1750'
Pond View/Great Oak Airport	2600'

PRIVATE AIRPORT RUNWAY LENGTHS

Ragged Island Airport	2000'
Ramsey Field	2200'
Recompense Farm Airport	1100'
Rise and Shine Airport	1600'
Robinson Private Airport	2100'
Rossneck Airport	1650'
Saxon Farms Airport	3230'
Silver Hill Airport	2500'
Slater Field	1685'
Smith Field	3000'
Spring Hill Airport	3900'
Spring Landing Airport	3250'
Squier Landing Airport	2250'
St. John Airport	2600'
Stewart Airport	2750'
Stol-Crest Airport	600'


Site
27
60
07
25
100
35
Kennedyville
SPRING LANDING (Pvt)
50 - 32
KRAKSTEL (Pvt)
DUFFY (Pvt)
HERTON (Pvt)
TAYLOR (Pvt)
SPRING ACRES
Millington
Chestertown
Church Hill
Galena
Betterton
Rock Hall
Worton
Still Pond
Fairlee
Kennedyville
Sudlersville
Queenstown
Centreville
Grasonville
Stevensville
Kent Island
Chester
Stevensville
Barclay
Millington
Galena
Chestertown
Church Hill
Rock Hall
Betterton
Worton
Still Pond
Fairlee
Sudlersville
Queenstown
Centreville
Grasonville
Stevensville
Kent Island
Chester
Barclay

TOTAL P.08

VOLUME I

IN RE: * BEFORE HEARING OFFICER/

HELMORE FARM * DEPUTY ZONING COMMISSIONER

Special Hearing/
Special Exception * OF BALTIMORE COUNTY

* No. 98-294 SPHX

* April 6, 1998

* * * * * * *

The above-entitled matter came on for hearing before the Deputy Zoning Commissioner of Baltimore County at Baltimore County Courts Building, Room 407, Towson, Maryland 21204, at 9:05 a.m., April 6, 1998.

* * * * * * *

BEFORE:

TIMOTHY KOTROCO, Esquire
Deputy Zoning Commissioner

APPEARANCES:

G. MACY NELSON, Esquire
On behalf of Protestants

G. SCOTT BARHIGHT, Esquire
On Behalf of Petitioner

Reported by:
Susan E. Smith, CSR

the special exception request, how many acres? Either of you can answer.

MR. BARHIGHT: Mr. Matis knows. If you'll wait just a moment, I'll proffer that. 45 acres, plus or minus.

MR. KOTROCO: Any other questions, Mr. Barhight?

MR. BARHIGHT: None during direct examination. Thank you very much.

Q. Mr. Lucas, from your testimony -- I'm going to ask a couple of questions, and then Mr. Nelson will have an opportunity to ask some questions. From your testimony, I gather your business is dependent on the airstrip to bring businessmen and colleagues in and out of your farm?

A. Increasingly so, yes.

Q. And to your knowledge, other than the historical usage of the property always having the airstrip and using it for fixed-wing and helicopter landings, you never really came in for an official hearing or an official approval to get that usage?

A. No. And one reason in particular is, okay,

nobody ever said anything about it. We didn't know that there was a requirement, because there was also an airstrip up in Worthington Valley at St. John's farm that had been built by Mr. Vanderbilt when he used to fly down from New York to the Sagamore Farm operation. And there was another one up in Butler. And nobody had ever said anything about them having requirements.

And I even ran Sagamore for awhile, and we had clients flying into St. John's airstrip there, and nobody ever requested anything be done with that. And specifically when we went into the ag preservation trust program, I asked them, I said, What kind of restrictions are placed on us? And they said, Well, basically anything that you're doing right now, you can continue to do.

And I said, Then how about if there's something I want to do we aren't doing now? They said, Well, then you need to tell us about it, and we'll put it on the documents. And so I requested that I have the right, in the wooded area on the other side of Jones Falls, to put in an aquaculture center and build ponds or even buildings back there to handle the growing of fish, which was kind

and out, they've got to take off before the area where that catch pen is.

Q. Now, we can agree, sir, can we not, that you have no personal knowledge, meaning you didn't witness with your own eyes, a plane landing at Helmore Farm prior to 1972?

A. In '71, the one I came in with Jan flying the plane, yes. That was just one time.

Q. Prior to that?

A. Prior to that, no.

Q. All right. And you will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at Helmore Farm?

A. No.

Q. With respect to the helicopter, it's true, is it not, that you can't say under oath that a helicopter has landed there every year since 1989?

A. Every year, except '93 I'm not sure. And I've contacted Jim Platt to fly in and out of there for 15 years to pick up people, and he doesn't have records that would let him know one way or the other.

Q. So I understand you to say, sir, that you cannot say that a helicopter has landed there every year since 1989; is that right?

A. That's correct.

Q. Now, you suggested to Commissioner Kotroco in response to his inquiry, Well, you never sought formal approval to land an airplane or helicopter at your site, did you, sir, prior to this proceeding? you said no, and the implication was that you thought it was appropriate; is that right?

A. Yes.

Q. Now, you mentioned the ag program, I believe?

A. That's correct.

Q. Did you tell the ag program that you had an airstrip at the farm?

A. Absolutely.

Q. You did. Did you have your property appraised in order to submit the land to the ag program?

A. Yes, we did.

Q. Did you list on those appraisals or communicate to your appraiser the improvements to your property?

going now.

Q. I didn't know that.

A. Right. And then breeding syndicate, brood mare Camaland (phonetic), there are four people in on that.

Q. So a total of eight?

A. Some of them are the same on both horses.

Q. Of that group of people you just identified, how many live, reside, not work, in the state of Maryland?

A. Half of them, four of them.

Q. Who are they?

A. Let's see. Bobby Kirchner, Leonard Farbman. Jim Hall lives in Washington. Bobby Kirchner, Bobby and Al Kirchner. They split a unit. More of them are out-of-state than I thought.

Q. How about Mr. Grass, is he a member of your syndicate?

A. Mr. Grass is a member of some -- well, it's a partnership between he and my father on valued horses. He owns 25 percent of eight different horses with my father.

Q. So Martin Grass owns 25 percent of eight horses owned by your father?

A. Right.

Q. When did that business relationship begin, Mr. Lucas?

A. Last year, in October.

Q. October 1997?

A. Right.

Q. How much did he invest in those eight horses?

MR. BARHIGHT: Objection.

MR. KOTROCO: What's the relevance of that?

MR. NELSON: Bias. This man has just come to this court and told you that I need this operation because I'm going down. I've now learned, contrary to his prior testimony, that Mr. Grass has invested in eight of these horses. I'm entitled to find out how much money Mr. Grass has invested.

MR. BARHIGHT: I certainly have to object to the invective. It's not contrary to any of his prior testimony.

THE WITNESS: Absolutely not.

MR. NELSON: I disagree.

MR. BARHIGHT: And if I may be heard, I allowed

VOLUME II

IN RE: * BEFORE HEARING OFFICER/
HELMORE FARM * DEPUTY ZONING COMMISSIONER
Special Hearing/ * OF BALTIMORE COUNTY
Special Exception
* No. 98-294 SPHX
* April 7, 1998

* * * * * * *

The above-entitled matter came on for hearing before the Deputy Zoning Commissioner of Baltimore County at Baltimore County Courts Building, Room 407, Towson, Maryland 21204, at 9:15 a.m., April 7, 1998.

* * * * * * *

BEFORE:
TIMOTHY KOTROCO, Esquire
Deputy Zoning Commissioner

APPEARANCES:

G. MACY NELSON, Esquire
On behalf of Protestants

G. SCOTT BARHIGHT, Esquire
On Behalf of Petitioner

Reported by:
Susan E. Smith, CSR

rebuttal.

MR. NELSON: Not to keep putting on the primary case, which he did.

MR. BARHIGHT: Excuse me, Mr. Nelson. I'm not done yet. I always properly wait for you to finish, so if you wouldn't mind affording me the same courtesy.

Second, I have but one more question beyond this. We've already taken up more time than he had to hear the objection.

MR. KOTROCO: Sometimes it's more entertaining with the arguing that goes on back and forth. You have one more question to ask him. Go ahead and ask your last question.

MR. BARHIGHT: Let him answer the first one.

MR. NELSON: I object.

MR. KOTROCO: I'll overrule the objection.

A. The first time was, I flew in a plane myself in 1971. I was not the pilot of the plane at that time, my instructor was. In '72 I started flying in myself, just as crosscountry flights for training.

Q. Last question on this topic. Have there been

aircraft operations at Helmore Farm during the decades of the '70s, the '80s, and the '90s?

MR. NELSON: I object. I'd like to be heard.

MR. KOTROCO: You want to be heard?

MR. NELSON: Yes, sir. We went through this very carefully. He testified to this. I cross-examined the man. There is no new matter that we produced in our defense. He's seeking to repeat what he said, perhaps change what he said, because at the conclusion of the evidence I'm going to move for judgment today on the nonconforming use because they haven't made out a prima facie case. And you cannot just repeat your case and fill in the holes that you left in your primary case. There is nothing new about our defense that they didn't know about. It's not proper rebuttal.

MR. KOTROCO: Is he simply going to restate what he already testified to?

MR. BARHIGHT: Well, I guess there might be a disagreement about whether that's what's occurring or not. Mr. Nelson has asserted in his characterization of Mr. Lucas's testimony that he claimed that there was only

aircraft taking off and landing at Helmore Farm for a six-year period. There he is. I asked him the question, Did it occur during the '70s and '80s and '90s. All I want him to do is say yes or no and we'll be done with it.

MR. NELSON: I object.

MR. KOTROCO: I don't understand your objection, Mr. Nelson. I myself have had some confusion about his testimony from the direct on the petitioner's portion of the case, so I don't mind myself, for purposes of clarification, hearing it one last time, even if it is the same as he's already testified to. And I'd have to review my notes.

But I would like to hear it again, just so I know in my mind. It's obviously a dispute, and it might not be a dispute. There is always a possibility that a plane came in at one particular time when all of your witnesses, who have already said they've never seen a plane or have only seen a plane on a rare occasion, could have come in while they were all at work, or on vacation, or --

MR. NELSON: Correct. You're right. But the point is this witness has testified under oath on two

occasions now, twice under oath, that he can't say it was done every year.

MR. BARHIGHT: I didn't ask him that.

MR. NELSON: Well --

MR. BARHIGHT: I didn't ask him that. I told you I'd only ask one more question and it's on the floor.

MR. NELSON: I object.

MR. KOTROCO: The objection is noted for the record. I'll overrule it. Go ahead and give your answer.

THE WITNESS: Can you state the question again?

MR. BARHIGHT: Sure. And so that I don't misstate it, would you please read it back? I don't want to be accused of changing the question.

(The reporter read back the question at page 467, line 21.)

MR. NELSON: I object.

A. Yes, there have. There have been aircraft operations through all of those decades. I think even Doug Carroll testified he saw them in the '50s, his sister in the '70s, and they have been all the way up through there. He's testified he knew there was an airstrip there

and there were aircraft operating in and out of there. Doug even testified he saw a helicopter land at the farm.

Q. There have been a variety of protestants concerned about the level of usage of the aircraft as proposed on a going-forward basis. I'm leaving historical. There is no question about that. On a going-forward basis, you've created a self-imposed restriction of eight events a day each for fixed-wing and helicopters. Just to lay a foundation here for the next question, is that my understanding correctly?

A. Yes, it is.

Q. How often would you expect in a year to actually approach that level?

A. Only on one day a year, the day of the Preakness, when we might have several clients coming in from New York. Especially if we have one of our partnership horses running in the race, we could have several people coming down from New York to see the race.

Q. Turning our attention to another topic that's been brought up on the protestants' case with regard to the ability to construct a residence at the Immelt parcel,

BY MR. NELSON:

Q. Mr. Lucas, of course we're here on a -- one of the things we're here on is a special exception, and the zoning commissioner has the authority and discretion to impose certain conditions on the special exception, in the event that he grants it.

You've shared with us, sir, the fact that you are considering buying an airplane, a Maule, which is one of these light, slow, single engine airplanes that can take off, according to Mr. Lamb, on this purported airstrip. Now, if you buy this aircraft, and if you get the special exception, would you be willing to accept a condition from Commissioner Kotroco that you not fly helicopters there?

A. No, because, as I've told you, there are certain weather conditions that -- when the horse is going to run, the horse is going to run, and we've got to be able to get there. If we can't safely fly the Maule, then we need to take the helicopter to accomplish what we're trying to do. And also, there are clients of ours in New York who would be coming down to us. They have their own helicopters. They have helicopter service that operates from the center

of the city, right at the PanAm building, several other locations, where they can just go there from Wall Street, come down here, see what they've got to do, come down here, land at our place, and we'll take them down to Pimlico, and then they can go back on their own helicopter to New York.

Q. So as I understand your testimony, the reason you cannot agree to that condition is that there are certain weather conditions in which you need a helicopter to fly to a racetrack, or you need one of your important clients to fly to you?

A. That's correct.

MR. BARHIGHT: Object. That wasn't the proper characterization.

MR. NELSON: He just said yes. Pardon me, counsel.

Q. Now, would you agree to the following condition? And I'm not suggesting to Commissioner Kotroco that he do this, but this is just purely hypothetical. If Commissioner Kotroco were to grant you this extraordinary special exception, would you agree to these conditions:

You can fly your Maule there in safe weather conditions, and if the weather conditions are dangerous, you can use a helicopter, but only you and only when you are flying to a racetrack, or if one of your customers is flying to you. And not to put too fine a point on it, a special condition that says no neighbor may use this helistop to commute to his or her place of business. Would you agree to that condition?

A. No, because I think it also knocks out one of my primary friends who has been flying a Maule in here, Dave Good, from Michigan; knocks out Bobby Kirchner, one of our partners who has been doing touch and goes here since back in the '70s. I mean, it's too much.

Q. (MR. KOTROCO) The $64,000 question, I think, is would you be willing to live with the condition that excludes Mr. Grass from flying his helicopter in there?

Q. (MR. NELSON) That's precisely the question.

A. Well, Mr. Grass has, since we started all this, become a client, and there's reason for him to fly in and out of here on business of the horse industry.

Q. May I rephrase the question?

A. That's the problem.

Q. All right. Would you agree to a condition, Mr. Lucas, that prohibits Mr. Martin Grass from commuting to work in Harrisburg, Pennsylvania, or wherever else he moves his enterprise, from your property? Would you agree to that special condition?

MR. NELSON: And I'm not suggesting you grant the exception. It's purely hypothetical to explore this man's motives.

Q. Would you agree to that, sir?

A. The problem we find, I find with that is that at Mr. Grass's current level of involvement with our horse operation, it's just in on partnership on eight horses we currently have. I've already currently laid out to him a major program for becoming involved in the breeding operation of the farm. To implement that major program, I need almost daily access to him, because it's going to become a major Maryland horse operation. To do that, to exclude me from having access to him on a daily basis would really throw a major, major monkey wrench in that. I wouldn't have the access to him to go over, be able to

review our plans and stuff. It basically bars him from being in there to do what we're trying to do. And what we're trying to do is -- I mean, like the Rosenbergs, they're there now. Ned has said he may buy a place of his own down the road. Maybe Mr. Grass becomes our major customer as far as the horse operation. Well, to be able to run that type of operation, the number of dollars we're talking about possibly having involved in the operation at that point, to say that I can't have access to him on a daily basis would just kill us.

Q. And Mr. -- I'm sorry, go ahead.

A. And basically it gets down to -- you know, it's almost like where the condition dictates whether or not we can be profitable, whether we can deal with the clients. I'd rather be limited to a number of flights a day, whether it's Mr. Grass, or the other clients, or something, come down to a level based on the noise or something that the people in the area would agree to, or you would agree to, so it's not a hindrance to anybody. But please give us the flexibility to deal with our clients and our business as we need to.

Q. Mr. Lucas, let me ask you this question. Could you not simply pick up the phone and dial the seven digits you need to dial to speak to Mr. Grass in the evening?

A. No.

Q. That's an option, is it not?

A. No, it's not, especially with Mr. Grass's wife and the way she conducts her house and stuff. We aren't supposed to call there in the evening during private hours.

Q. Well, you can dial ten digits and get him in Pennsylvania, could you not, during the workday?

A. Have you ever tried to get a C.E.O. of a corporation? This way, with him there, I have him captive every day, twice a day.

Q. So your point is he will only speak to you and he will only consider investing in your enterprise if and only if you let him fly in and out of your property eight times a day. Is that what you're telling this Court?

A. Not eight times a day. I'm not asking for him to be able to fly in and out eight times a day.

Q. You're right. That was only Preakness day. How

about twice a day?

A. Twice a day, that means I know where he is twice a day and I can get to him. Our operation can get to him twice a day.

Q. How much are you asking Mr. Grass to invest in your enterprise?

MR. BARHIGHT: Objection.

A. I am not asking Mr. Grass to invest any specified amount. I have laid out what I think is a prudent way to become involved in the horse operation, gradually phasing in buying a few brood mares, and every couple of years buy a few more, buy a couple fillies to run at the racetrack and see how they all pan out over time. And you're constantly culling. It's a whole process.

MR. BARHIGHT: I guess my objection was overruled by my client.

MR. KOTROCO: By your client. He just went ahead and answered.

Q. I mean, is there a written proposal that you've made to Mr. Grass?

A. Yes, there is.

Q. Where is that document?

A. It's in our offices.

Q. And this is a master plan for Mr. Grass to get involved in your enterprise; is that right, sir?

A. It's a master plan if we can have access to him enough to implement the program.

Q. Has he said that I won't implement this plan if I can't fly from your property?

A. There are constraints beyond his control that would not allow him to take ordinary losses against ordinary income if he doesn't have access to the operation a certain number of hours.

Q. Oh. What you've just told us is that if he -- if you get this special exception, and he flies out of there and invests in horses, he gets the tax shelter?

A. No, it's not --

Q. What did you just say?

A. It does not operate as a tax shelter.

Q. What did you say about his tax consequences?

A. What happens is if you devote a specified number of hours, which is a variable, to an operation, you are

not a passive investor, you are an active investor. And if you are an active investor, then any losses, which in the first few years of getting involved, building up a horse operation, are almost inevitable, unless you hit a big horse right off, you can, if you're active, considered active, you can use those losses against your ordinary income. If you're only a hobby loss, you cannot use them against ordinary income, and it really deters people from being involved in the horse business.

Q. You've told us this helicopter is on the ground for maybe, what, 45 to 60 seconds. The total flight in, pick up, and flight out is, according to your stopwatch, three minutes and 23 seconds.

A. That's correct.

Q. If this helicopter is on the ground for 45 seconds in the morning and 45 seconds in the afternoon, are you saying, from the point of view of the IRS, that he's an active participant in your horse farm?

MR. BARHIGHT: Objection.

A. That's not the only time when he is on the farm.

Q. What are the other times he's on the farm?

MR. KOTROCO: Do you want your objection ruled upon?

MR. BARHIGHT: Well, he keeps on overruling my objection. He said that's not the only time that he's on the farm.

Q. Well, we'll explore that. When else is he on the farm?

A. He's there before he takes off, so that when that helicopter gets there he's ready to go.

Q. I see.

A. So that we have time to discuss what we need to before he has to take off. And when he gets out of the helicopter, he'll hang around as long as I need him to, to go over what we need to. And he'll even come up to the office and sit down, and we conduct our business as we need to.

Q. How many minutes a day do you need to make him an active participant?

MR. BARHIGHT: Objection. That calls for a legal conclusion. It's up to the IRS to decide those details.

MR. KOTROCO: Whether Mr. Grass gets a tax

deduction as a passive investor or an active investor really isn't too germane to whether or not I grant a special exception.

MR. NELSON: Very well, I'll move on.

MR. BARHIGHT: That's true.

MR. KOTROCO: I'll sustain the objection. It was interesting, though.

MR. NELSON: It was.

Q. So just so the record is clear --

MR. KOTROCO: I didn't mind hearing it.

Q. -- you would not agree to a condition that you can fly your Maule, or a plane like it, that your buddies from Michigan and wherever can come in for touch and go to visit, but you would not agree to a condition that prohibits people from commuting to their place of business, so long as that place of business is unrelated to the horse industry. You would not agree to that; is that right, sir?

A. You're right. I'd agree to a limitation that would allow owners of the farm, our clients, and my personal friends.

Q. To use your place to commute to Harrisburg, Pennsylvania?

A. Right, right.

Q. All right. Now, forgive me if I'm going over old ground, but I'm constrained to do it now. We can agree, can we not, that prior to 1971 you, with your own eyes, never saw any aircraft or any helicopter land at Helmore Farm?

A. Prior to '71, no.

Q. We can agree, can we not, that since 1971, through 1997, you cannot state under oath that an airplane landed every year at Helmore Farm?

A. Well, an aircraft has. An airplane every year, I cannot state that. A helicopter every year, I cannot state that.

Q. All right. So just so I understand what you just said, you're unable to say since '71 an airplane, a fixed-wing aircraft has landed every year?

A. Yes. No, I'm not saying a fixed-wing every year. I'm saying either/or, one or the other has been in there every year.

Q. We'll get to that.

A. Right.

Q. And you can't state under oath that a helicopter has landed there every year at Helmore since 1972?

A. No, not a helicopter every year, no.

Q. What was the first year a helicopter landed there?

A. First year was '72.

Q. Now, you can't state under oath -- let me back up. What document -- can you list for me the years that the fixed-wing aircraft have landed? Give me the years, please.

A. The fixed wing?

Q. Yes, sir. List the years.

A. Let's see, '72 to '78 I was flying -- '71 to '78 I was flying from College Park Airport into the farm myself, either with a pilot or without a pilot. Since '77, from '77 to '91, Bobby Kirchner has been operating his plane, doing touch and goes, takeoffs and landings. He's stopped and taken us to Ocean City, flown in there and picked us up. '91 he stopped because he got a

twin-engine plane and the strip couldn't handle it anymore. Then Dave Good, who I used to ski race with, he has operated a Maule that he gets from a friend of his in Michigan. They've got a lot of Maules up there because of the lakes and all. But he's operated a Maule down here every year since about '83.

Q. Every year since '83?

A. Right.

Q. So you said that you've flown a plane every year --

A. Not me.

Q. Wait a minute -- between '71 and '78?

A. Right, that's correct.

Q. Mr. Good -- was it Mr. Good?

A. Dave Good, right.

Q. -- flew a plane every year from '71 to '91?

A. No.

Q. I misheard you then. '71 to what year?

A. No, you're getting the two guys mixed up. Bobby Kirchner, '77 to '91,

Q. And Dave Good?

A. Dave Good, about '83 to the current. He still comes down.

Q. So would you list for me, under oath, the years, every year, year by year, that a plane landed there?

A. You want me to state the year, every year?

Q. Yes, sir. Tell me every year.

A. '71, '72, '73, '74, '75, '76, '77, '78, '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90, '91, '92, '93, '94, '95, '96, and the Scout last week, '98.

Q. (MR. KOTROCO) You skipped '97? Did you include that?

A. I said '97.

MR. KOTROCO: Did he say '97?

A. '97.

MR. BARHIGHT: I don't think he said '97.

A. Okay, '97.

Q. (MR. NELSON) Now, Mr. Lucas, I asked you precisely this question under oath on two occasions. The first time was before the circuit court, and I have the transcript, and let me read the question and the answer.

MR. BARHIGHT: What page?

MR. NELSON: Page 108.

Q. Question: Can you tell this Court, please, each year that an airplane landed at Helmore Farm since 1972?

And your answer, under oath, in the Circuit Court for Baltimore County, not one floor down from here, under oath, was: I don't have a list of when planes landed or helicopters landed, no, just on an as-needed basis.

Question: So you will agree, sir, will you not, that you cannot testify under oath --

MR. BARHIGHT: What page are you on?

MR. NELSON: 108.

Q. So you will agree, sir, will you not, that you cannot testify under oath that a fixed-wing airplane landed each year between 1972 and the present?

Answer: Not with certainty, no.

Was that not my question and was that not your answer, under oath, six weeks ago downstairs with the circuit court?

A. I also told you --

MR. BARHIGHT: I'd like to have the witness to have the opportunity to read the transcript. I'm not

finding it now.

MR. NELSON: Page 108.

MR. BARHIGHT: I'm sorry. It's not on ours. Do you mind letting the witness see your version of the transcript before he's forced to answer the question, had an opportunity to review the transcript, just as your witness was. I'm not doubting that Mr. Nelson --

MR. NELSON: We've got three more days, Mr. Barhight.

MR. BARHIGHT: I'm not doubting that Mr. Nelson has properly quoted from the transcript. I wanted to do two things: first catch up to him in ours, and also give the witness an opportunity to review the transcript.

MR. NELSON: We've got three days.

MR. BARHIGHT: I don't think I'll need three days, thank you very much.

MR. NELSON: I might need it.

MR. BARHIGHT: Well, I'm glad we have them so you can use them at your leisure. We're about three or four pages off, but we can call it up.

Q. The question is --

MR. BARHIGHT: Please feel free now to let the witness review the transcript.

Q. My question is, for the witness, did I not ask you that question and did you not answer under oath as I just recited to you a few moments ago?

A. Yes, I did, and it also states in here my answer to the questions about that, that from '89 to the current, as I was going up to that point, the only year I don't know about is '93. And we checked, and I can say that now because Dave Good did come down in '93.

Q. Oh, I see. So your explanation now is that you told me two pages later that the only year you didn't know about was 1993, therefore you checked with Mr. Good so you can say that you've flown in aircraft every year since 1972, fixed-wing; is that right?

A. Yes.

Q. Now, it's true, is it not, that the reference to 1993, we're talking not about fixed-wing aircraft but about helicopters?

A. No, '93 we're talking about fixed-wing. Dave doesn't even have a helicopter.

Q. Would you please look at page 110 and read with me, Mr. Lucas.

Question: My question is very simple, sir. Would you please tell this Court, under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present.

Answer: 1972, 1978.

A. No, that's incorrect in here. It was 72 to '78.

Q. All right. Give it a dash, I don't care.

1972, correction, dash, '78. From 1978 I don't know when until 1989. There were years in there, but there is some gaps in there. Now, I know in 1989 up to the current that it's been every year, except that I can't, I don't know about 1993, that we landed there in 1993.

Don't you agree that you're talking about helicopters there and not fixed-wing aircraft?

A. In this part here I'm talking about helicopters. In the other part, at that point I did not know if anything landed there in '93.

Q. So it's your testimony now that an aircraft has

landed every year, fixed-wing aircraft, since 1972?

A. Yes, sir.

Q. When did you do your research about the year 1993?

A. I called Dave as soon as I could get ahold of him. He was out of the country.

Q. After this hearing?

A. After that hearing, yes, after this.

Q. So you knew that information before we started this proceeding, didn't you?

A. Before we started here today?

Q. Yesterday.

A. Yes.

MR. NELSON: Okay. Now I'm going to ask the court reporter to read back my cross-examination of this witness where I asked precisely the same question under oath, and he gave precisely the same answer he did in the circuit court, which contradicts his testimony today. Because I asked her to read it to me in the hall this morning. I'm going to ask her to do that.

Do a word search, please, for "every year" in my

initial cross-examination. And we'll see this is now the second time he has changed his testimony.

(Discussion off the record.)

MR. NELSON: This is my cross-examination of this witness from this proceeding yesterday, right?

THE REPORTER: Right.

MR. KOTROCO: Before you start, I need to get another tape. You get ready to read whatever you need to read, and I'll be right back.

(A brief was taken.)

MR. KOTROCO: All right.

Q. Mr. Lucas, did I not ask you this question in your cross-examination yesterday. This is some six weeks after the hearing in the circuit court. This is after you immediately called your friend in the Midwest to confirm that he had been there in 1993. Did I not ask you this question:

And you will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at the Helmore Farm?

Answer: No.

So you told me in this proceeding that an aircraft, you were unable to say that an aircraft landed every year since 1979. You told me that yesterday, didn't you?

A. Well, also at that point we're in 1998. Aircraft, fix-winged aircraft had not landed there at that point. We hadn't done the sound test for '98.

Q. I see. So what you're saying was it landed every year since '79, but not 1998; therefore it wasn't every year?

A. Right.

Q. I see. So do you disavow your testimony from the circuit court proceeding, sir?

A. No.

Q. You don't. Would you please list for me every year that an airplane landed at Helmore between 1943 and 1972?

MR. BARHIGHT: Objection, asked and answered. He also already said he can't testify to that.

MR. NELSON: All right. Do we have that stipulation?

MR. BARHIGHT: It's not based on personal knowledge. All he has are the books and records of the corporation. It's been asked and answered twice.

MR. NELSON: I want the record to reflect that no one has presented any evidence that an aircraft, from a witness, has landed prior to '72.

MR. KOTROCO: Well, '71.

MR. NELSON: '71, I beg your pardon.

THE WITNESS: Yeah.

Q. Now, will you please summarize for this Court the documents that you have that allow you to say an aircraft, fixed-wing, has landed every year between 72, '71, and the present?

A. Documents?

MR. BARHIGHT: Objection, asked and answered. We've been through this.

MR. KOTROCO: I'm not sure he asked about documents.

Q. (MR. KOTROCO) Do you have any documents that show when -- do you keep a logbook or something like that?

A. No, don't keep an airstrip logbook.

Q. You went back through some old documents to show capital improvements where you put the pipe in and --

A. Right, because that has to go in for accounting reasons, into the books, and we have to be able to depreciate. So I can find it from the depreciation schedule.

Q. Other than those documents, you don't have any other documents?

A. No. We don't depreciate an air flight or anything. The great majority of them are using friends' planes and stuff, or Dave flying in where I'm not even doing the flying.

Q. (MR. NELSON) And just so the record is clear, you don't have any documents for helicopter, do you?

A. Right, no.

Q. Help me here. You said that you were unable to say that an aircraft had landed at Helmore farm every year since '79 because you hadn't yet done the test in '98; is that right?

A. Yeah. We just did that test.

Q. When did you do the test?

A. Just did the test a couple of weeks ago.

Q. Okay. What month, what year?

A. I think it was in March '98.

Q. Well, isn't it true that the testimony we read from the transcript was yesterday, not six weeks ago. But yesterday you told this Court under oath that fixed-wing aircraft had not landed there every year since '79, and that was after this so-called test you did in March of 1998? Do you want me to read the transcript again?

A. No, you don't have to read the transcript again.

Q. Do you want to disavow that testimony now, sir?

A. What are you asking me to disavow?

Q. My question, sir, is I read to you your transcript from yesterday where you said I'm unable to state under oath that a fixed-wing aircraft has landed here every year since 1979. Then, by way of explanation, you said, Well, wait a minute, we hadn't done the test for '98 yet, and that's why I didn't say it was every year. Then I came back and said, When was the test that you did?

A. I think I didn't understand the context of your question, the way you were saying it at the time.

ORIGINAL

IN THE CIRCUIT COURT
FOR BALTIMORE ~~COUNTY~~, MARYLAND

DEIDRE SMITH, et al.

PLAINTIFFS

6

CASE NO.
03-C-98-000364

VERSUS

EDGAR LUCAS, et al.

DEFENDANTS

_____/ Friday,
February 20th, 1998

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE R. DANIELS, JUDGE

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

G. MACY NELSON, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

JAMES R. CHASON, ESQUIRE
THOMAS M. WOOD, ESQUIRE
DAVID K. GILDEA, ESQUIRE

REPORTED BY:
DEBORAH K. LAMBERT
Official Court Reporter
Baltimore County Circuit Court
401 Bosley Ave., Room M-08
Towson, Maryland 21204
(410) 887-2635

Q My question is not that, but did you land your airplane in 1972 where the helicopter is now being landed?

MR. CHASON: May the witness complete his answer.

THE WITNESS: The way was too --

MR. NELSON: Withdrawn.

THE COURT: The question has been withdrawn.

THE WITNESS: Yes.

BY MR. NELSON:

Q Did you --

A Yes. This is where we landed the plane.

Q Can you tell this Court, please, each year that an airplane landed at Helmore Farm since 1972.

A I don't have a list of when planes or helicopters landed, no. Just on an as-needed basis.

Q So you will agree, sir, will you not, that you cannot testify under oath that a fixed-wing airplane landed each year between 1972 and the present?

A Not with certainty, no.

Q All right.

A No.

Q Can you tell the Court, please, under oath, each year since 1972, that a helicopter landed at

Helmore Farm.

A From 1989, when we first started with the partnerships. Well, from '72 to '78, while there was the College Park airport, we were there many times because we would fly from College Park to the farm.

Q In a helicopter?

A Yes.

Q All right. So you are saying that between 1972 and 1979 that --

A 1972 and 1978.

Q 1972 to 1978?

A Yes.

Q -- that a helicopter was landed at Helmore Farm?

A Right.

Q Each year?

A And then --

Q Each year?

A Each year.

Q And since 1978, can you list the years that a helicopter has --

A From 1989 to current, the only year I don't know about is '93.

Q All right. So to put it another way, between the years of 1978 and 1989 no helicopter landed

there?

A No. I just -- there were times we flew in and out with the helicopter, but I don't know the -- those were sequential years that I know about. There were several other times, maybe a dozen times some years, a couple times, three times one year. But there are several years that there are probably gaps in there.

Q My question is very simple, sir.

Would you please tell this Court, under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present.

A 1972, 1978. From '78, I don't know when, until '89. There were years we landed in there, but there is some gaps in there.

Now, I know in '89, up to the current, that it's been every year, except that I can't -- I don't know about '93, if we landed in there in '93.

Q Okay. What documents do you have that allow you to document what you just told this Court under oath?

A The documents? I just know which races that the -- partnership races we flew to.

Q Did you ask the pilot to produce logs for these proceedings?

Parris N. Glendening
Governor

David L. Winstead
Secretary

Maryland Aviation Administration

*"To provide services to our customers and the air transportation industry
To foster and develop aviation in Maryland • To develop and empower our employees."*

Theodore E. Mathison Executive Director

April 13, 1998

C. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson MD 21204

Dear Mr. Nelson:

Thank you for the opportunity to comment upon the two airports you have properly identified as those less than 1,200 feet in length registered in the State of Maryland. As Director of Regional Aviation Assistance, I am responsible for the inspection and certification that the airports do not pose a risk to aircraft operating from the airports and the people in those aircraft and on the ground.

The first airport, Recompense Farm Airport is located in southern St. Mary's County. It is in a mostly agricultural setting with some large acreage residences nearby. The airport's runway is 1,100 feet in length and is used by the owner and his Ryan Navion aircraft which has the capability to safely operate from that length of runway.

Approaches to the runway ends are, for Runway 27, essentially over water and, for Runway 09, over trees and a road running across the close-in approach. As far as I know, no helicopters operate from the airport.

The second airport, Stol Crest Airport is near Ijamsville in Frederick County. It has a runway 600 feet in length. The area is similar in nature as stated above, but appears more agricultural with fewer large acreage residences. Approaches to the ends of this airport are, for Runway 04, over a highway, and for Runway 22, over sparse trees. The aircraft used at this airport is a Maule, manufactured for its short take-off and landing capabilities and well suited for use in short fields. As far as I know, there is no helicopter traffic into or out of this airport.

If you have any further questions, please contact me at (410) 859-7064.

Sincerely,

Bruce F. Mundie, Director
Regional Aviation Assistance

FAXED 4-14-98

APR 15 1998

P.O. Box 8766, BWI Airport, Maryland 21240-0766 (410) 859-7100
TOLL FREE: 1 (800) I-FLY-BWI • FAX: (410) 850-4729 • TDD for the hearing impaired: (410) 859-7227
The Maryland Aviation Administration is an agency of the Maryland Department of Transportation

MAULE AIR, INC.

2099 GA Hwy. 133 South
Moultrie, GA 31768

Phone: 912-985-2045
FAX: 912-890-2402

Parts Department
FAX: 912-890-7307

February 06, 1998

Dale Lucas
P.O. Box 1248
Brooklandville MD 21022
410-321-1202

Dear Mr. Lucas:

We wish to extend our appreciation for your inquiry on our "Maule" aircraft. Please find enclosed literature as requested. We hope that the information provided will help your decision in purchasing our aircraft.

If we can be of further service, please contact Brent Maule in our sales department. Thank you again for your interest and we hope to hear from you soon.

Sincerely,
Maule Air, Inc.
Mekisia Shell
Mekisia Shell
Asst. Sales Secretary

cc: File
dealer: none/area

MAULE AIR, INC. - 2099 GA HWY 133 SOUTH - MOULTRIE, GA 31768 (U.S.A.) - PH:1-912-985-2045 - FX:1-912-890-2402

MAULE TAILDRAGGER SPECIFICATIONS:	MX-7-180B	M-7-235B	M-7-235B	M-7-235C	M-7-235C
ENGINE (LYCOMING):	O-360-C1F	O-540-J3A5 OR B4B5	IO-540-W1A5	O-540-J3A5 OR B4B5	IO-540-W1A5
PROPELLER (FP=FIXED PITCH/CS=CONSTANT SPEED):	76" CS	81" CS	81" CS	81" CS	81" CS
WING SPAN (FT):	32.9	32.9	32.9	32.9	32.9
WING AREA (SQ FT):	165.6	165.6	165.6	165.6	165.6
LENGTH (FT):	23.5	23.5	23.5	23.5	23.5
HEIGHT (FT) (TAIL DOWN):	6.3	6.3	6.3	6.3	6.3
CABIN WIDTH (IN):	42	42	42	42	42
SEATS:	4 (5^{TH} OPT)	5	5	5	5
GROSS WEIGHT (LB):	2500	2500	2500	2500	2500
EMPTY WEIGHT (AVERAGE) (LB):	1395	1530	1530	1600	1600
USEFUL LOAD (AVERAGE) (LB):	1105	970	970	900	900
FUEL CAPACITY (GAL) (USEABLE):	73	73	73	73	73
STALL SPEED (MPH) (FULL FLAPS/LIGHT WEIGHT):	40	40	40	40	40
TAKE OFF ROLL (FT) (LIGHT WEIGHT):	300	250	250	250	250
TAKE OFF AT GROSS OVER 50' OBSTACLE (FT):	600	600	600	600	600
RATE OF CLIMB, INITIAL (FT/MIN) (LIGHT WEIGHT):	1200	2000	2000	2000	2000
LAND AT GROSS OVER 50' OBSTACLE (FT):	500	500	500	500	500
BEST CLIMB SPEED (MPH):	90	90	90	90	90
SERVICE CEILING (FT):	15,000	20,000	20,000	20,000	20,000
FUEL CONSUMPTION (65% POWER) (GPH):*	9	12	11	12	11
RANGE (NO RESERVE) (MI):*	1095	912	995	912	995
CRUISE (75% POWER AT OPT ALT - TAS) (MPH):*	145	160	160	160	160
FLAP SETTINGS (DEGREES):	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48

*AVERAGE PERFORMANCE DATA - NOT FOR FLIGHT PLANNING

(02/22/96)

AOPA PILOT

FEBRUARY 1998

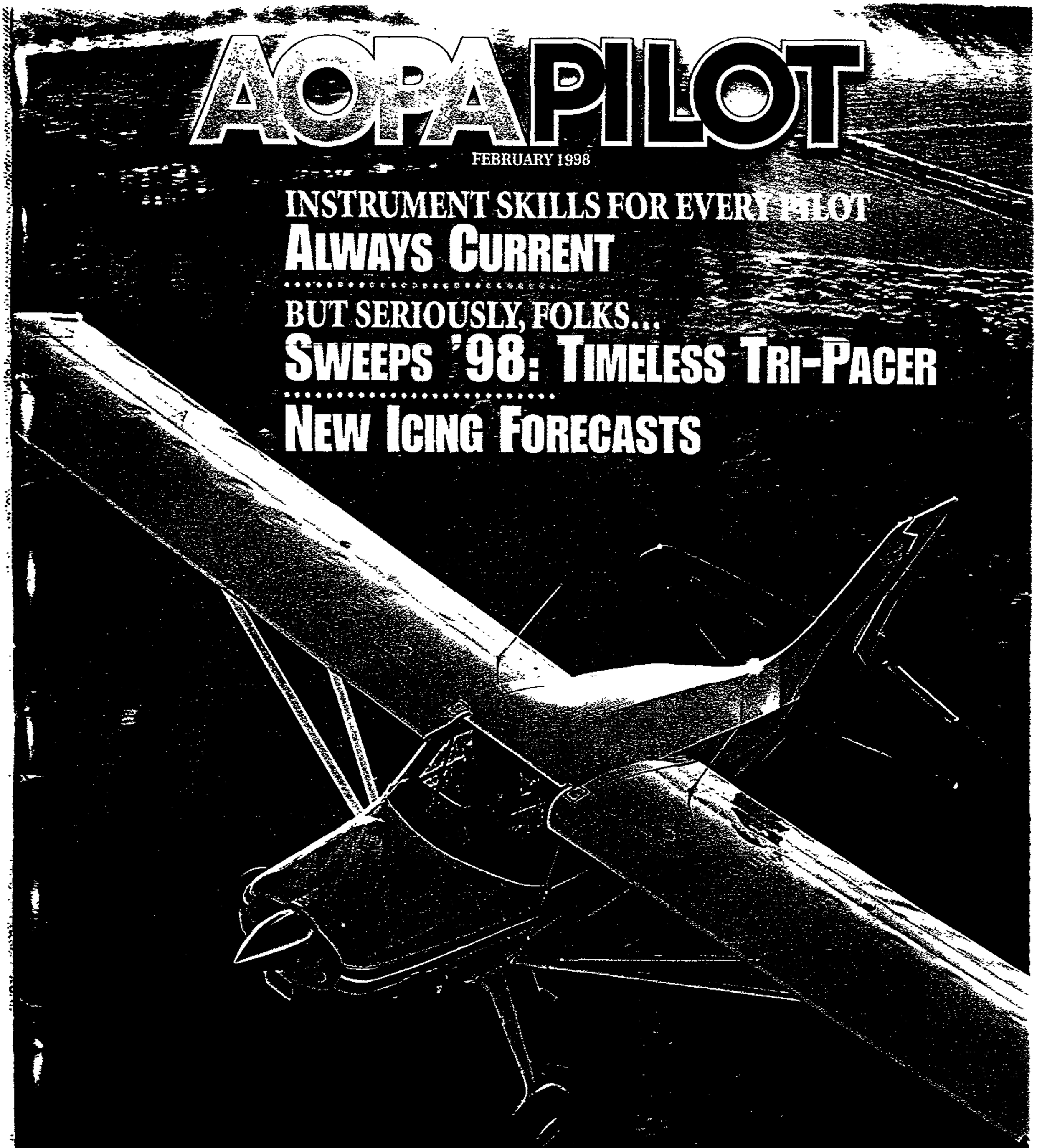
INSTRUMENT SKILLS FOR EVERY PILOT

ALWAYS CURRENT

BUT SERIOUSLY, FOLKS...

SWEEPS '98: TIMELESS TRI-PACER

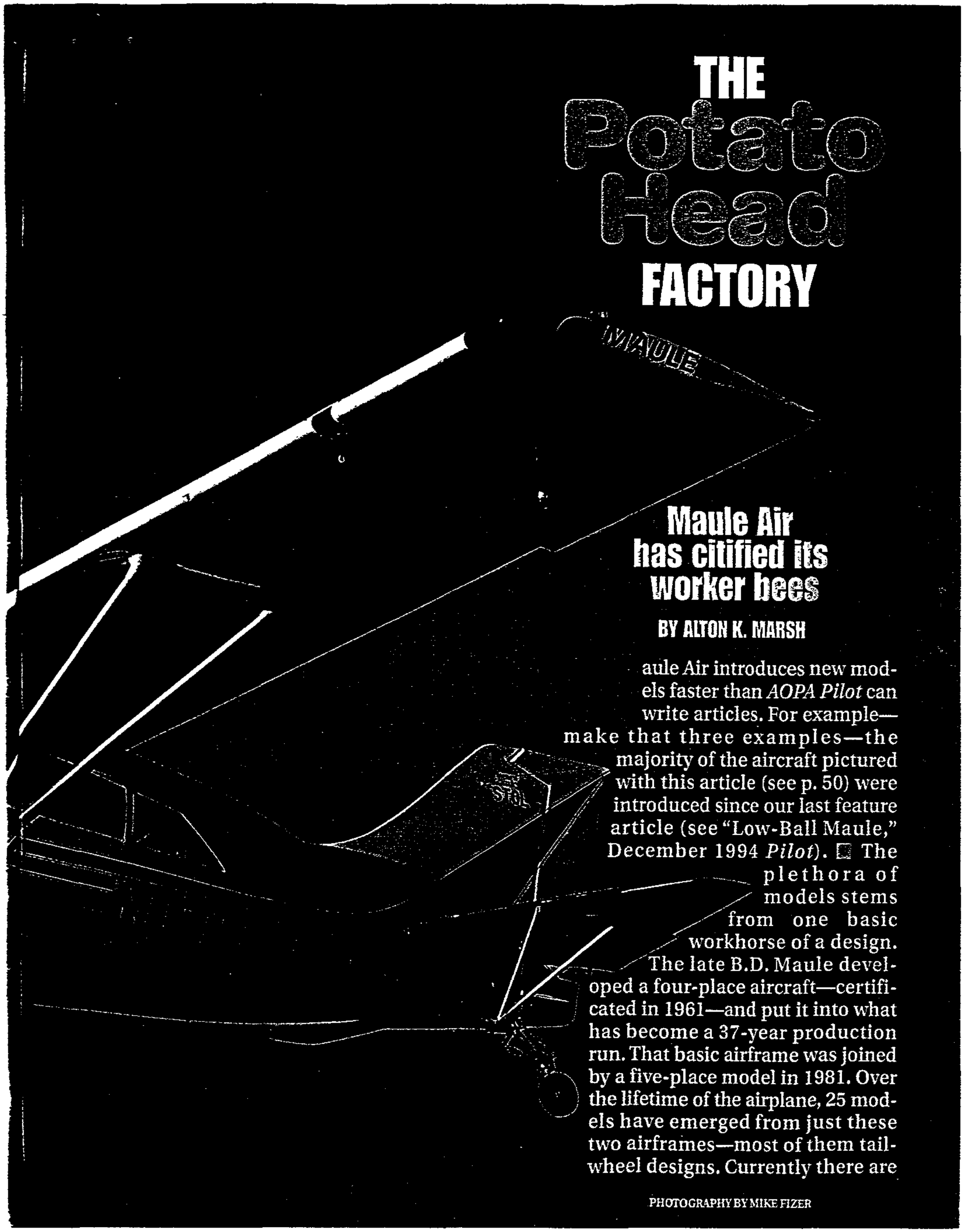
NEW ICING FORECASTS



ALL SLICKED UP

MAULE ORION

THE Potato Head FACTORY



Maule Air has citified its worker bees

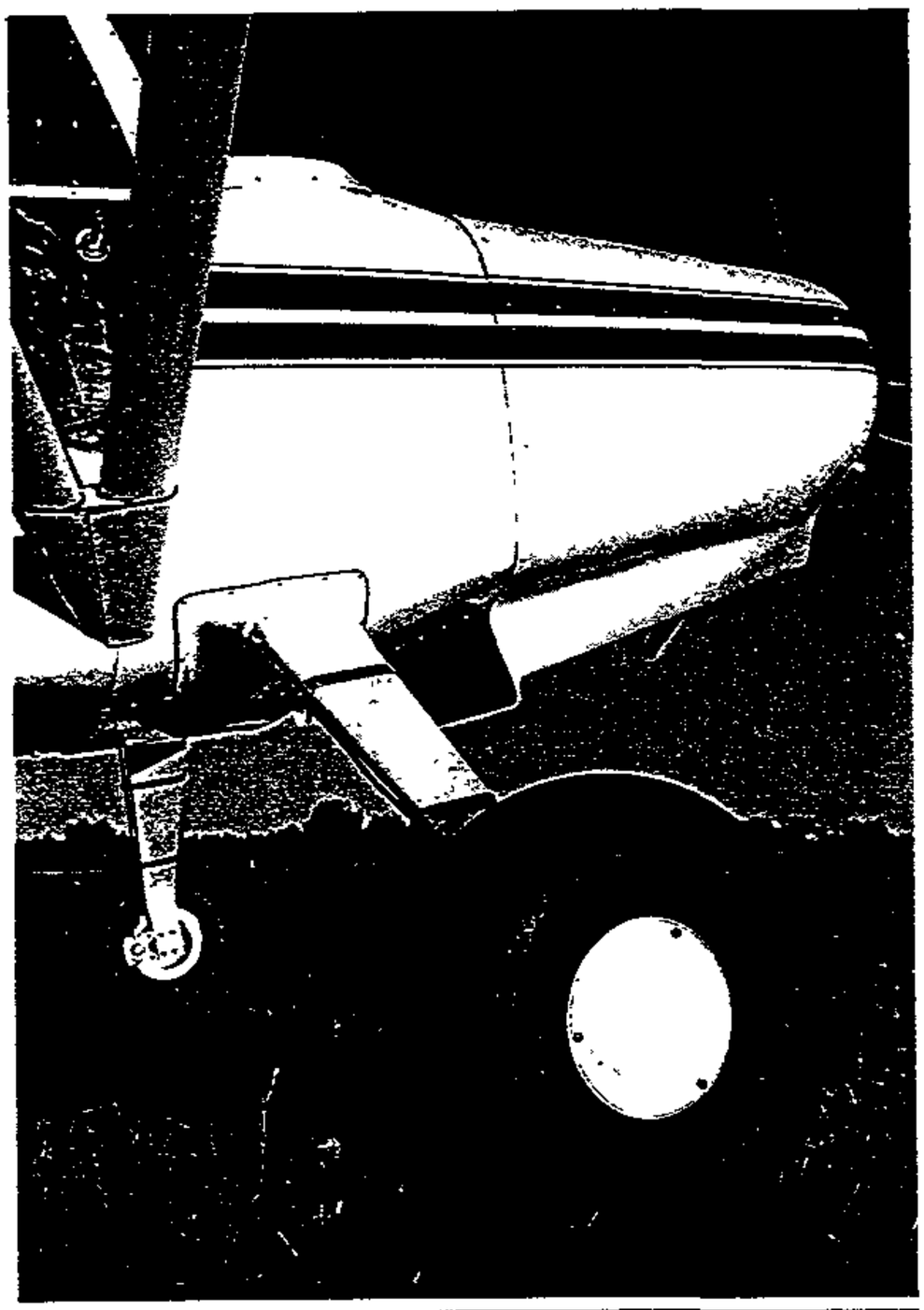
BY ALTON K. MARSH

Maule Air introduces new models faster than *AOPA Pilot* can write articles. For example—make that three examples—the majority of the aircraft pictured with this article (see p. 50) were introduced since our last feature article (see "Low-Ball Maule," December 1994 *Pilot*). ☐ The plethora of models stems from one basic workhorse of a design. The late B.D. Maule developed a four-place aircraft—certificated in 1961—and put it into what has become a 37-year production run. That basic airframe was joined by a five-place model in 1981. Over the lifetime of the airplane, 25 models have emerged from just these two airframes—most of them tailwheel designs. Currently there are

PHOTOGRAPHY BY MIKE FIZER

12 models available; five of them, including a turboprop, have nosewheels. FAA officials call Maule Air, located at Spence Airport near Moultrie, Georgia, the Potato Head Factory (after the Mr. Potato Head toy) because of the numerous options. You can put a lot of faces on the standard Maule potato. Every time a model gets a new option, such as the spring-aluminum landing gear, it gets a new name.

Obviously the design has sold well. That's because Maule airplanes have a reputation for hauling a heavy load off a short runway and thereafter cruising at anywhere from 100 knots to 170 knots—depending on the model. Sales average 65 to 70 a year, good economy or bad, thanks to prices that hold strong appeal, especially for the light of wallet and the value seekers. At this writing, there are 50 aircraft on order from customers in Mexico; South Africa; Switzerland, Poland, and other countries in Europe; and the United States.



The M-7-235C Orion—while more expensive—is among Maule Air's top-performing piston-powered aircraft.

In the 1994 article it was noted that the paint easily wore off leading edges and cowlings, the interiors were Spartan, and the owner's manuals were rather thin. Today the manuals are still thin, but all else has changed. The new paint is winning praise from dealers and customers, and the interiors are downright citified. The Maule is not just a workhorse anymore.

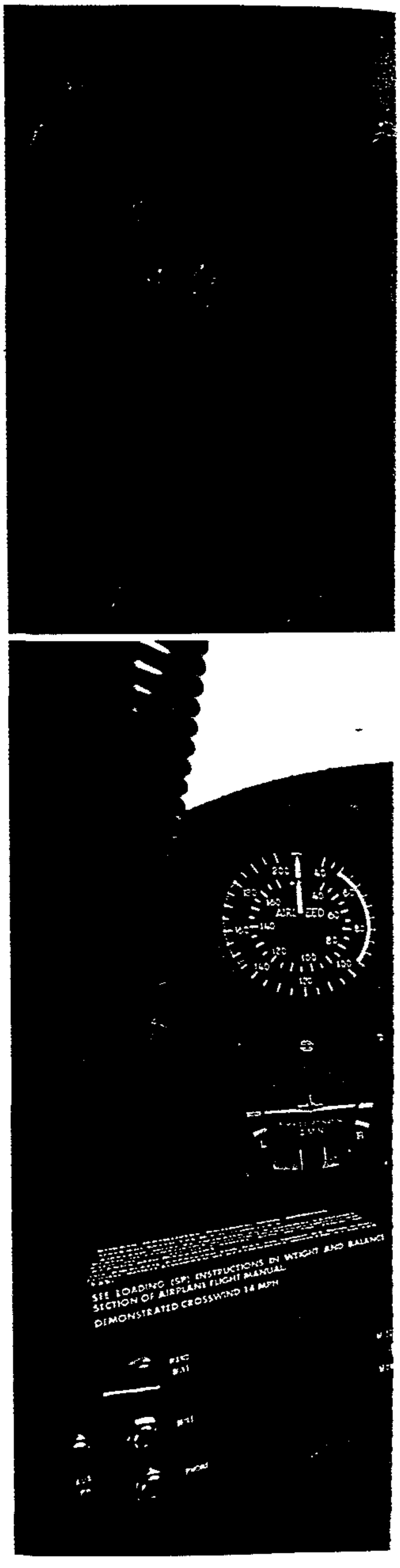
Instrument panels come in tan and gray, not just black, and the hardware-store switches and knobs are all but gone—replaced with more traditional aviation-quality fixtures.

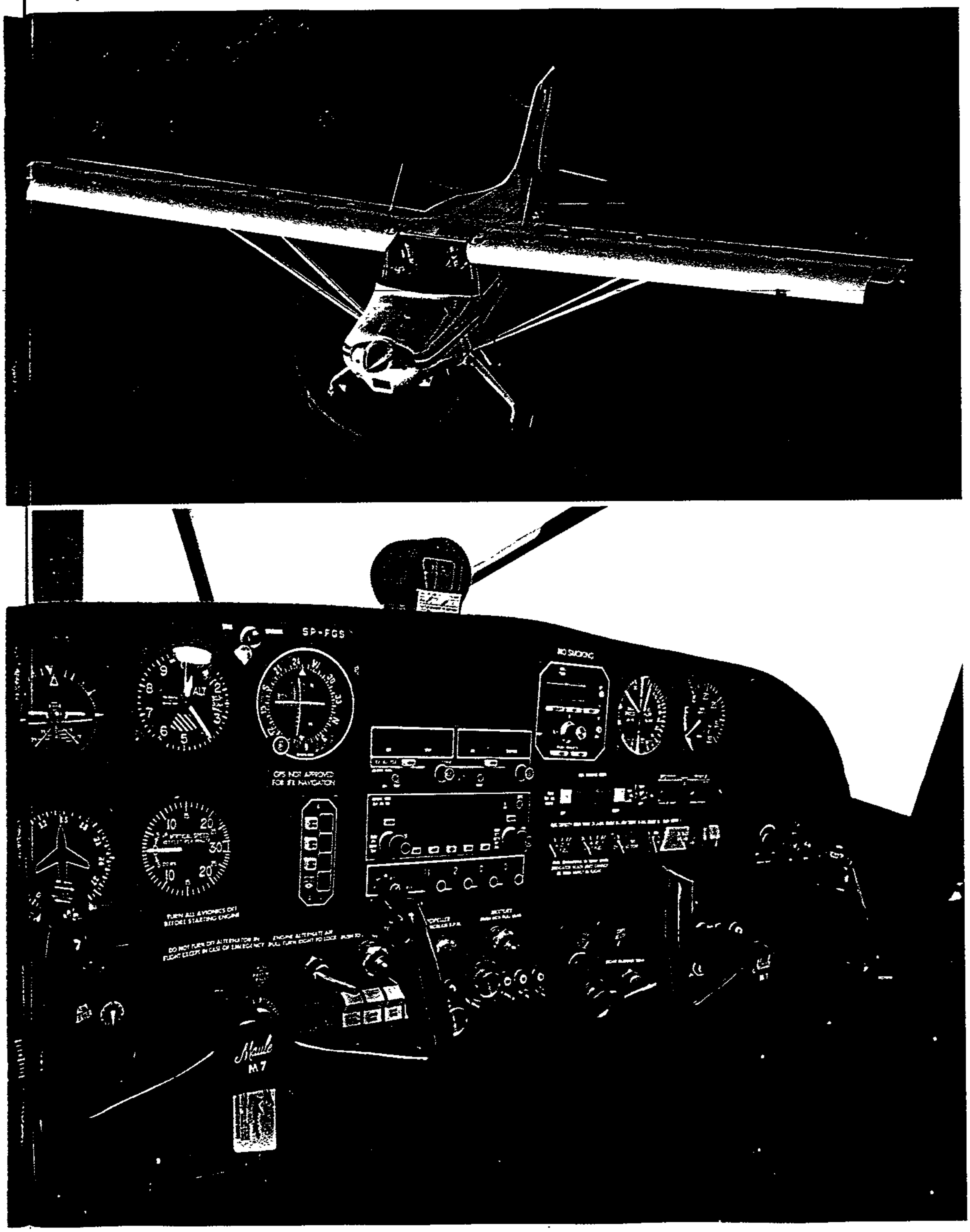
There's a $100,000 paint booth from Italy now sitting in one corner of the plant where spraying can be done in a clean and temperature-controlled environment. Fixtures have been built to hold wings and tails so that they can be painted prior to mounting on the aircraft. The old technique was to assemble the entire airplane and paint it afterward. The new urethane paint looks glassier and doesn't get brittle on the fabric-covered aft fuselage and tail.

There are other production changes as well, part of a $200,000 factory modernization over the past two years. All steel parts are sent out to be powder-coated for improved corrosion resistance. These include the fuselage, landing gear, and aileron attachments.

Speaking of landing gear, most customers are now requesting the new spring-aluminum gear, as opposed to the older style with supporting struts and braces. It is easier to maintain, has a wider stance that makes the aircraft easier to land, and adds a few knots to the cruise speed. But don't get the idea that "spring" means springy. While the landing gear can absorb shock, it does not bounce the aircraft.

There are less visible changes in the basic Maule design as well. The fire wall and the metal cowling near the exhaust




SP-FGS
GPS NOT APPROVED FOR IFR NAVIGATION
TURN ALL AVIONICS OFF BEFORE STARTING ENGINE
Maule
M7

pipe exit are stainless steel and therefore last longer, and the wing skin is thicker to reduce wrinkling that sometimes occurred in older-model Maules during rigging. Prices, despite the improvements, have risen little.

The ultimate citification of the Maule, however, is the new handsewn leather interior option. Prices start at $1,300 and go up to $3,400 for a full leather interior. The luxury look is a source of pride for everyone in the factory, but especially for Willene Hunt, Nadine Willis, and Hilda Burnham, a mother-sister-daughter combination that sews all the aircraft interiors. There are several mother-daughter and father-son combinations among the workers, not to mention 10 members of the Maule family working there; June Maule heads up the operation started by her late husband, B.D.

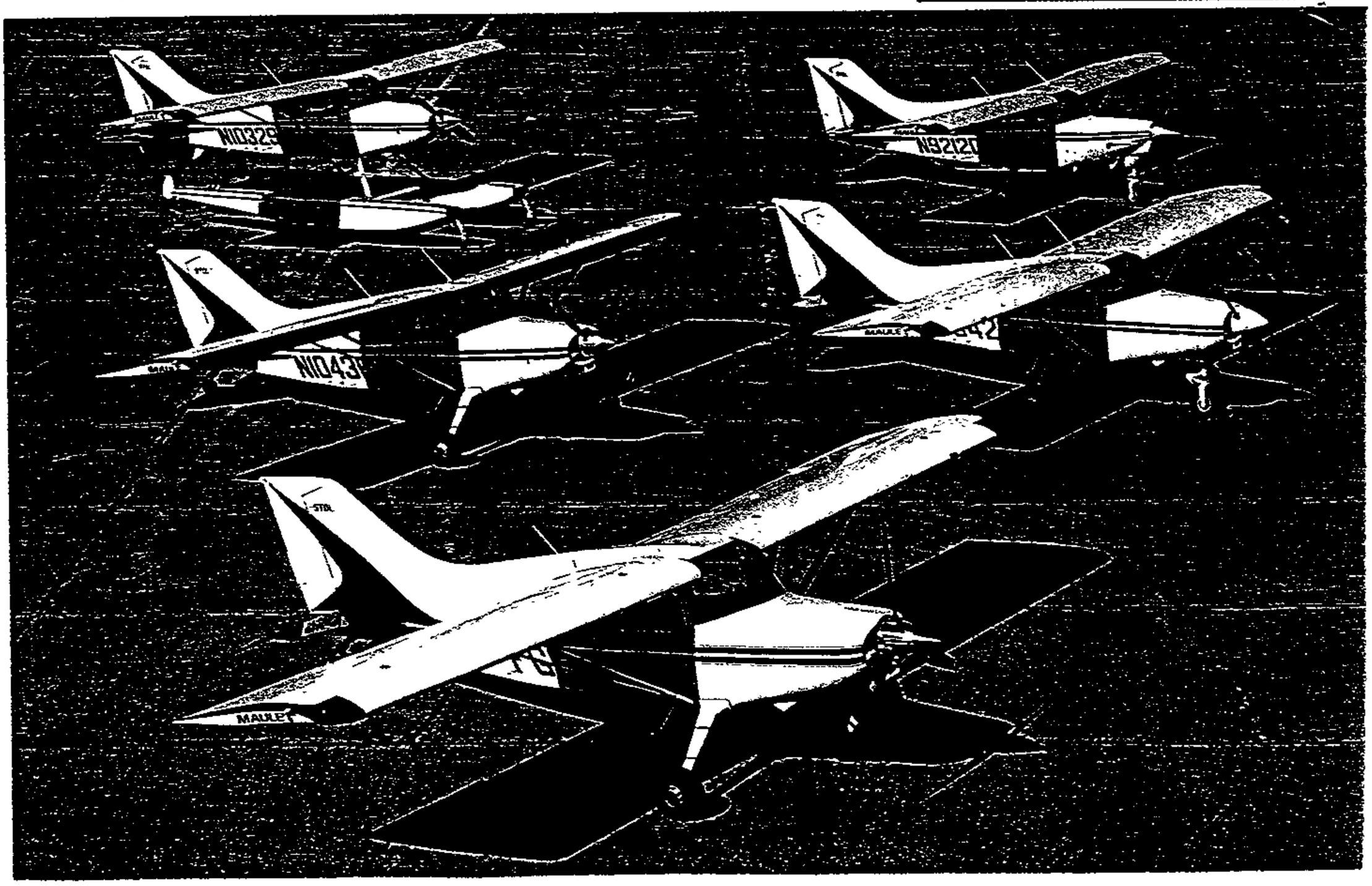
The newest models are the M–7-235C Orion, the MX–7-180C Millennium, and the MX–7-180B amphibian floatplane. Just for good measure, the MXT–7-180A Comet nosewheel model was flown as well. Suffice it to say that they all are gentle in the stall, all approach at about 70 mph (60 kt), all require the pilot to lead a turn with the rudder and follow with ailerons, and all have the minus-seven-degree flap position that is claimed to reduce drag in cruise, adding airspeed in the process.

Orion

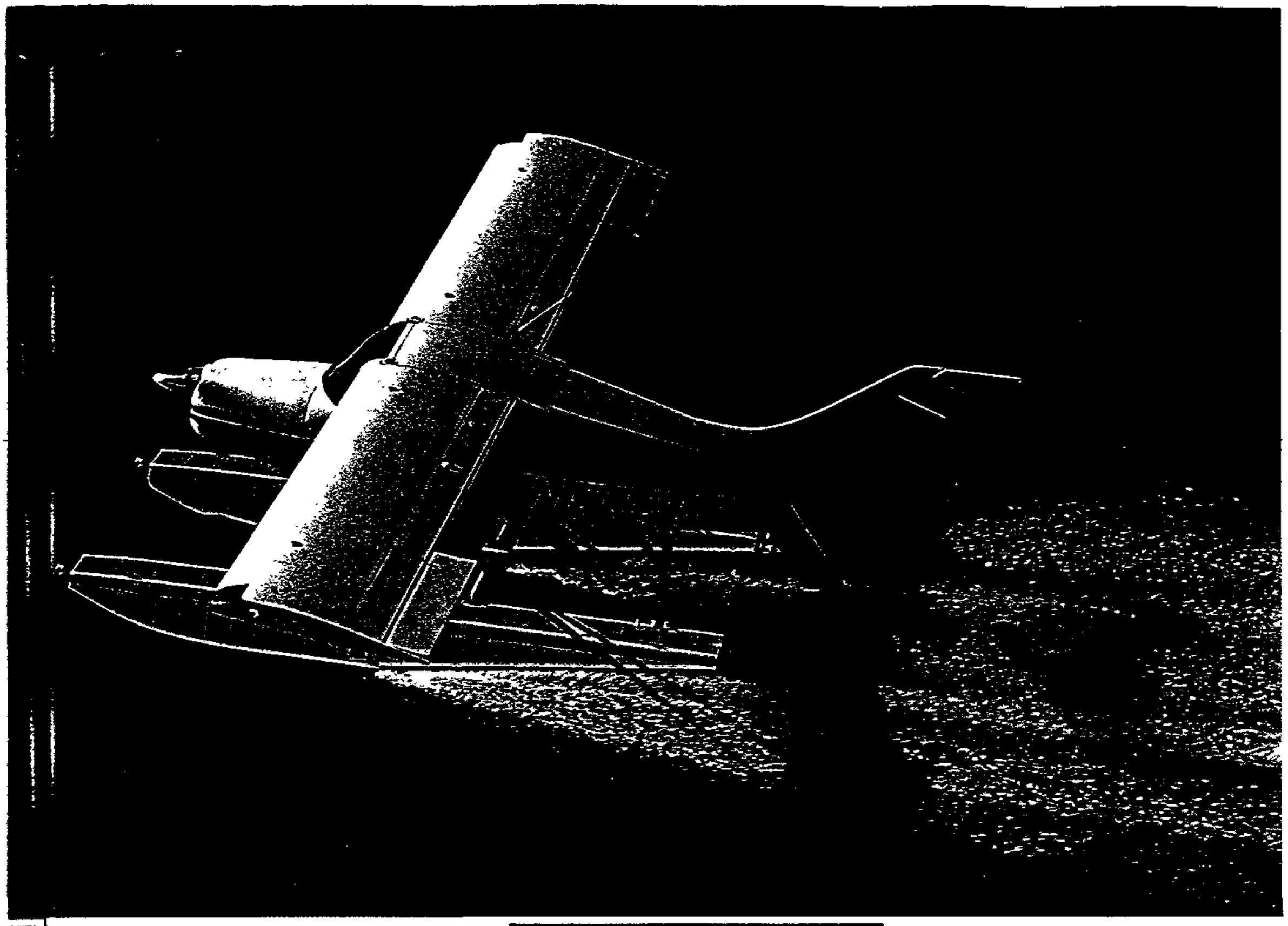
The M–7-235C Orion was chosen for special attention during my test flights, because—while more expensive (see the specifications box)—it is among Maule Air's top-performing piston-powered aircraft. Yes, there is a Maule powered by an Allison turboprop engine, but it was not flown for this review.

The Orion is selling well, with 14 produced in 1997 and a total of 20 on order. The five-place Orion is for pilots who need more speed or who need to carry large, bulky objects from short runways and high-altitude airports. While the max gross weight is no higher than that of the average Maule, the five-place fuselage provides more cabin volume.

The 73-gallon (usable) long-range tanks come as standard equipment. However, an option allows up to 83 gallons of total usable fuel. The Orion features spring-aluminum landing gear, but the aircraft can also be mounted on



Maule Air has an airplane to fit any need, and almost any price. Shown below (clockwise from top left) are the 180-horsepower amphibian, the turbine-powered Maule, the Comet, the Orion, and the Millennium.



floats. Florida tour operators use the Orion for scenic rides.

During demonstration flights, factory pilot Ray Maule took off in what appeared to be about 250 feet, landing in about the same distance, and even had the author coming close to that performance (about 300 to 350 feet) before the flight ended. The aircraft used was expected to be delivered to Poland by the time you read this, and averaged slightly more than 144 knots true airspeed at slightly greater than 75-percent power settings during the evaluation flight. Factory officials say, however, that most owners may use lower power settings as a routine and will average 139 kt.

Millennium

The new MX–7-180C Millennium tailwheel 180-hp model—base price $121,435—comes with long-range tanks (73 gallons of usable fuel) as standard. Obviously, owners won't fill the tanks every time; but when they're full, the aircraft has an eight-hour endurance and, with reserves, a range of 940 nautical miles. Fully equipped for IFR flight, an average model tops out at $142,900. The useful load averages about 1,000 pounds. The four-place aircraft features the new spring-aluminum gear and a constant-speed propeller, and it can be put on floats. Tested on warm day at 3,000 feet, the aircraft averaged 118 KTAS.

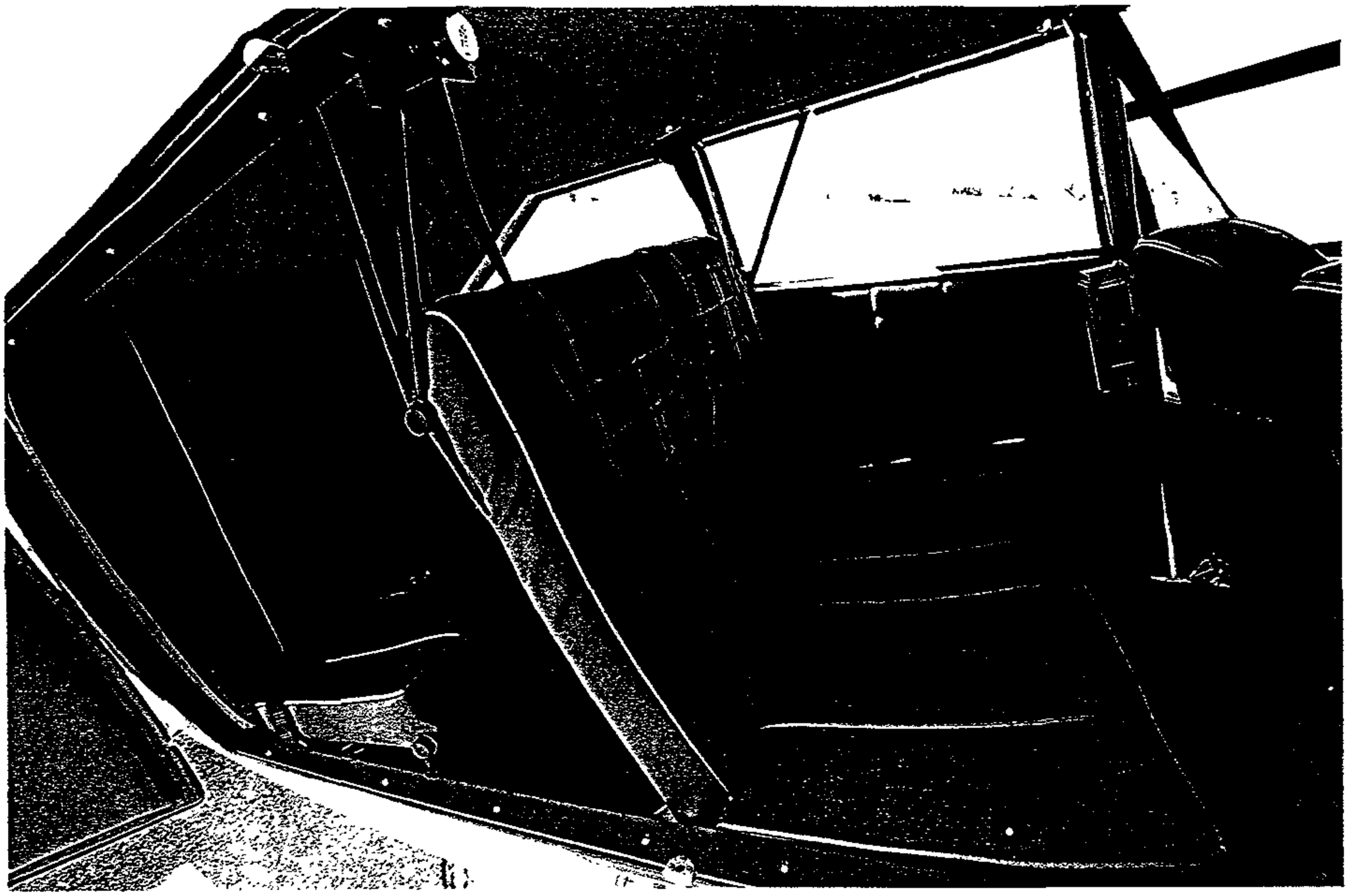
Sales average 65 to 70 a year, good economy or bad, thanks to prices that hold strong appeal, especially for the light of wallet and the value seekers.

Comet

The 180-hp MXT–7-180A Comet has a nosewheel for those not willing to spend the 10 hours or so it takes to learn tailwheel flying. While the Comet comes with standard fuel tanks (43 gallons usable), long-range tanks can be added as an option. This model emerged two years ago and has found a role as a trainer. As this was written, Henderson State University in Arkansas was completing a deal to purchase six of the four-seat Comets for its flight school. The base price is $113,999 ($128,599 IFR equipped). The Comet, with a useful load of 950 lb, features the spring-aluminum gear and a fixed-pitch propeller. On the day it was flown, it was lightly loaded and climbed at nearly 900 feet per minute; cruise speeds averaged 113 KTAS. Entering the aircraft, it was noticed that the foot step was awkward to use in its location ahead of the landing gear. Once inside, however, instructors will find it a comfortable aircraft for long hours of training.

Amphibian

The final aircraft of the day to be evaluated was the 180-hp MX–7-180B four-place amphibian. Brent Maule, Ray's son, said that it is also known as the Star Rocket, not to be confused with the nosewheel model of the same name The amphibian is the newest model and was awaiting certification at the time of the demonstration flight. It has already found an owner, by the way, and will be delivered when certification is com-



plete. It is Maule's only 180-hp model to be mounted on amphibious floats (meaning that the floats are equipped with retractable wheels to operate on land), and is equipped with Wipaire's new model 2350 Wipline floats. It is Wipaire's first venture into building floats for smaller single-engine aircraft. The 73-gallon tanks are standard. The aircraft has a useful load of 695 lb. With a base price of $165,000, it is marketed as an economical floatplane for personal fun or training. It was tested for this article on both warm days and cooler ones. The takeoff in warmer weather seemed to consume at least half and possibly more of the 2,800-foot specially built water runway at the Maule plant, but the takeoff run on the cooler day was about 1,200 ft. The cruise speed averaged 98 KTAS.

Just as the amphibian taxied up to the Maule plant at the conclusion of the demonstration flight, Brent came running to the aircraft. "Dad," he said to Ray, "I think we're building a new model." A customer had phoned, asking whether Maule Air could build a nosewheel aircraft that could be easily converted to floats when necessary. Engineering studies now indicate that it can be done, and yet another model will soon emerge from the Potato Head Factory.

In April Maule Air will announce two new models, a 260-hp tailwheel model and a new variation of the turboprop-powered model. So that's two more models to come, right? No, each aircraft will have three sets of equipment options, including engine and landing gear choices. Make that six new models. □

Links to all Web sites referenced in this issue can be found on AOPA Online (www.aopa.org/pilot/links.shtml). E-mail the author at alton.marsh@aopa.org

Maule M-7-235C Orion
Base price: $135,706
Price as tested: $155,283

Specifications

Powerplant	Lycoming O-540 or IO-540, 235 hp
Recommended TBO	2,000 hr
Propeller	McCauley constant speed, 81 in dia, two-blade (three-blade is optional)
Length	23 ft 8 in
Height	6 ft 3 in
Wingspan	32 ft 11 in
Wing area	165.6 sq ft
Wing loading	15.1 lb/sq ft
Power loading	10.64 lb/hp
Seats	5
Cabin length	6 ft 11 in
Cabin width	3 ft 6 in
Cabin height	40 in
Empty weight	1,549 lb
Maximum gross weight	2,500 lb
Useful load	951 lb
Payload w/full fuel	513 lb
Maximum takeoff weight	2,500 lb
Fuel capacity, std	77.6 gal (73 gal usable) 465.6 lb (438 lb usable)
Oil capacity	12 qt (8 qt for the IO-540)
Baggage capacity	250 lb

Performance

Takeoff distance, ground roll	250 ft
Takeoff distance over 50-ft obstacle	600 ft
Max demonstrated crosswind component	10 kt
Rate of climb, sea level	2,000 fpm (one person, half fuel)
Cruise speed/endurance w/45-min rsv, std fuel (fuel consumption)	
@ 75% power, best economy	139 KTAS/5 hr
7,500 ft	(78 pph/13 gph)
Maximum operating altitude	20,000 ft
Landing distance over 50-ft obstacle	600 ft
Landing distance, ground roll	300 ft

Limiting and Recommended Airspeeds

V_X (best angle of climb)	65 KIAS
V_Y (best rate of climb)	78 KIAS
V_{FE} (max flap extended)	83 KIAS
V_{NO} (max structural cruising)	128 KIAS
V_{NE} (never exceed)	158 KIAS
V_{S1} (stall, clean)	54 KIAS
V_{SO} (stall, in landing configuration)	43 KIAS

For more information, contact Maule Air, 2099 Highway 133 South, Moultrie, Georgia 31768, 912/985-2045, fax 912/890-2402, or on the Web (http://members.surfsouth.com/~maule/)

All specifications are based on manufacturer's calculations

MAULE AIR, INC.

2099 GA HWY. 133 S. MOULTRIE, GA 31768
PH: 912-985-2045 / FAX: 912-890-2402
PARTS DEPT. FAX: 912-890-7307

IT'S PERFORMANCE THAT COUNTS!

FACSIMILE TRANSMISSION TO: FAX NUMBER 410-821-5138

DATE 3/12/98 NUMBER OF PAGES 4 (INCLUDING COVER SHEET)

TO: _____

FROM Bruce Harlow

REMARKS: Per our phone conversation, the following. All prices are list, an d I have no idea what discounts may apply, if any. The radio packages are suggested, and can be altered according to personal preference. I don't know how much the leather interior cost is, but that may be a negotiable perk. I hope this helps.

Yours, Bruce



Maule Air, Inc.

ROBERT B. HARLOW
PARTS DEPARTMENT
DMIRCE500086

E (912) 985-2045
890-2402
7307-PARTS

LAKE MAULE
2099 GA HWY. 133 SOUTH
MOULTRIE, GA 31768

RMANCE THAT COUNTS

STANDARD EQUIPMENT INCLUDED WITH AIRCRAFT

Airspeed
Alternator 60 Amp
Altimeter
Amp Meter
Audible Stall Warning
Aux Cabin Heater
Aux Fuel Pump
Aux Power Plug
Battery 12 Volt
Broad Band Antenna (1)
Cabin Overhead Speaker
Cabin Sound Proofing
Cabin Steps
Cargo Tie Down Straps
Circuit Breakers
Clock
Cloth Velour Upholstery
Compass
Constant Speed Propeller
Cyl Head Temp Gauge
Door Locks
Double Cargo Door 51"
Dual Controls
Electric Fuel Gauge
ELT
Fifth Seat (M-7 Only)
Float Reinforcement (235/180B)
Fuel Drains (")
Fuel Pressure Gauge
Full Gyro Panel/Vacuum System
Heated Pitot Tube
Hydraulic Brakes
Inst and Dome Lights
King KT-76A-00 Transponder
King KX-125-01 Nav/Com
(OR) King KLX-135A GPS/Com
Landing Light Left Wing
Manifold Pressure Gauge
Mike and Bracket
Mike and Phone Jacks (F/R)
Narco AR-850 Alt Encoder
Navigation Lights
Oil Pressure Gauge
Oil Temp Gauge
Omni Antenna (1)
Parking Brakes
Powder Coating
PS Eng PM1000 Intercom
Push To Talk Switch (2)
Radio Master Switch
Ram Horn Control Wheels
Seat Belts/Shoulder Harnesses (F/R)
Seats, 2/Front (Adj)
Seats, 2/Rear (Non-Adj)
Stall Warning Light
Standard Paint & Scheme
Swing Out Window (Pilot)
Tachometer
Tie Down Rings
Window Vents
Windshield (Smoke-Tint)
Windshield Defroster
Wing Corrosion Proofing
Wing Tip Strobe Lights
Wing Tip Tanks (Total Gals 73)

TAILDRAGGER and TRI-GEAR STANDARD PRICE LIST

[ ]--MAULE MX-7-180B Star Rocket Taildragger with 0-360 Lycoming----------$116,435.00
[ ]--MAULE M-7-235B Super Rocket Taildragger with 0-540 Lycoming----------$129,868.00
[ ]--MAULE M-7-235B Super Rocket Taildragger with IO-540 Lycoming----------$137,568.00
[ ]--MAULE MX-7-180C Spring-Gear Taildragger with O-360 Lycoming----------$121,435.00
[ ]--MAULE M-7-235C Orion Spring-Gear Taildragger with 0-540 Lycoming------$135,706.00
[ ]--MAULE M-7-235C Orion Spring-Gear Taildragger with IO-540 Lycoming------$143,406.00
[ ]--MAULE MXT-7-180 Star Rocket Tri-Gear with 0-360 Lycoming----------$126,888.00
[ ]--MAULE MT-7-235 Super Rocket Tri-Gear with IO-540 Lycoming----------$149,278.00

ENGINE SPECIFICATIONS

180 HP 0-360-C Lycoming 2000 TBO
235 HP 0-540-J Lycoming 2000 TBO
235 HP IO-540-W Lycoming 2000 TBO
235 HP 0-540-B Lycoming 2000 TBO

OPTIONAL EQUIPMENT

[ ]--King KA-33-00 Cooling Blower	$ 800.00
[ ]--King KA-134-03 Audio Control System	$ 1,485.00
[ ]--King KI-203-00 Indicator--Vor/Loc/Gs	$ 2,518.00
[ ]--King KI-204-02 Indicator--Vor/Loc/Gs/Cv	$ 2,779.00
[ ]--King KI-206-04 Indicator--Vor/Loc/Gs--(used w/KNS81)	$ 2,180.00
[ ]--King KI-208-00 Indicator--Vor/Loc/Cv	$ 1,376.00
[ ]--King KI-209-01 Indicator--Vor/Loc/Gs/Cv	$ 1,631.00
[ ]--King KMA-24-02 Audio Control Console	$ 2,019.00
[ ]--King KN-62A-01 DME-w/Harmonic Filter-(Distance Measuring Equip)	$ 6,780.00
[ ]--King KN-64-00 DME	$ 4,660.00
[ ]--King KN-75-00 Glideslope Receiver	$ 2,355.00
[ ]--King KNS-81-12 Integrated Navigation System	$ 12,167.00
[ ]--King KR-21 Marker Beacon Receiver	$ 1,314.00
[ ]--King KR-87-16 Dig ADF--(Automatic Direction Finder)-w/KI227 Ind	$ 6,108.00
[ ]--King KT-76A-00 Transponder	$ 2,049.00
[ ]--King KX-125-01 Nav/Com	$ 4,300.00
[ ]--King KX-155-38 Digital Nav/Com--(without glideslope)	$ 5,222.00
[ ]--King KX-155-42 Digital Nav/Com--(with glideslope)	$ 6,047.00
[ ]--King KY-197A-30 Com Transceiver	$ 5,121.00
[ ]--Narco AR-850 Remote Altitude Encoder--(037530304)	$ 617.00
[ ]--Sigtronics SPA-400 Intercom--(4/Place)	$ 586.00
[ ]--Sigtronics SPA-600 Intercom--(5-6/Place)	$ 645.00
[ ]--ADF Filter--(Hawkins/RFI-70)	$ 248.00
[ ]--Alcor Mixture EGT 1 Probe--(211-110-0)	$ 390.00
[ ]--Alcor Mixture EGT 4 Probe--(211-140-0)	$ 1,073.00
[ ]--Alcor Mixture EGT 6 Probe--(211-160-0)	$ 1,362 00
[ ]--Auxiliary Cabin Cool Air	$ 390.00
[ ]--Broad Band Antenna--(Heriden/BB16)	$ 175.00

Avionics Packages

Standard Packages

SP-1
King KX-125-01 Nav/Com
King KT-76A Transponder
Narco AR-850 Remote Altitude Encoder
PS Engineering PM 1000II w/ Crew Intercom (4-place)

SP-2
King KLX-135A GPS/Com
King KT-76A Transponder
Narco AR-850 Remote Altitude Encoder
PS Engineering PM 1000II w/ Crew Intercom (4-place)

SP-3
Garmin GNC 250XL GPS/Com (requires use of headsets)
King KT-76A Transponder
Narco AR-850 Remote Altitude Encoder
PS Engineering PM 1000II w/ Crew Intercom (4-place)

IFR Packages *

IFR-1 ..... $ 10,999.00
King KX-155-42 Digital Nav/Com
King KI-209-01 Indicator - VOR/Loc/Gs/Cv
King KT-76C Transponder
King KA-33-00 Cooling Blower
Garmin GNC 250XL GPS/Com
Narco AR-850 Remote Altitude Encoder
PS Engineering PMA 6000M Audio Panel
Broad Band Antenna
Marker Beacon Antenna
Triplexer

IFR-2 ..... $ 18,649.00
King KX-165-21 Digital Nav/Com
King KT-76C Transponder
King KA-33-00 Cooling Blower
King KI-206 Indicator - VOR/Loc/Gs/Cv
Garmin GNC 300XL GPS/Com (IFR Certifiable)
Mid Continent MD 41-454 Annunciator Switching Panel
Narco AR-850 Remote Altitude Encoder
PS Engineering PMA 6000M Audio Panel
Broad Band Antenna
Marker Beacon Antenna
Triplexer

Colors and Materials subject to change without notice. Effective (March 5,1998)

Avionics Packages

IFR-3 ..... $ 22,199.00
Century NSD-360-15 Unslaved HSI
King KX-165-21 Digital Nav/Com
King KT-76C Transponder
King KA-33-00 Cooling Blower
Garmin GNC 300XL GPS/Com (IFR Certifiable)
Mid Continent MD 41-454 Annunciator Switching Panel
Narco AR-850 Remote Altitude Encoder
PS Engineering PMA 6C00M Audio Panel
Broad Band Antenna
Marker Beacon Antenna
Triplexer

Standard Equipment for all Avionics Packages
Broad Band Antenna
Mike and Phone Jacks (2 Front / 2 Rear)
Push-To-Talk Switches (Pilot & Copilot)
Radio Master Switch
* IFR packages do not include std. PM 1000 II Intercom, and/or Std. Nav/Com or GPS/Com. IFR certification for GPS and Database Subscription not included.

28 Volt System Upgrade for IFR Packages ..... $ 500.00
28V System Equipment
King KA-33-01 Cooling Blower
28V Converter for GNC 300XL

Stereo Upgrade for Intercom or Audio Panel (incl. Jacks)
PS Engineering PM 3000 ..... $ 225.00
PS Engineering PMA 6000MS ..... $ 300.00

Insight Strikefinder SF-2000 ..... $ 6,700.00

S-Tec System 50 2-axis Autopilot ..... $ 8,915.00

Avionics selections must be made before the aircraft enters Stage 5. Wiring harnesses are made up when aircraft enters this stage, so changes made to avionics made after Stage 5 are subject to ar reconfiguration fee.

If you would like any avionics equipment other than that listed here, please contact your Maule Air, Inc. dealer or factory representative for more information on our custom avionics packages.

Prices and Equipment subject to change without notice.

Effective (March 5,1998)

Maule Air, Inc. - 2099 GA Hwy 133 S. - Moultrie, GA 31768 - PH. (912) 985-2045 - FX. (912) 890-2402

STANDARD EQUIPMENT INCLUDED WITH AIRCRAFT

- Airspeed
- Alternator 60 Amp
- Altimeter
- Amp Meter
- Audible Stall Warning
- Aux Cabin Heater
- Aux Fuel Pump
- Aux Power Plug
- Battery 12 Volt
- Broad Band Antenna (1)
- Cabin Overhead Speaker
- Cabin Sound Proofing
- Cabin Steps
- Cargo Tie Down Straps
- Circuit Breakers
- Clock
- Cloth Velour Upholstery
- Compass
- Constant Speed Propeller
- Cyl Head Temp Gauge
- Door Locks
- Double Cargo Door 51"
- Dual Controls
- Electric Fuel Gauge
- ELT
- Fifth Seat (M-7 Only)
- Float Reinforcement (235/180B)
- Fuel Drains (7)
- Fuel Pressure Gauge
- Full Gyro Panel/Vacuum System
- Heated Pitot Tube
- Hydraulic Brakes
- Inst and Dome Lights
- King KT-76A-00 Transponder
- King KX-125-01 Nav/Com
- (OR) King KLX-135A GPS/Com
- Landing Light Left Wing
- Manifold Pressure Gauge
- Mike and Bracket
- Mike and Phone Jacks (F/R)
- Narco AR-850 Alt Encoder
- Navigation Lights
- Oil Pressure Gauge
- Oil Temp Gauge
- Omni Antenna (1)
- Parking Brakes
- Powder Coating
- PS Eng PM1000 Intercom
- Push To Talk Switch (2)
- Radio Master Switch
- Ram Horn Control Wheels
- Seat Belts/Shoulder Harnesses (F/R)
- Seats, 2/Front (Adj)
- Seats, 2/Rear (Non-Adj)
- Stall Warning Light
- Standard Paint & Scheme
- Swing Out Window (Pilot)
- Tachometer
- Tie Down Rings
- Window Vents
- Windshield (Smoke-Tint)
- Windshield Defroster
- Wing Corrosion Proofing
- Wing Tip Strobe Lights
- Wing Tip Tanks (Total Gals 73)

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235 HP 0-540-J Lycoming 2000 TBO
235 HP IO-540-W Lycoming 2000 TBO
235 HP 0-540-B Lycoming 2000 TBO

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[ ]--King KN-62A-01 DME-w/Harmonic Filter-(Distance Measuring Equip)---------$ 6,780.00
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[ ]--Sigtronics SPA-400 Intercom--(4/Place)----------$ 586.00
[ ]--Sigtronics SPA-600 Intercom--(5-6/Place)----------$ 645.00
[ ]--ADF Filter--(Hawkins/RFI-70)----------$ 248.00
[ ]--Alcor Mixture EGT 1 Probe--(211-110-0)----------$ 390.00
[ ]--Alcor Mixture EGT 4 Probe--(211-140-0)----------$ 1,073.00
[ ]--Alcor Mixture EGT 6 Probe--(211-160-0)----------$ 1,362.00
[ ]--Auxiliary Cabin Cool Air----------$ 390.00
[ ]--Broad Band Antenna--(Meriden/BB16)----------$ 175.00

[ ]--Carburetor Air Temp----------$ 652.00
[ ]--Clear Windshield----------$ 57.00
[ ]--Diplexer--(Meriden NC-4)----------$ 175.00
[ ]--Door Pockets--(L/R)----------$ 80.00
[ ]--Dual Caliper Brakes----------$ 680.00
[ ]--Dual Tail Struts--(Required w/Floats)----------$ 588.00
[ ]--Dynamic Balancing for Prop----------$ 390.00
[ ]--Fire Extinguisher--(Halon)--(Saber/1211-1301)----------$ 130.00
[ ]--Grab Handles on Fuselage--(L/R)----------$ 259.00
[ ]--Hour Meter--(Aviall/102149/76052)----------$ 219.00
[ ]--K S Mix Mizer EGT 1 Probe--(EGT-1L)----------$ 280.00
[ ]--Landing Light Right Wing----------$ 251.00
[ ]--Lift Rings and Fairings--(Required w/Floats)----------$ 236.00
[ ]--Marker Beacon Antenna--(Meriden/MB5)----------$ 187.00
[ ]--Mike and Phone Jack--(1/5th Seat)----------$ 105.00
[ ]--Observation Window----------$ 393.00
[ ]--Parts Catalog----------$ 35.00
[ ]--Plexiglass Door----------$ 393.00ea
[ ]--Pulselite--(Precise Flight/1210-2405-2A)----------$ 529.00
[ ]--Radio Cooling Kit--(Narco/033120502)----------$ 344.00
[ ]--Shoulder Harnesses w/Lap Belt--(Set/L&R)--(AmSafe/502338423/425)--------$ 1,834.00
[ ]--Ski Fittings--(Twin Beams)----------$ 519.00
[ ]--Sky Light w/Cover----------$ 2,851.00
****[ ]--Speed Fairings and Mountings--(Standard 7.00 Tires Only)----------$ 455.00
[ ]--Swing Out Window----------$ 627.00ea
[ ]--Telex Headset--(Air 3500/300400-000)----------$ 520.00ea
**[ ]--Three Blade Propeller--(78 Inch McCauley)--(235 Only)----------$ 1,944.00
**[ ]--Three Blade Propeller--(80 Inch McCauley)--(235 Only)----------$ 2,591.00
[ ]--Tires and Tubes 8.00x6--(McCreary)----------$ 135.00
[ ]--Tires and Tubes 8.50x6--(McCreary)----------$ 221.00
[ ]--Tow Bar--(Taildragger)----------$ 228.00
[ ]--Tow Bar--(Tri-Gear)----------$ 113.00
[ ]--Tow Hitch Release Assembly--(Schweizer/3415001K)----------$ 2,523.00
[ ]--Tow Hitch Release Assembly--(Tost)-(Europe)--(wo/Hitch Mechanism)-------$ 2,135.00
[ ]--Triplexer--(Meriden/MT-1A)----------$ 141.00
[ ]--True Airspeed Indicator--(180)--(SigmaTek/EA517401PTMAL)----------$ 767.00
[ ]--True Airspeed Indicator--(235)--(SigmaTek/EA517404PTMAL)----------$ 767.00
***[ ]--Ventral Fin--(Required w/Floats)----------$ 627.00

GPS

[ ]--Garmin GPS--(GPS100AVD-100)--(MIO-10000-00)--(Worldwide)----------$ 2,695.00
[ ]--Trimble TNL2000A GPS--(14653-10)----------$ 4,295.00

AUTO PILOTs

[ ]--Century IIB Auto Pilot(92S49)/ArtHori(94A5021)/DirGyro(94A5019)---------$ 7,525.00
[ ]--Century IIB Radio Coupler--(92S1)----------$ 1,390.00

FLOATS

[ ]--Aqua 2200 Floats----------$ 20,600.00
[ ]--Aqua 2400 Floats----------$ 22,660.00
[ ]--Edo 2440B Floats----------$ 21,500.00
[ ]--Shipping to Factory----------$ 750.00
[ ]--Installation at Factory----------$ 2,500.00
[ ]--Paint to Match Aircraft----------$ 750.00

/*/**** ***/**** ***/****
ITEMS NOT AVAILABLE FOR MXT-7-180, MT-7-235 & M-7-235C

Note: Full Gyro Panel w/Vacuum System, consist of: Attitude Gyro, Directional Gyro, Dry Air Pump, Electric Turn Coordinator, Filter, Outside Air Temp Gauge, Rate of Climb, Regulator and Suction Gauge.

Powder Coating on fuselage, tail surface structure, engine mount and most all other steel components.

NOTICE: THE ABOVE TAILDRAGGER & TRI-GEAR PRICES ARE THOSE CURRENTLY IN EFFECT AS OF MARCH 26, 1997 AND ARE SUBJECT TO CHANGE WITHOUT NOTICE, FOR CURRENT PRICING CALL 1-912-985-2045.

(03/26/97)

MAULE AIR, INC. - 2099 GA HWY 133 SOUTH - MOULTRIE, GA 31768 (U.S.A.) - PH:1-912-985-2045 - FX:1-912-890-2402

MAULE TAILDRAGGER SPECIFICATIONS:	MX-7-180B	M-7-235B	M-7-235B	M-7-235C	M-7-235C
ENGINE (LYCOMING):	O-360-C1F	O-540-J3A5 OR B4B5	IO-540-W1A5	O-540-J3A5 OR B4B5	IO-540-W1A5
PROPELLER (FP=FIXED PITCH/CS=CONSTANT SPEED):	76" CS	81" CS	81" CS	81" CS	81" CS
WING SPAN (FT):	32.9	32.9	32.9	32.9	32.9
WING AREA (SQ FT):	165.6	165.6	165.6	165.6	165.6
LENGTH (FT):	23.5	23.5	23.5	23.5	23.5
HEIGHT (FT) (TAIL DOWN):	6.3	6.3	6.3	6.3	6.3
CABIN WIDTH (IN):	42	42	42	42	42
SEATS:	4 (5^{TH} OPT)	5	5	5	5
GROSS WEIGHT (LB):	2500	2500	2500	2500	2500
EMPTY WEIGHT (AVERAGE) (LB):	1395	1530	1530	1600	1600
USEFUL LOAD (AVERAGE) (LB):	1105	970	970	900	900
FUEL CAPACITY (GAL) (USEABLE):	73	73	73	73	73
STALL SPEED (MPH) (FULL FLAPS/LIGHT WEIGHT):	40	40	40	40	40
TAKE OFF ROLL (FT) (LIGHT WEIGHT):	300	250	250	250	250
TAKE OFF AT GROSS OVER 50' OBSTACLE (FT):	600	600	600	600	600
RATE OF CLIMB, INITIAL (FT/MIN) (LIGHT WEIGHT):	1200	2000	2000	2000	2000
LAND AT GROSS OVER 50' OBSTACLE (FT):	500	500	500	500	500
BEST CLIMB SPEED (MPH):	90	90	90	90	90
SERVICE CEILING (FT):	15,000	20,000	20,000	20,000	20,000
FUEL CONSUMPTION (65% POWER) (GPH):*	9	12	11	12	11
RANGE (NO RESERVE) (MI):*	1095	912	995	912	995
CRUISE (75% POWER AT OPT ALT - TAS) (MPH):*	145	160	160	160	160
FLAP SETTINGS (DEGREES):	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48	-7,0,24,40,48

*AVERAGE PERFORMANCE DATA - NOT FOR FLIGHT PLANNING

(02/22/96)

MAULE AIR, INC. - 2099 GA HWY 133 SOUTH - MOULTRIE, GA 31768 (U.S.A.) - PH:1-912-985-2045 - FX:1-912-890-2402

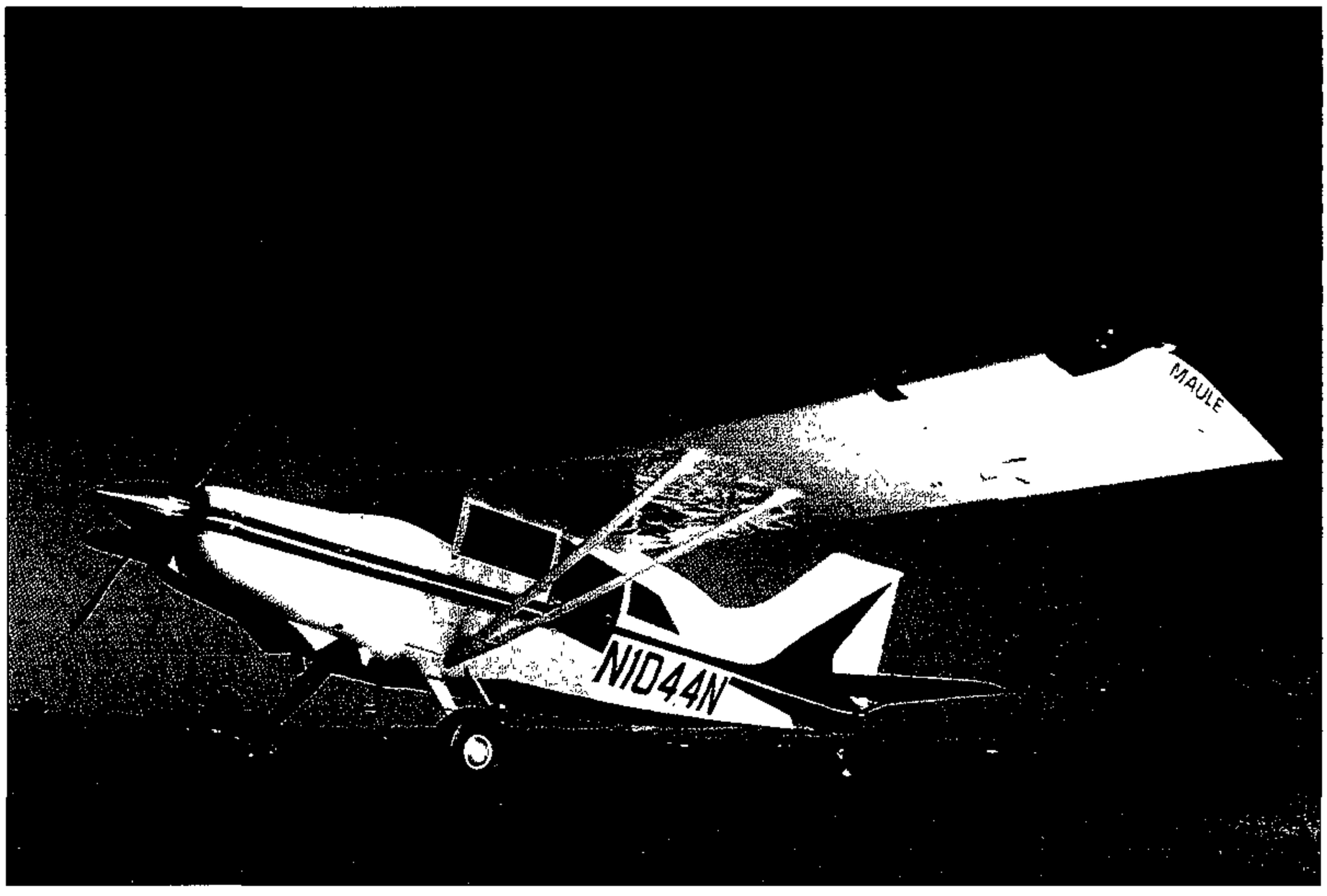
MAULE FLOATPLANE SPECIFICATIONS:	MX-7-180B	MX-7-180B	M-7-235B	M-7-235B
FLOAT TYPE:	EDO 2440B	AQUA 2200	EDO 2440B	AQUA 2400
FLOAT TOTAL WEIGHT (LB):	340	370	340	391
FLOAT TOTAL LENGTH (FT):	17	18	17	18
ENGINE (LYCOMING):	O-360-C1F	O-360-C1F	O-540-J3A5 OR IO-540-W1A5	O-540-J3A5 OR IO-540-W1A5
PROPELLER, CONSTANT SPEED, 2 BLADES:	76"	76"	81"	81"
WING SPAN (FT):	32.9	32.9	32.9	32.9
WING AREA (SQ FT):	165.6	165.6	165.6	165.6
LENGTH (FT):	23.5	23.5	23.5	23.5
HEIGHT (FT):	10	9.7	10	9.7
CABIN WIDTH (IN):	42	42	42	42
SEATS:	4	4	5	5
GROSS WEIGHT (LB):	2500	2500	2750	2750
EMPTY WEIGHT (LB):	1640	1670	1796	1847
USEFUL LOAD (LB):	860	830	954	903
FUEL CAPACITY (GAL) (USEABLE):	73	73	73	73
STALL SPEED (FULL FLAPS/POWER OFF/LIGHT WT) (MPH-IAS):	40	40	40	40
TAKE OFF ROLL (FT) (LIGHT WEIGHT):	1000	1000	750	750
TAKE OFF AT GROSS OVER 50' OBSTACLE (FT):	1500	1500	1250	1250
RATE OF CLIMB, INITIAL (FT/MIN) (LIGHT WEIGHT):	1000	1000	1350	1350
LAND AT GROSS OVER 50' OBSTACLE (FT):	800	800	1000	1000
BEST CLIMB SPEED (MPH):	90	90	90	90
SERVICE CEILING (FT):	15,000	15,000	17,000	17,000
FUEL CONSUMPTION (65% POWER) (GPH):*	9	9	12-(O)/11-(IO)	12-(O)/11-(IO)
RANGE (NO RESERVE) (MI):*	973	973	815/889	815/889
CRUISE (75% POWER AT OPT ALT - TAS) (MPH):*	130	130	144	144
FLAP SETTINGS (DEGREES):	-7,0,24,40	-7,0,24,40	-7,0,24,40	-7,0,24,40

*AVERAGE PERFORMANCE DATA - NOT FOR FLIGHT PLANNING

(04/10/95)

2099 Georgia Highway 133 South, Moultrie, Georgia 31768
Phone 912-985-2045 Fax 912-890-2402

MAULE MILLENNIUM



- 180 H.P. or 235 H.P. Lycoming Engine PLANE PICTURED, ORION
- Hartzell or McCauley Constant Speed Propeller
- 4 or 5 Place
- Rugged, Wide Track, Spring Aluminum Landing Gear
- Excellent Ground Handling and Stability
- At Home on the Turf or the Tarmac
- World Reknowned Maule STOL Performance
- Dependable, Safe, Comfortable, and Economical
- The Best Value in a Multi-Purpose, Go-Anywhere Airplane

MAULE SPRING-GEAR SPECIFICATIONS	MX-7-180C	M-7-235C
		O-540-J3A5 O-540-B4B5
ENGINE, LYCOMING:	0-360-C1F	I0-540-W1A5
PROPELLER, CONSTANT SPEED:	76 IN.	78/81 IN. (2/3 BLADE)
WING SPAN:	32.9 FT.	32.9 FT.
WING AREA:	165.6 SQ. FT.	165.6 SQ. FT.
LENGTH:	23.5 FT.	23.5 FT.
HEIGHT: (TAIL DOWN)	6.3 FT.	6.3 FT.
CABIN WIDTH:	42 IN.	42 IN.
CONFIGURATION:	4 (5TH OPT.)	5 PLACE
GROSS WEIGHT:	2500 LBS.	2500 LBS.
EMPTY WEIGHT:	1500 LBS.	1600 LBS.
USEFUL LOAD:	1000 LBS.	900 LBS.
FUEL CAPACITY:	73 GALS.	73 GALS.
STALL SPEED (FULL FLAPS/LIGHT WEIGHT):	40 MPH.	40 MPH.
TAKE OFF ROLL (LIGHT WEIGHT):	300 FT.	250 FT.
TAKE OFF AT GROSS OVER 50' OBSTACLE:	600 FT.	600 FT.
RATE OF CLIMB, INITIAL (LIGHT WEIGHT):	1200 FPM.	2000 FPM.
LAND AT GROSS OVER 50' OBSTACLE:	500 FT.	500 FT.
BEST CLIMB SPEED:	90 MPH.	90 MPH.
SERVICE CEILING:	15,000 FT.	20,000 FT.
FUEL CONSUMPTION (65% POWER):	9 GPH.	11 (IO) / 12 (O) GPH.
RANGE, MAX (NO RESERVE):	1095 MILES	995 (IO) / 912 (O) MILES
CRUISE (75% POWER AT OPT. ALT.):	145 MPH. TAS.	160 MPS. TAS.
FLAP SETTINGS:	-7, 0, 24, 40, 48º	-7, 0, 24, 40, 48º

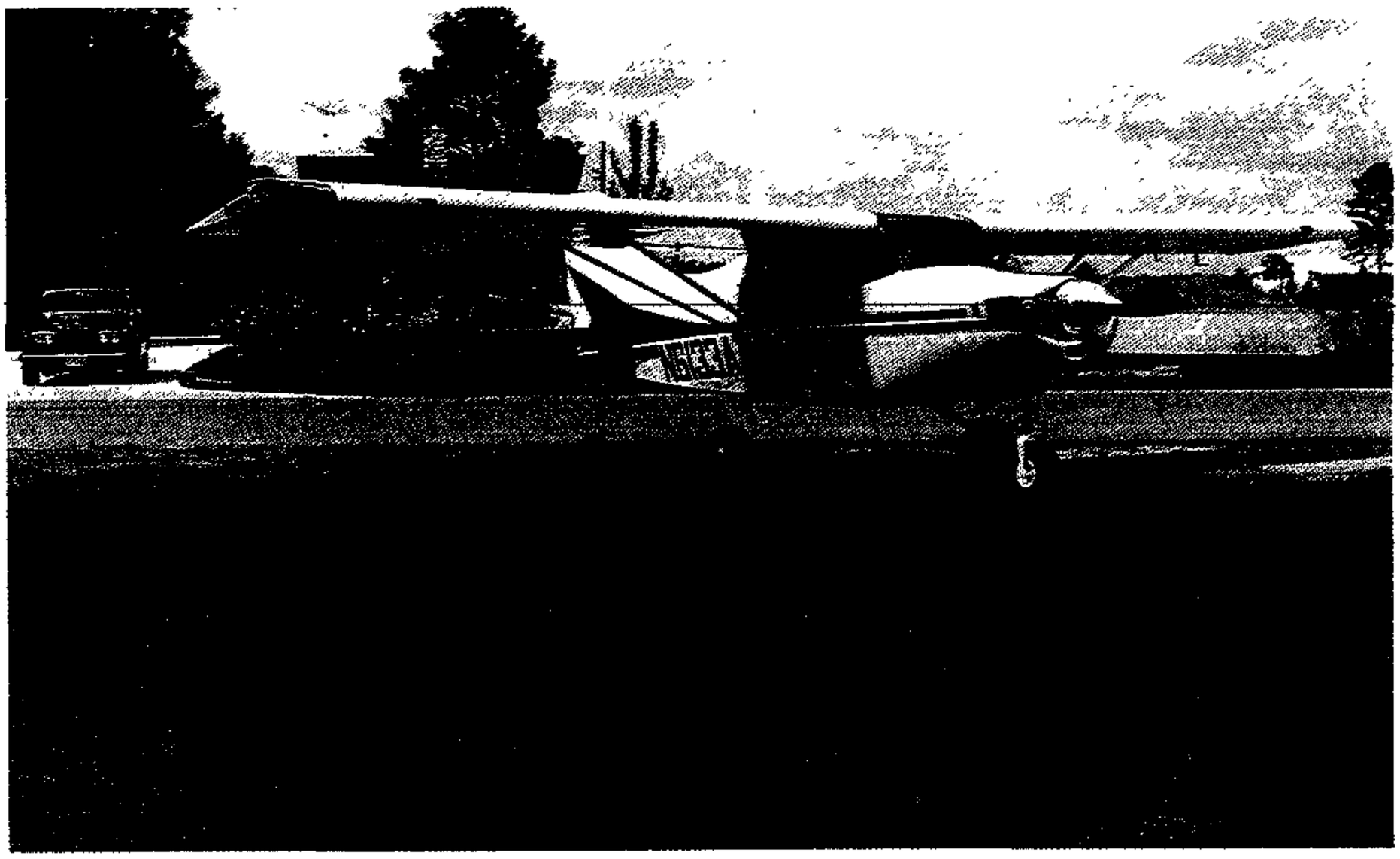
Maule AIR. INC

BUILDERS OF FAA PRODUCTION CERTIFIED AIRPLANES SINCE 1962

MAULE AIR, INC.

2099 GA Hwy. 133 S.
Moultrie, GA 31768

Phone: 912-985-2045
Fax: 912-890-2402



NEW "MAULE" TRI-GEAR - MODEL MXT-7-180

- 180 H.P. LYCOMING 0-360 ENGINE
- HARTZELL CONSTANT SPEED PROPELLER
- 4 PLACE
- STOL PERFORMANCE: 600FT OVER 50FT OBST
- 140 MPH CRUISE SPEED
- 40 MPH STALL SPEED
- MOST ECONOMICAL NEW 4 PLACE AIRCRAFT ON THE MARKET
- EXCELLENT INSTRUMENT PLATFORM - CAN BE FITTED OUT WITH AUTO PILOT
- SUITABLE FOR TRAINER, FAMILY AIRCRAFT, PATROL AND SURVEILANCE - A RUGGED, HIGH PERFORMANCE AIRCRAFT
- ALL METAL WINGS

IT'S PERFORMANCE THAT COUNTS

MAULE "TRI-GEAR" SPECIFICATIONS	MXT-7-180
ENGINE:	0-360-C1F
PROPELLER, HARTZELL, C/S, 2 BLADES:	76 INCH
WING SPAN:	32.92'
WING AREA:	165.6 SQ. FT.
LENGTH:	23' 6"
HEIGHT:	8' 4"
CABIN WIDTH:	42 INCH
CONFIGURATION:	4/5 PLACE
GROSS WEIGHT:	2500 LBS.
EMPTY WEIGHT:	1410 LBS.
USEFUL LOAD:	1090 LBS.
BAGGAGE:	250 LBS.
CARGO (SEATS REMOVED):	770 LBS.
FUEL CAPACITY:	70 GALS.
STALL SPEED (FULL FLAPS/1 PERSON/½ FUEL):	40 MPH
TAKE OFF (1 PERSON/½ FUEL):	200 FT.
TAKE OFF AT GROSS OVER 50' OBSTACLE:	600 FT.
RATE OF CLIMB (1 PERSON/½ FUEL):	1200 FPM
LAND AT GROSS OVER 50' OBSTACLE:	500 FT.
BEST CLIMB SPEED:	90 MPH
SERVICE CEILING:	15,000 FT.
FUEL CONSUMPTION (65% POWER):	9 GPH
RANGE, MAX (30 MIN. RESERVE):	950 MILES
CRUISE (75% POWER AT OPT. ALT.):	140 MPH
FLAP SETTINGS:	-7^{0}, 0^{0}, 24^{0}, 40^{0}

MAULE AIR, INC.

2099 GA Hwy. 133 South
Moultrie, GA 31768 * Phone: 912-985-2045 * Fax: 912-890-2402



NEW "MAULE" TRI-GEAR - MODEL MT-7-235

- 235 H.P. LYCOMING I0-540 ENGINE
- McCAULEY CONSTANT SPEED PROPELLER
- 5 PLACE
- STOL PERFORMANCE: 600FT OVER 50FT OBST.
- 160 MPH CRUISE SPEED
- 40 MPH STALL SPEED
- MOST ECONOMICAL NEW 4 PLACE AIRCRAFT ON THE MARKET
- EXCELLENT INSTRUMENT PLATFORM - CAN BE FITTED OUT WITH AUTO PILOT
- SUITABLE FOR TRAINER, FAMILY AIRCRAFT, PATROL AND SURVEILANCE - A RUGGED, HIGH PERFORMANCE, GO-ANYWHERE AIRCRAFT
- ALL METAL WINGS

IT'S PERFORMANCE THAT COUNTS

MAULE "TRI-GEAR" SPECIFICATIONS	MT-7-235
ENGINE, LYCOMING:	I0-540-W1A5D
PROPELLER, McCAULEY, C/S, 2 OR 3 BLADE:	81 OR 80 IN.
WING SPAN:	32.9 FT.
WING AREA:	165.6 SQ. FT.
LENGTH:	23.5 FT.
HEIGHT:	8.3 FT.
CABIN WIDTH:	XXXXX 42"
CONFIGURATION:	5 PLACE
GROSS WEIGHT:	2500 LBS.
EMPTY WEIGHT:	XXXXXXX 1625 LBS.
USEFUL LOAD:	XXXXXX 875 LBS.
BAGGAGE:	250 LBS.
CARGO (SEATS REMOVED):	770 LBS.
FUEL CAPACITY:	70 GALS.
STALL SPEED (FULL FLAPS/1 PERSON/½ FUEL):	40 MPH
TAKE OFF (1 PERSON/½ FUEL):	200 FT.
TAKE OFF AT GROSS OVER 50' OBSTACLE:	600 FT.
RATE OF CLIMB (1 PERSON/½ FUEL):	1700 FPM
LAND AT GROSS OVER 50' OBSTACLE:	500 FT.
BEST CLIMB SPEED:	90 MPH
SERVICE CEILING:	20,000 FT.
FUEL CONSUMPTION (65% POWER):	12 GPH
RANGE, MAX (30 MIN. RESERVE):	850 MILES
CRUISE (75% POWER AT OPT. ALT.):	160 MPH
FLAP SETTINGS:	-7°, 0°, 24°, 40°

STANDARD EQUIPMENT INCLUDED WITH AIRCRAFT

Airspeed
Alternator 60 Amp
Altimeter
Amp Meter
Audible Stall Warning
Aux Cabin Heater
Aux Fuel Pump
Aux Power Plug
Battery 12 Volt
Broad Band Antenna (1)
Cabin Overhead Speaker
Cabin Sound Proofing
Cabin Steps
Cargo Tie Down Straps
Circuit Breakers
Clock
Cloth Velour Upholstery
Compass
Cyl Head Temp Gauge
Door Locks
Double Cargo Door 51"
Dual Controls
Electric Fuel Guage
ELT
Fuel Drains (5)
Fuel Pressure Gauge
Fuel Tanks 43 Gals
Full Gyro Panel/Vac Sys
Heated Pitot Tube
Hydraulic Brakes
Inst and Dome Lights
King KT-76A-00 Transponder
King KX-125-01 Nav/Com
(OR) King KLX-135A GPS/Com
Landing Light Left Wing
Mike and Bracket
Mike and Phone Jacks (F/R)
Narco AR-850 Alt Encoder
Navigation Lights
Oil Pressure Gauge
Oil Temp Gauge
Omni Antenna (1)
Parking Brakes
Powder Coating
PS Eng PM1000 Intercom
Push To Talk Switch (2)
Radio Master Switch
Ram Horn Control Wheels
Seat Belts/Shoulder Harnesses (F/R)
Seats, 2/Front (Adj)
Seats, 2/Rear (Non-Adj)
Stall Warning Light
Standard Paint & Scheme
Swing Out Window (Pilot)
Tachometer
Tie Down Rings
Window Vents
Windshield (Smoke-Tint)
Windshield Defroster
Wing Corrosion Proofing
Wing Tip Strobe Lights

"SEE" COMET SALE SHEET
FOR SALE PRICES
ON AIRCRAFT

COMET TRI-GEAR STANDARD PRICE LIST

[ ]--MAULE MXT-7-160 COMET TRI-GEAR with 0-320 Lycoming----------$108,570.00

[ ]--MAULE MXT-7-180A COMET TRI-GEAR with 0-360 Lycoming----------$113,999.00

ENGINE SPECIFICATIONS

160 HP 0-320-B2D Lycoming, 2000 HR TBO
180 HP 0-360-C4F Lycoming, 2000 HR TBO

PROPELLER SPECIFICATIONS

160 HP - Sensenich 74 IN DIA, Metal Fixed Pitch
180 HP - Sensenich 76 IN DIA, Metal Fixed Pitch

OPTIONAL EQUIPMENT

[ ]--King KA-33-00 Cooling Blower----------$ 800.00
[ ]--King KA-134-03 Audio Control System----------$ 1,485.00
[ ]--King KI-203-00 Indicator--Vor/Loc/Cv----------$ 2,518.00
[ ]--King KI-204-02 Indicator--Vor/Loc/Gs/Cv----------$ 2,779.00
[ ]--King KI-206-04 Indicator--Vor/Loc/Gs--(used w/KNS81)----------$ 2,180.00
[ ]--King KI-208-00 Indicator--Vor/Loc/Cv----------$ 1,376.00
[ ]--King KI-209-01 Indicator--Vor/Loc/Gs/Cv ----------$ 1,631.00
[ ]--King KMA-24-02 Audio Control Console----------$ 2,019.00
[ ]--King KN-62A-01 DME-w/Harmonic Filter-(Distance Measuring Equip)---------$ 6,780.00
[ ]--King KN-64-00 DME--(Distance Measuring Equipment)----------$ 4,660.00
[ ]--King KN-75-00 Glide Slope Receiver----------$ 2,355.00
[ ]--King KNS-81-12 Integrated Navigation System----------$ 12,167.00
[ ]--King KR-21 Marker Beacon Receiver----------$ 1,314.00
[ ]--King KR-87-16 Dig ADF-(Automatic Direction Finder)-w/KI227 Indicator----$ 6,108.00
[ ]--King KT-76A-00 Transponder----------$ 2,049.00
[ ]--King KX-125-01 Nav/Com----------$ 4,300.00
[ ]--King KX-155-38 Digital Nav/Com--(without glideslope)----------$ 5,222.00
[ ]--King KX-155-42 Digital Nav/Com--(with glideslope)----------$ 6,047.00
[ ]--King KY-197A-30 Com Transceiver----------$ 5,121.00
[ ]--Narco AR-850 Remote Altitude Encoder--(037530304)----------$ 617.00
[ ]--Sigtronics SPA-400 Intercom--(4/Place)----------$ 586.00
[ ]--Sigtronics SPA-600 Intercom--(5-6/Place)----------$ 645.00

[ ]--ADF Filter--(Hawkins/RF-170)----------$ 248.00
[ ]--Alcor Mixture EGT 1 Probe--(211-110-0)----------$ 390.00
[ ]--Alcor Mixture EGT 4 Probe--(211-140-0)----------$ 1,073.00
[ ]--Auxiliary Cabin Cool Air----------$ 390.00
[ ]--Broad Band Antenna--(Meriden/BB16)----------$ 175.00
[ ]--Carburetor Air Temp----------$ 652.00
[ ]--Clear Windshield----------$ 57.00
[ ]--Diplexer--(Meriden/NC-4)----------$ 175.00
[ ]--Door Pockets--(L/R)----------$ 80.00
[ ]--Dynamic Balancing for Prop----------$ 390.00
[ ]--Fire Extinguisher--(Halon)--(Saber/1211-1301)----------$ 130.00
[ ]--Grab Handles on Fuselage--(L/R)----------$ 259.00
[ ]--Hour Meter--(Aviall/102149/76052)----------$ 219.00
[ ]--K & M Mix Mizer EGT 1 Probe--(EGT-1L)----------$ 280.00
[ ]--Landing Light Right Wing----------$ 251.00
[ ]--Marker Beacon Antenna--(Meriden/MB5)----------$ 187.00
[ ]--Mike and Phone Jack--(1/5th Seat)----------$ 105.00
[ ]--Observation Window----------$ 393.00
[ ]--Parts Catalog----------$ 35.00
[ ]--Plexiglass Door----------$ 393.00ea
[ ]--Pulselite--(Precise Flight/1210-2405-2A)----------$ 529.00
[ ]--Radio Cooling Kit--(Narco/033120502)----------$ 344.00
[ ]--Shoulder Harnesses w/Lap Belt--(Set)--(AmSafe/502338423/425)----------$ 1,834.00
[ ]--Sky Light w/Cover----------$ 2,851.00
[ ]--Swing Out Window----------$ 627.00ea
[ ]--Telex Headset--(Air 3500/300400-000)----------$ 510.00ea
[ ]--Tow Bar----------$ 113.00
[ ]--Tow Hitch Release Assembly--(Schweizer/3415001K)----------$ 2,523.00
[ ]--Tow Hitch Release Assembly--(Tost)-(Europe)--(wo/Hitch Mechanism)------$ 2,135.00
[ ]--Triplexer--(Meriden/NT-1A)----------$ 141.00
[ ]--True Airspeed Indicator--(180)--(SigmaTek/EA517401PTMAL)----------$ 767.00
[ ]--Wing Tip Tanks--(Auxiliary Fuel Tanks/73 Gals Total Fuel)----------$ 1,763.00

GPS

[ ]--Garmin GPS--(GPS100AVD-100)--(M10-10000-00)--(Worldwide)----------$ 2,695.00
[ ]--Trimble TNL2000A GPS--(14653-10)----------$ 4,295.00

AUTO PILOT

[ ]--Century IIB Auto Pilot(92S49)/ArtHori(94A5021)/DirGyro(94A5019)--------$ 7,525.00
[ ]--Century IIB Radio Coupler--(92S1)----------$ 1,390.00

Note: Full Gyro Panel consist of: Attitude Gyro, Directional Gyro, Electric Turn Coordinator, Outside Air Temperature Gauge, Rate of Climb and Vacuum System consist of: Dry Air Pump, Filter, Regulator and Suction Gauge

Powder Coating on fuselage, tail surface structure, engine mount and most all other steel components.

NOTICE: THE ABOVE COMET TRI-GEAR PRICES ARE THOSE CURRENTLY IN EFFECT AS OF MARCH 26, 1997 AND ARE SUBJECT TO CHANGE WITHOUT NOTICE, FOR CURRENT PRICING CALL 1-912-985-2045.

(03/26/97)

MAULE AIR, INC.

2099 GA Hwy. 133 South
Moultrie, GA 31768

Phone: 912-985-2045
FAX: 912-890-2402

MXT-7-180A COMET TRI-GEAR SALE SHEET

MAULE MXT-7-180A COMET TRI-GEAR WITH O-360 LYCOMING, MIN IFR----------$82,192.00**

FEATURES & EQUIPMENT INCLUDED WITH AIRCRAFT:

AIRSPEED	DUAL CONTROLS	OIL TEMP GAUGE
ALTERNATOR 60 AMP	ELECTRIC FUEL GAUGE	OMNI ANTENNA
ALTIMETER	ELECTRIC STARTER	PARKING BRAKES
AMP METER	ELT	PS ENG PM1000 W/CREW INTERCOM
AUDIBLE STALL WARNING	ENGINE, 180HP O-360 LYCOMING	PUSH TO TALK SWITCH (2)
AUXILIARY CABIN HEATER	FUEL DRAINS (5)	RADIO MASTER SWITCH
AUXILIARY FUEL PUMP	FUEL PRESSURE GAUGE	RAM HORN CONTROL WHEELS
AUXILIARY POWER PLUG	FUEL TANKS 43 GALS	SEAT BELTS/SHOULDER HARNESSES (F/R)
BATTERY 12 VOLT	FULL GYRO PANEL/VACUUM SYSTEM*	SEATS, 2/FRONT (ADJUSTABLE)
BROAD BAND ANTENNA	HEATED PITOT TUBE	SEATS, 2/REAR (NON-ADJUSTABLE)
CABIN OVERHEAD SPEAKER	HYDRAULIC BRAKES	SENSENICH FIXED PITCH PROPELLER
CABIN SOUND PROOFING	INSTRUMENT AND DOME LIGHTS	STALL WARNING SYSTEM (LIGHT)
CABIN STEPS	KING KT-76A-00 TRANSPONDER	STANDARD PAINT & SCHEME
CARGO TIE DOWN STRAPS	KING KX-125-01 NAV/COM	SWING OUT WINDOW (PILOT)
CIRCUIT BREAKERS	(OR) KING KLX-135A GPS/COM***	TACHOMETER
CLOCK	LANDING LIGHT LEFT WING	TIE DOWN RINGS
CLOTH VELOUR UPHOLSTERY	MIKE AND BRACKET	WINDOW VENTS
COMPASS	MIKE AND PHONE JACKS (FRONT/REAR)	WINDSHIELD (SMOKE-TINT)
CYL HEAD TEMP GAUGE	NARCO AR-850 REMOTE ALT ENCODER	WINDSHIELD DEFROSTER
DOOR LOCKS	NAVIGATION LIGHTS	WING CORROSION PROOFING
DOUBLE CARGO DOOR 51"	OIL PRESSURE GAUGE	WING TIP STROBE LIGHTS

MAULE MXT-7-180A COMET TRI-GEAR WITH O-360 LYCOMING, FULL IFR----------$94,570.00**

INCLUDES OPTIONAL AVIONICS AND EQUIPMENT:

KING KI-209-01 INDICATOR	K S MIX MIZER EGT 1 PROBE
KING KMA-24-02 AUDIO CONTROL CONSOLE	LANDING LIGHT RIGHT WING
KING KR-87-16 DIGITAL ADF	MARKER BEACON ANTENNA
KING KX-155-42 DIG N/C W/GLIDESLOPE	PULSELITE
ADF FILTER	RADIO COOLING KIT
AUXILIARY CABIN COOL AIR	TOW BAR
DOOR POCKETS (L/R)	TRIPLEXER
HOUR METER	

NOTES: *FULL GYRO PANEL CONSISTS OF: ATTITUDE GYRO, DIRECTIONAL GYRO, ELECTRIC TURN COORDINATOR, OUTSIDE AIR TEMPERATURE GAUGE, RATE OF CLIMB AND VACUUM SYSTEM CONSIST OF: DRY AIR PUMP, FILTER, REGULATOR AND SUCTION GAUGE

****DEDUCT $3,000 FOR THE MXT-7-160 WITH 0-320 LYCOMING ENGINE.**

*****-10 ATLANTIC, -11 PACIFIC, -12 AMERICAS**

NOTE: PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. (12/08/97)

IT'S PERFORMANCE THAT COUNTS



MAULE COMET

MAULE COMET SPECIFICATIONS MXT-7-160 MXT-7-180A

ENGINE, LYCOMING:	0-320-B2D	0-360-C4F
PROPELLER, SENSENICH: 2 BLADE	74 INCH	76 INCH
WING SPAN:	32.9 FT.	32.9 FT.
WING AREA:	165.6 SQ. FT.	165.6 SQ. FT.
LENGTH:	23.5 FT.	23.5 FT.
HEIGHT:	8.3 FT.	8.3 FT.
CABIN WIDTH:	42 IN.	42 IN.
CONFIGURATION:	4 PLACE	4 PLACE
GROSS WEIGHT:	2200 LBS.	2400 LBS.
EMPTY WEIGHT:	1430 LBS.	1450 LBS.
USEFUL LOAD:	770 LBS.	950 LBS.
FUEL CAPACITY:	43 GALS. (73 OPT.)	43 GALS. (73 OPT.)
STALL SPEED (FULL FLAPS/1 PERSON/1/2 FUEL):	45 MPH	45 MPH
TAKE OFF (1 PERSON/1/2 FUEL):	600 FT.	550 FT.
TAKE OFF AT GROSS OVER 50' OBSTACLE:	1180 FT.	1150 FT.
RATE OF CLIMB (1 PERSON/1/2 FUEL);	825 FPM	920 FPM
LAND AT GROSS OVER 50' OBSTACLE:	500 FT.	500 FT.
BEST CLIMB SPEED:	90 MPH	90 MPH
SERVICE CEILING:	13,000 FT.	15,000 FT.
FUEL CONSUMPTION (65% POWER):	8 GPH	9 GPH
RANGE, MAX (30 MIN. RESERVE, STD. TANKS):	585 MILES	535 MILES
CRUISE (75% POWER AT OPT. ALT.):	130 MPH	135 MPH
FLAP SETTINGS:	-7°, 0°, 24°, 40°	-7°, 0°, 24°, 40°

Maule AIR, INC

BUILDERS OF FAA PRODUCTION CERTIFIED AIRPLANES SINCE 1962

2099 Georgia Highway 133 South, Moultrie, Georgia 31768
Phone 912-985-2045 Fax 912-890-2402

STANDARD EQUIPMENT INCLUDED WITH AIRCRAFT

Airspeed
Alternator 60 Amp
Altimeter
Amp Meter
Audible Stall Warning
Aux Cabin Heater
Aux Fuel Pump
Aux Power Plug
Battery 12 Volt
Broad Band Antenna (1)
Cabin Overhead Speaker
Cabin Sound Proofing
Cabin Steps
Cargo Tie Down Straps
Circuit Breakers
Clock
Cloth Velour Upholstery
Compass
Cyl Head Temp Gauge
Door Locks
Double Cargo Door 51"
Dual Controls
Electric Fuel Guage
ELT
Fuel Drains (5)
Fuel Pressure Gauge
Fuel Tanks 43 Gals
Full Gyro Panel/Vac Sys
Heated Pitot Tube
Hydraulic Brakes
Inst and Dome Lights
King KT-76A-00 Transponder
King KX-125-01 Nav/Com
(OR) King KLX-135A GPS/Com
Landing Light Left Wing
Mike and Bracket
Mike and Phone Jacks (F/R)
Narco AR-850 Alt Encoder
Navigation Lights
Oil Pressure Gauge
Oil Temp Gauge
Omni Antenna (1)
Parking Brakes
Powder Coating
PS Eng PM1000 Intercom
Push To Talk Switch (2)
Radio Master Switch
Ram Horn Control Wheels
Seat Belts/Shoulder Harnesses (F/R)
Seats, 2/Front (Adj)
Seats, 2/Rear (Non-Adj)
Stall Warning Light
Standard Paint & Scheme
Swing Out Window (Pilot)
Tachometer
Tie Down Rings
Window Vents
Windshield (Smoke-Tint)
Windshield Defroster
Wing Corrosion Proofing
Wing Tip Strobe Lights

SPORTPLANE TAILDRAGGER STANDARD PRICE LIST

[ ]--MAULE MX-7-160 Sportplane Taildragger with 0-320 Lycoming----------$ 99,069.00

[ ]--MAULE MX-7-180A Sportplane Taildragger with 0-360 Lycoming----------$104,499.00

NON S.T.O.L.

ENGINE SPECIFICATIONS

160 HP 0-320-B2D Lycoming, 2000 HR TBO
180 HP 0-360-C4F Lycoming, 2000 HR TBO

PROPELLER SPECIFICATIONS

160 HP - Sensenich 74 IN Dia, Metal Fixed Pitch
180 HP - Sensenich 76 IN Dia, Metal Fixed Pitch

OPTIONAL EQUIPMENT

[ ]--King KA-33-00 Cooling Blower----------$ 800.00
[ ]--King KA-134-03 Audio Control System----------$ 1,485.00
[ ]--King KI-203-00 Indicator--Vor/Loc/Cv----------$ 2,518.00
[ ]--King KI-204-02 Indicator--Vor/Loc/Gs/Cv----------$ 2,779.00
[ ]--King KI-206-04 Indicator--Vor/Loc/Gs--(used w/KNS81)----------$ 2,180.00
[ ]--King KI-208-00 Indicator--Vor/Loc/Cv----------$ 1,376.00
[ ]--King KI-209-01 Indicator--Vor/Loc/Gs/Cv ----------$ 1,631.00
[ ]--King KMA-24-02 Audio Control Console----------$ 2,019.00
[ ]--King KN-62A-01 DME-w/Harmonic Filter-(Distance Measuring Equip)---------$ 6,780.00
[ ]--King KN-64-00 DME--(Distance Measuring Equipment)----------$ 4,660.00
[ ]--King KN-75-00 Glide Slope Receiver----------$ 2,355.00
[ ]--King KNS-81-12 Integrated Navigation System----------$ 12,167.00
[ ]--King KR-21 Marker Beacon Receiver----------$ 1,314.00
[ ]--King KR-87-16 Dig ADF-(Automatic Direction Finder)-w/KI227 Indicator----$ 6,108.00
[ ]--King KT-76A-00 Transponder----------$ 2,049.00
[ ]--King KX-125-01 Nav/Com----------$ 4,300.00
[ ]--King KX-155-38 Digital Nav/Com--(without glideslope)----------$ 5,222.00
[ ]--King KX-155-42 Digital Nav/Com--(with glideslope)----------$ 6,047.00
[ ]--King KY-197A-30 Com Transceiver----------$ 5,121.00
[ ]--Narco AR-850 Remote Altitude Encoder--(037530304)----------$ 617.00
[ ]--Sigtronics SPA-400 Intercom--(4/Place)----------$ 586.00
[ ]--Sigtronics SPA-600 Intercom--(5-6/Place)----------$ 645.00

[ ]--ADF Filter--(Hawkins/RF-170)----------$ 248.00
[ ]--Alcor Mixture EGT 1 Probe--(211-110-0)----------$ 390.00
[ ]--Alcor Mixture EGT 4 Probe--(211-140-0)----------$ 1,073.00
[ ]--Auxiliary Cabin Cool Air----------$ 390.00
[ ]--Broad Band Antenna--(Meriden/BB16)----------$ 175.00
[ ]--Carburetor Air Temp----------$ 652.00
[ ]--Clear Windshield----------$ 57.00
[ ]--Diplexer--(Meriden/NC-4)----------$ 175.00
[ ]--Door Pockets--(L/R)----------$ 80.00
[ ]--Dynamic Balancing for Prop----------$ 390.00
[ ]--Fire Extinguisher--(Halon)--(Saber/1211-1301)----------$ 130.00
[ ]--Grab Handles on Fuselage--(L/R)----------$ 259.00
[ ]--Hour Meter--(Aviall/102149/76052)----------$ 219.00
[ ]--K S Mix Mizer EGT 1 Probe--(EGT-1L)----------$ 280.00
[ ]--Landing Light Right Wing----------$ 251.00
[ ]--Marker Beacon Antenna--(Meriden/MB5)----------$ 187.00
[ ]--Mike and Phone Jack--(1/5th Seat)----------$ 105.00
[ ]--Observation Window----------$ 393.00
[ ]--Parts Catalog----------$ 35.00
[ ]--Plexiglass Door----------$ 393.00ea
[ ]--Pulselite--(Precise Flight/1210-2405-2A)----------$ 529.00
[ ]--Radio Cooling Kit--(Narco/033120502)----------$ 344.00
[ ]--Shoulder Harnesses w/Lap Belt--(Set)--(AmSafe/502338423/425)----------$ 1,834.00
[ ]--Sky Light w/Cover----------$ 2,851.00
[ ]--Speed Fairings and Mountings--(Standard 7.00 Tires Only)----------$ 455.00
[ ]--Swing Out Window----------$ 627.00ea
[ ]--Telex Headset--(Air 3500/300400-000)----------$ 510.00ea
[ ]--Tow Bar----------$ 113.00
[ ]--Tow Hitch Release Assembly--(Schweizer/3415001K)----------$ 2,523.00
[ ]--Tow Hitch Release Assembly--(Tost)-(Europe)--(wo/Hitch Mechanism)------$ 2,135.00
[ ]--Triplexer--(Meriden/NT-1A)----------$ 141.00
[ ]--True Airspeed Indicator--(180)--(SigmaTek/EA517401PTMAL)----------$ 767.00
[ ]--Wing Tip Tanks--(Auxiliary Fuel Tanks/73 Gals Total Fuel)----------$ 1,763.00

GPS

[ ]--Garmin GPS--(GPS100AVD-100)--(MIO-10000-00)--(Worldwide)----------$ 2,695.00
[ ]--Trimble TNL2000A GPS--(14653-10)----------$ 4,295.00

AUTO PILOT

[ ]--Century IIB Auto Pilot(92S49)/ArtHori(94A5021)/DirGyro(94A5019)--------$ 7,525.00
[ ]--Century IIB Radio Coupler--(92S1)----------$ 1,390.00

Note: Full Gyro Panel consist of: Attitude Gyro, Directional Gyro, Electric Turn Coordinator, Outside Air Temperature Gauge, Rate of Climb and Vacuum System consist of: Dry Air Pump, Filter, Regulator and Suction Gauge

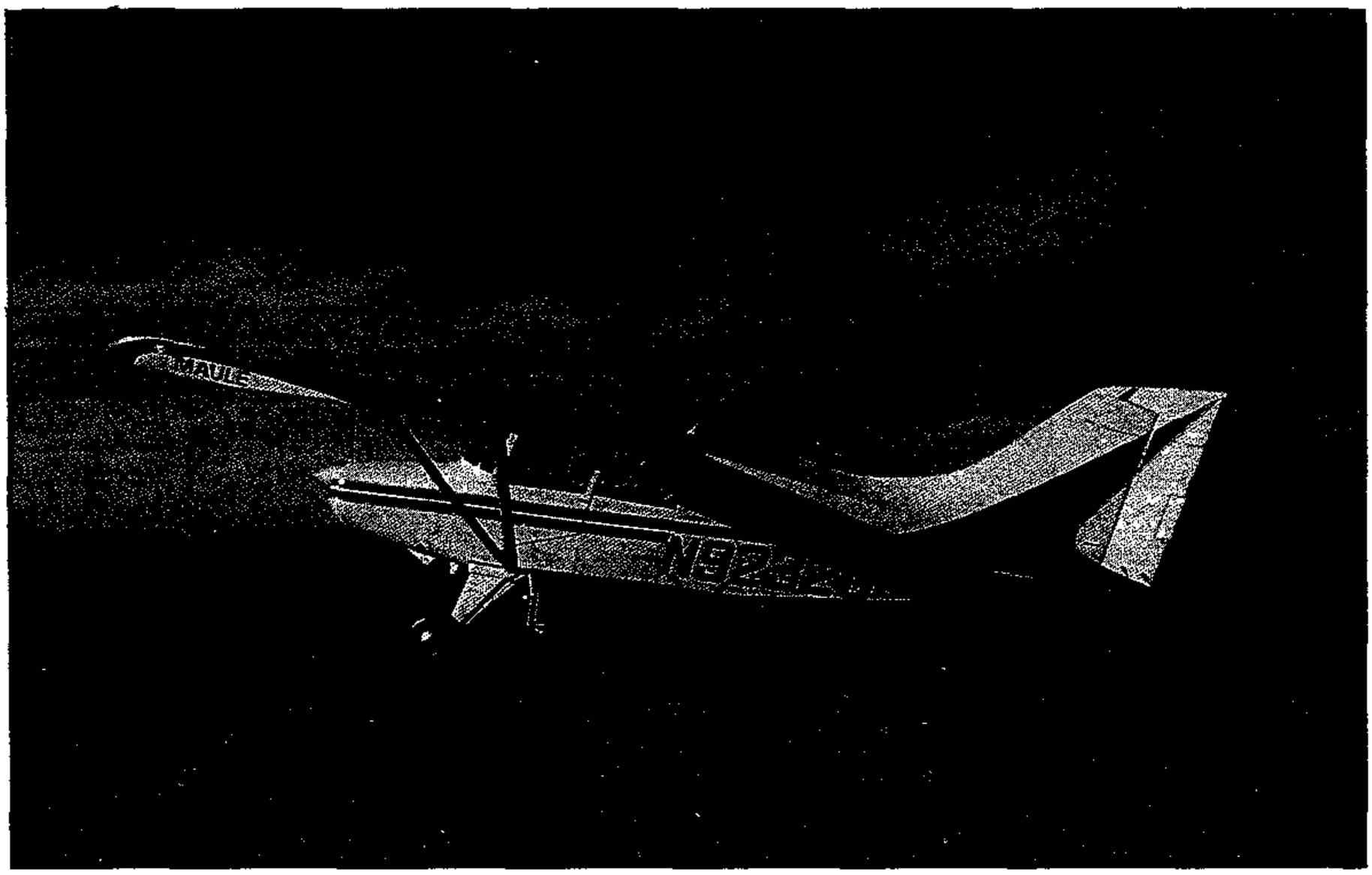
Powder Coating on fuselage, tail surface structure, engine mount and most all other steel components.

NOTICE: THE ABOVE SPORTPLANE TAILDRAGGER PRICES ARE THOSE CURRENTLY IN EFFECT AS OF MARCH 26, 1997 AND ARE SUBJECT TO CHANGE WITHOUT NOTICE, FOR CURRENT PRICING CALL 1-912-985-2045.

(03/26/97)

MAULE AIR, INC.

2099 GA Hwy 133 S.
Moultrie, GA 31768
Phone: 912-985-2045
Fax: 912-890-2402



NEW MAULE *"SPORTPLANE"* - MX-7-160 AND -180A

- 160 H.P. OR 180 H.P. LYCOMING ENGINE
- SENSENICH FIXED PITCH PROPELLER
- 4 PLACE
- 870 OR 1050 POUND USEFUL LOAD
- 135 OR 140 MPH MAX. CRUISE SPEED
- 40 MPH STALL SPEED
- MOST ECONOMICAL NEW 4 PLACE AIRCRAFT ON THE MARKET
- RUGGED - BRED FROM A LINE OF BUSH PLANES
- STABLE - FORGIVING - EASY TO FLY
- SUITABLE FOR TRAINER, FAMILY AIRCRAFT, PATROL AND SURVEILANCE
- EASY MAINTENANCE - PARTS AVAILABLE
- MADE IN USA

IT'S PERFORMANCE THAT COUNTS

MAULE SPORTPLANE SPECIFICATIONS	MX-7-160	MX-7-180A
ENGINE, LYCOMING:	0-320-B2D	0-360-C1F/-C4F
PROPELLER, SENSENICH:	74 INCH	76 INCH
WING SPAN:	32.9 FT.	32.9 FT.
WING AREA:	165.6 SQ. FT.	165.6 SQ. FT.
LENGTH:	23.5 FT.	23.5 FT.
HEIGHT:	6.3 FT.	6.3 FT.
CABIN WIDTH:	42 IN.	42 IN.
CONFIGURATION:	4 PLACE	4 PLACE
GROSS WEIGHT:	2200 LBS.	2400 LBS.
EMPTY WEIGHT:	1330 LBS.	1350 LBS.
USEFUL LOAD:	870 LBS.	1050 LBS.
FUEL CAPACITY:	40 GAL. (70 OPT.)	40 GAL. (70 OPT.)
STALL SPEED (FULL FLAPS/1 PERSON/1/2 FUEL):	40 MPH	40 MPH
TAKE OFF (1 PERSON/1/2 FUEL):	600 FT.	550 FT.
TAKE OFF AT GROSS OVER 50' OBSTACLE:	1180 FT.	1150 FT.
RATE OF CLIMB (1 PERSON/1/2 FUEL):	825 FPM	920 FPM
LAND AT GROSS OVER 50' OBSTACLE:	500 FT.	500 FT.
BEST CLIMB SPEED:	90 MPH	90 MPH
SERVICE CEILING:	13,000 FT.	15,000 FT.
FUEL CONSUMPTION (65% POWER):	8 GPH	9 GPH
RANGE, MAX (30 MIN. RESERVE):	540 MILES	500 MILES
CRUISE (75% POWER AT OPT. ALT.):	135 MPH	140 MPH
FLAP SETTINGS:	-7°, 0°, 24°, 40°	-7°, 0°, 24°, 40°

ACTION PRINTING, CO.

Standard Equipment Included with Aircraft

Adj Front Seats (2)	Circuit Breakers	Fuel Drains (7)	Parking Brakes
Airspeed	Clock	Fuel Filter Light	Prop RPM Indicator
Airspeed Warning System	Cloth Velour Upholstery	Full Gyro Panel/Vac Sys	Ram Horn Control Wheels
Altimeter	Compass	Heated Pitot Tube	without Switch
Aux Cabin Cool Air	Constant Speed BETA Prop	Hydraulic Brakes	Rate of Climb
Aux Cabin Heater	Door Locks	Inst and Dome Lights	Rear Removable Seats
Aux Fuel Pump	Double Cargo Door	King KT-76A-01 Transponder	Stall Warning System
Aux Power Plug	Dual Controls	King KX-155-39 Nav/Com	Standard Paint Scheme
Battery Key Switch	Dual Load/Volt Meter	Landing Light Left Wing	Starter Generator 100 AMP
Battery 24 Volt	Electric Fuel Gauges	Mike and Bracket	Tie Down Rings
Broad Band Antenna (1)	Electric Turn Coordinator	Narco AR-850 Alt Encoder	Turbine Out Temp Indicator
Cabin Overhead Speaker	Emergency Locator Transmitter	Navigation Lights	Turbine RPM Indicator (%)
Cabin Sound Proofing	Engine Fuel Pressure Ind.	Oil Pressure Gauge	Window Vents
Cabin Steps	Engine Torque Indicator	Oil Temp Gauge	Windshield (Smoke-Tint)
Cargo Tie Down Straps	Fifth Seat (M-7 Only)	Omni Antenna	Wing Tip Strobe Lights
Chip Detector Light	Float Reinforcement(Amphib)	Outside Air Temp Gauge	Wing Tip Tanks

TURBOPROP STANDARD PRICE LIST

[ ]--MAULE MX-7-420 Starcraft Turboprop Taildragger----------$450,000.00
[ ]--MAULE MXT-7-420 Starcraft Turboprop Tri-Gear----------$490,000.00
[ ]--MAULE M-7-420 Starcraft Turboprop Amphibian----------$550,000.00

ENGINE SPECIFICATION

420 SHP Allison Model 250-B17C

PROPELLER SPECIFICATION

3 Bladed Hartzell Constant Speed
Full Feathering, Reversing with
BETA control, Model HC-B3TF-7A

OPTIONAL EQUIPMENT

[ ]--King KA-33-01 Cooling Blower--28V--(used w/KNS80)----------	$ 751.00
[ ]--King KA-39 Convertor--28V to 14V--(used w/KX-125-01)----------	$ 738.00
[ ]--King KA-134-03 Audio Control System----------	$ 1,419.00
[ ]--King KI-203-00 Indicator----------	$ 2,422.00
[ ]--King KI-204-02 Indicator----------	$ 2,671.00
[ ]--King KI-206-04 Indicator--(used w/KNS80)----------	$ 2,095.00
[ ]--King KI-208-00 Indicator----------	$ 1,308.00
[ ]--King KI-209-01 Indicator----------	$ 1,563.00
[ ]--King KMA-24-02 Audio Control Console----------	$ 1,939.00
[ ]--King KN-62A-01 DME--w/Harmonic Filter-(Distance Measuring Equipment)--	$ 6,512.00
[ ]--King KN-64-00 DME----------	$ 4,246.00
[ ]--King KN-75-00 Glide Slope Receiver----------	$ 2,247.00
[ ]--King KNS-81-12 Integrated Navigation System----------	$ 9,803.00
[ ]--King KR-21 Marker Beacon Receiver----------	$ 1,314.00
[ ]--King KR-87-16 Digital ADF-(Automatic Direction Finder)-w/KI227 Ind----	$ 5,847.00
[ ]--King KT-76-01 Transponder--28V----------	$ 2,009.00
[ ]--King KX-155-39 Digital Nav/Com--w/Audio Amp--28V----------	$ 5,020.00
[ ]--King KX-155-43 Digital Nav/Com--w/Audio Amp/Gs--28V----------	$ 5,809.00
[ ]--King KY-196A-30 Com Transceiver-28V----------	$ 4,738.00
[ ]--Narco AR-850 Remote Altitude Encoder--(037530304)----------	$ 575.00
[ ]--PS Engineering Intercom w/Crew--(PM1000II)----------	$ 767.00
[ ]--Sigtronics SPA-400 Intercom--(4/Place)----------	$ 586.00
[ ]--Sigtronics SPA-600 Intercom--(5-6/Place)----------	$ 645.00
[ ]--ADF Filter--(Hawkins/RFI70)----------	$ 246.00
[ ]--Audible Stall Warning----------	$ 130.00
[ ]--Broad Band Antenna--(Meriden/BB16)----------	$ 175.00
[ ]--Diplexer-(Meriden NC-4)----------	$ 175.00
[ ]--Door Pockets--(L/R)----------	$ 80.00
[ ]--Dual Caliper Brakes----------	$ 680.00
[ ]--Fire Extinguisher--(Halon)--(Saber/1211/1301)----------	$ 130.00
[ ]--Hour Meter--(Aviall/102149/76052)----------	$ 210.00
[ ]--Jump Seat in Baggage Area--(MX-7)----------	$ 2,000.00
[ ]--Landing Light Right Wing----------	$ 251.00
[ ]--Marker Beacon Antenna--(Meriden/MB5)----------	$ 187.00
[ ]--Mike and Phone Jacks--(2/Front)----------	$ 65.00
[ ]--Mike and Phone Jacks--(2/Rear)----------	$ 222.00
[ ]--Mike and Phone Jack-(1/5 th Seat)----------	$ 105.00
[ ]--Observation Window----------	$ 393.00
[ ]--Parts Catalog----------	$ 35.00
[ ]--Plexiglass Door----------	$ 393.00ea
[ ]--Pulselite--(Precise Flight/1210-2405-2A)----------	$ 529.00
[ ]--Push To Talk Switches--(2-L/R on Ram Horn Control Wheels)----------	$ 110.00

[ ]--Radio Cooling Kit--(Narco/0033120502)----------$ 259.00
[ ]--Radio Master Switch--(Newark/7560K5)----------$ 59.00
[ ]--Shoulder Harnesses w/Lap Belt--(Set L/R)--(AmSafe/502338423/425)------$ 1,834.00
[ ]--Sky Light w/Cover----------$ 2,851.00
[ ]--Speed Fairings and Mounting--(Standard 7.00 Tires Only)----------$ 455.00
[ ]--Swing Out Window--(Pilot or Co-Pilot)----------$ 627.00ea
[ ]--Telex Headset--(Air 3500/300400-000)----------$ 510.00ea
[ ]--Tires and Tubes 8.00x6--(McCreary)----------$ 135.00
[ ]--Tires and Tubes 8.50x6--(McCreary)----------$ 221.00
[ ]--Triplexer--(Meriden/NT-1A)----------$ 141.00
[ ]--True Airspeed Indicator--(SigmaTek)----------$ 767.00

GPS

[ ]--Garmin GPS--(GPS100AVD-100)--(M10-10000-00)--(Worldwide)----------$ 2,695.00
[ ]--Trimble TNL2000A GPS--(14653-10)----------$ 4,295.00

AUTO PILOT

[ ]--Century IIB Auto Pilot (92S49)/ArtHori (94A5021)/DirGyro (94A5019)----$ 7,525.00
[ ]--Century IIB Radio Coupler--(92S1)----------$ 1,390.00

Note: Full Gyro Panel w/Vacuum System, consist of: Attitude Gyro, Directional Gyro, Dry Air Pump, Electric Turn Coordinator, Filter, Outside Air Temp Gauge, Rate of Climb, Regulator and Suction Gauge.

All Aircraft are Powder Coated on fuselage, tail surface structure, engine mount and most all other steel components.

Notice: THE ABOVE TURBOPROP PRICES ARE THOSE CURRENTLY IN EFFECT AS OF MAY 11, 1996 AND ARE SUBJECT TO CHANGE WITHOUT NOTICE, FOR CURRENT PRICING CALL 1-912-985-2045.

Maule "Turboprop" Specifications	MX-7-420	MXT-7-420	M-7-420
Type Landing Gear:	Taildragger	Tri-Gear	Amphibian
Float Type:			EDO 2500
Float Total Weight:			575 LBS
Float Total Length:			18'
Engine, Allison Turboprop Gas Turbine:	250-B17-C	250-B17-C	250-B17-C
Propeller, Hartzell C/S, BETA, 3 Blades:	80"	80"	90"
Wing Span:	30' 10"	32' 9"	33' 8"
Wing Area:	157.9 SQ FT	165.6 SQ FT	177 SQ FT
Length:	24'	24' 3"	23' 6"
Height:	6' 4"	8' 4"	10'
Cabin Width:	42"	42"	42"
Configuration:	4/5 PLACE	4/5 PLACE	4 PLACE
Gross Weight:	2500 LBS	2500 LBS	2750 LBS
Empty Weight:	1380 LBS	1500 LBS	2000 LBS
Useful Load:	1120 LBS	1000 LBS	750 LBS
Fuel Capacity:	85 GALS	85 GALS	85 GALS
Stall Speed (Full Flaps/Power Off):	50 MPH (43K)	49 MPH (42K)	54 MPH (47K)
Take Off Roll, Land/Water:	200 FT	200 FT	250/750 FT
Rate of Climb, Initial/Sustained:	4700/2800 FT/MIN	4700/2800 FT/MIN	2500/1800 FT MIN
Land Roll, Land/Water:	300 FT	300 FT	300/350 FT
Best Climb Speed:	100 MPH (87K)	100 MPH (87K)	100 MPH (87K)
Service Ceiling:	20,000 FT	20,000 FT	20,000 FT
Speed Maximum:	200 MPH (174K)	200 MPH (174K)	185 MPH (160K)
Speed, (75% Power, Opt. Alt.):	195 MPH (169K)	195 MPH (169K)	180 MPH (156K)
Speed, (50% Power, Opt. Alt.):	180 MPH (156K)	180 MPH (156K)	165 MPH (139K)
Fuel Consumption, (75% Power):	25.9 GPH	25.9 GPH	25.9 GPH
Fuel Consumption, (50% Power):	17 GPH	17 GPH	17 GPH
Range, (No reserve, 75% Power, Opt. Alt.):	635 MILES	635 MILES	585 MILES
Range, (No reserve, 50% Power, Opt. Alt.):	900 MILES	900 MILES	825 MILES
Flap Settings (Degrees):	-7,0,24,40	-7,0,24,40	-7,0,24,40

MAULE AIR, INC. - 2099 GA HWY 133 S - MOULTRIE, GA 31768
PH:1-912-985-2045 - FX:1-912-890-2402

AVIONICS PACKAGES

PACKAGE "A"----------TOTAL LIST $14,999.00
KING KI-209-01 INDICATOR
KING KLX-135A GPS/COM (SE)
KING KMA-24-02 AUDIO CONTROL CONSOLE
KING KR-87-16 DIGITAL ADF
KING KX-155-42 DIGITAL NAV/COM w/GLIDESLOPE
PS ENG. PM1000 INTERCOM W/CREW (SE)
(INCLUDES STANDARD AVIONICS EXCEPT KX-125)

PACKAGE "C"----------TOTAL LIST $26,095.00
KING KA-33 COOLING KIT
KING KI-209-01 INDICATOR
KING KLN-89B GPS w/RESOLVER & SWITCH (APPROACH MODE)
KING KMA-24-02 AUDIO CONTROL CONSOLE
KING KT-71-00 TRANSPONDER
KING KX-155-42 DIGITAL NAV/COM w/AUDIO AMP/GS/ISO
KING KY-197A-30 COM TRANSCEIVER
NARCO AR-850 REMOTE ALTITUDE ENCODER (SE)
PM 1000 II INTERCOM w/CREW (SE)
BROAD BAND ANTENNA (2/1-SE)
MARKER BEACON ANTENNA
MIKE AND PHONE JACKS (2/FRONT)
MIKE AND PHONE JACKS (2/REAR)
PUSH TO TALK SWITCH (2)
RADIO MASTER SWITCH
TRIPLEXER
(DOES NOT INCLUDE STANDARD KX-125, KLX-135A & KT-76A)
(NON-MAULE FACTORY IFR/APPROACH APPROVED)

PACKAGE "C-1"----------TOTAL LIST $31,311.00
PACKAGE C, PLUS
KING KR-87-16 DIGITAL ADF w/KI227 INDICATOR
ADF FILTER

PACKAGE "C-2"----------TOTAL LIST $23,095.00
PACKAGE C, LESS
RESOLVER & SWITCH (NO APPROACH MODE)

IT'S PERFORMANCE THAT COUNTS



ADDITIONAL EQUIPMENT INCLUDED WITH "A" AVIONICS PACKAGE:

ADF FILTER
BROAD BAND ANTENNA (2ND)
DOOR POCKETS (L/R)
MARKER BEACON ANTENNA
MIKE AND PHONE JACKS (2/FRONT) (SE)
MIKE AND PHONE JACKS (2/REAR) (SE)
PUSH TO TALK SWITCH (2) (SE)
RADIO COOLING KIT
RADIO MASTER SWITCH (SE)
TOW BAR
TRIPLEXER

FULL GYRO PANEL w/VACUUM SYSTEM CONSISTS OF:

ATTITUDE GYRO
DIRECTIONAL GYRO
ELECTRIC TURN COORDINATOR
OUTSIDE AIR TEMPERATURE GAUGE
RATE OF CLIMB
VACUUM SYSTEM CONSISTS OF:
DRY AIR PUMP
FILTER
REGULATOR
SUCTION GAUGE

(SE)=STANDARD EQUIPMENT

NOTE: SEE STANDARD PRICE LIST FOR ADDITIONAL AVIONICS AND EQUIPMENT
(01/05/98)

MAULE AIR, INC.

2099 GA Hwy. 133 South
Moultrie, GA 31768

Phone: 912-985-2045
FAX: 912-890-2402

STANDARD PAINT AND PAINT SCHEME: (8/25/97)

U-TECH

COLORS:

INSIGNIA WHITE (WHITE/WHITE) "BASE COLOR ALL MODELS"
DAYTONA WHITE (IVORY/BEIGE) - MAY BE SPECIFIED IN LIEU OF INSIGNIA WHITE

COLORADO RED
BAHAMA BLUE
HICKORY BROWN
CRUISER ORANGE
A.N. ORANGE YELLOW
MONTEGO GREEN
BOSTON MAROON
BLACK

NOTE: PIN STRIPE INCLUDED, TO BE SAME COLOR AS TRIM. EXTRA CHARGE FOR FROST, PIN STRIPE OF DIFFERENT COLOR, ADDITIONAL TRIM, OR DIFFERENT PAINT SCHEME.

UPHOLSTERY COLORS:

STANDARD INTERIOR: LIGHT SLATE GREY HEADLINER
DARK CHARCOAL GREY VELOUR SEATS WITH LIGHT SLATE VINYL PIPING
STANDARD CARPET: BLACK

DARK/LIGHT GREY VELOUR WITH OR WITHOUT LIGHT/DARK GREY VINYL PIPING
LIGHT BLUE VELOUR WITH OR WITHOUT COBALT VINYL PIPING
SANDSTONE VELOUR WITH OR WITHOUT TAUPE OR PARCHMENT VINYL PIPING
MEDIUM MAPLE VELOUR WITH OR WITHOUT CRANBERY VINYL PIPING
GREEN VELOUR WITH OR WITHOUT MINT VINYL PIPING

NOTE: ANY VELOUR COLOR CAN BE USED AS A HEADLINER

NOTE: PAINTED LEADING EDGES NOT STANDARD (EXTRA CHARGE)



CECONITE

3615 MEDFORD STREET
LOS ANGELES, CALIFORNIA 90063
213 266-6651 • 266-2793

February 6, 1989

Mrs. June Maule
Maule Air, Inc.,
Lake Maule, Route 5, Box 319
Moultrie, Georgia 31768

Subject: Longevity of Ceconite Fabric Covered Aircraft

Dear Mrs. Maule:

As a follow-up to our recent telephone conversation, I have had involvement with Ceconite and Ceconite fabric covered airplanes for the past twenty-five year. I have yet to witness an aircraft requiring recovering, when properly finished, due to deterioration of the Ceconite fabric itself. Ceconite fabric is used throughout the world in climates ranging from Alaska to the tropics and in many areas where rapid changes in climate exist. I would suggest that Ceconite aircraft covering, when properly installed, is the most durable product available in the world today.

I am not familiar with your manufacturing process nor the type of nitrate or butyrate dope you are currently using. However, I am well aware of the fact that your company has a long history of manufacturing fabric covered aircarft and assume you have developed a great amount of expertise in application and sourcing your materials.

Basically, a Ceconite fabric covered aircraft requiring recovering exists for one of two reasons; the airframe requires complete inspection or the finish has deteriorated to the extent that it no longer can be rejuvenated. This, however, is a factor of the finish rather than the fabric itself. I would suggest that you contact your coating supplier for recommendations regarding subjecting a fabric aircraft to adverse or severe climate conditions.

Yours truly,

T. A. Irwin
President

fcs/

MAULE AIR INC.

FEB - 8 1989

RECEIVED

COOPER ENGINEERING CO.

BOX 3428
VAN NUYS, CALIFORNIA

GR. 2-0310 GR. 2-7751

CECONITE

DESIGN • DEVELOPMENT • MANUFACTURE • AIRCRAFT PARTS

In reply to your inquiry concerning the advantages of a "CECONITE" covering the following information will be of interest.

As a result of several years experimentation the Cooper Engineering Co. has developed "CECONITE" 101 as a cover for fabric covered aircraft. "CECONITE" is a synthetic fabric which, for the same weight, is twice as strong and outlasts cotton aircraft fabric three to one. With normal care this covering can equal the life of the airplane. Thus, for the first time it is possible to enjoy the advantages of a light weight fabric covering, together with lifetime durability.

"CECONITE" contains no Fiberglas and has fatigue and flexural qualities superior to cotton. Furthermore, it will not mildew or absorb moisture and is not affected by climatic changes (1). Except for concentrated acids and strong alkalies, it is chemically inert. Hydrocarbon compounds such as gasoline and oil have no effect.

A "CECONITE" covering is directly competitive in cost with conventional fabric coverings. While the cost of material is slightly higher, substantial savings in labor and dope more than offset this cost; for example: ordinary dope has but little effect and "CECONITE" is tautened by heat - in this case by a flatiron. Thus there is the savings of four coats of dope, labor involved, and airplane out of commission time (2). Since a "CECONITE" finish weighs the same as cotton, control surface rebalance is not required. Repairs, using CAM Manual 18 as a guide, are simple and similar to cotton fabric repairs on fabric covered airplanes.

"CECONITE" is FAA approved when covering is accomplished in accordance with our manual. STC approval, if not already secured for your model airplane, will be obtained by us upon completion of conformity inspection (3).

The procedures of covering and finishing are simple and may be accomplished by any A&E mechanic or individual having previous aircraft fabric covering experience. A procedures manual is supplied with each order.

Long lasting rib cord, machine and hand sewing thread (all of synthetic composition instead of the usual cotton) are required in the "CECONITE process. "CECONITE", is available through us or our dealers.

(1) "CECONITE" has been tested at temperatures ranging from -70° to 400°F.
(2) Only one man-hour is required to heat tauten a "CECONITE" fuselage covering on the average airplane.
(3) We now have STC approval for nearly all types of airplanes.

Very truly yours,

Daniel A Cooper

DANIEL A. COOPER
President

MAULE AIR, INC.

2099 GA Hwy. 133 South
Moultrie, GA 31768

Phone: 912-985-2045
FAX: 912-890-2402

FORM LETTER

MAULE AIR, INC. REQUIRES A DOWNPAYMENT OF ***$10,000.00*** FOR EACH AIRCRAFT ORDER ($25,000.00 FOR TURBOPROP). WE WILL ACCEPT PERSONAL CHECKS ON DOWNPAYMENT ONLY. DRAWN ON A U.S. BANK.

IMPORTANT NOTICE: PLEASE PROVIDE AIRCRAFT SPECS WITH INTERIOR AND EXTERIOR COLORS WHEN PLACING AIRCRAFT ORDER.

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P.O. BOX 608067
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JODY A. BARKER
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ORLANDO, FL 32803
WILLIAM LAWYER
PH:1-800-814-6682

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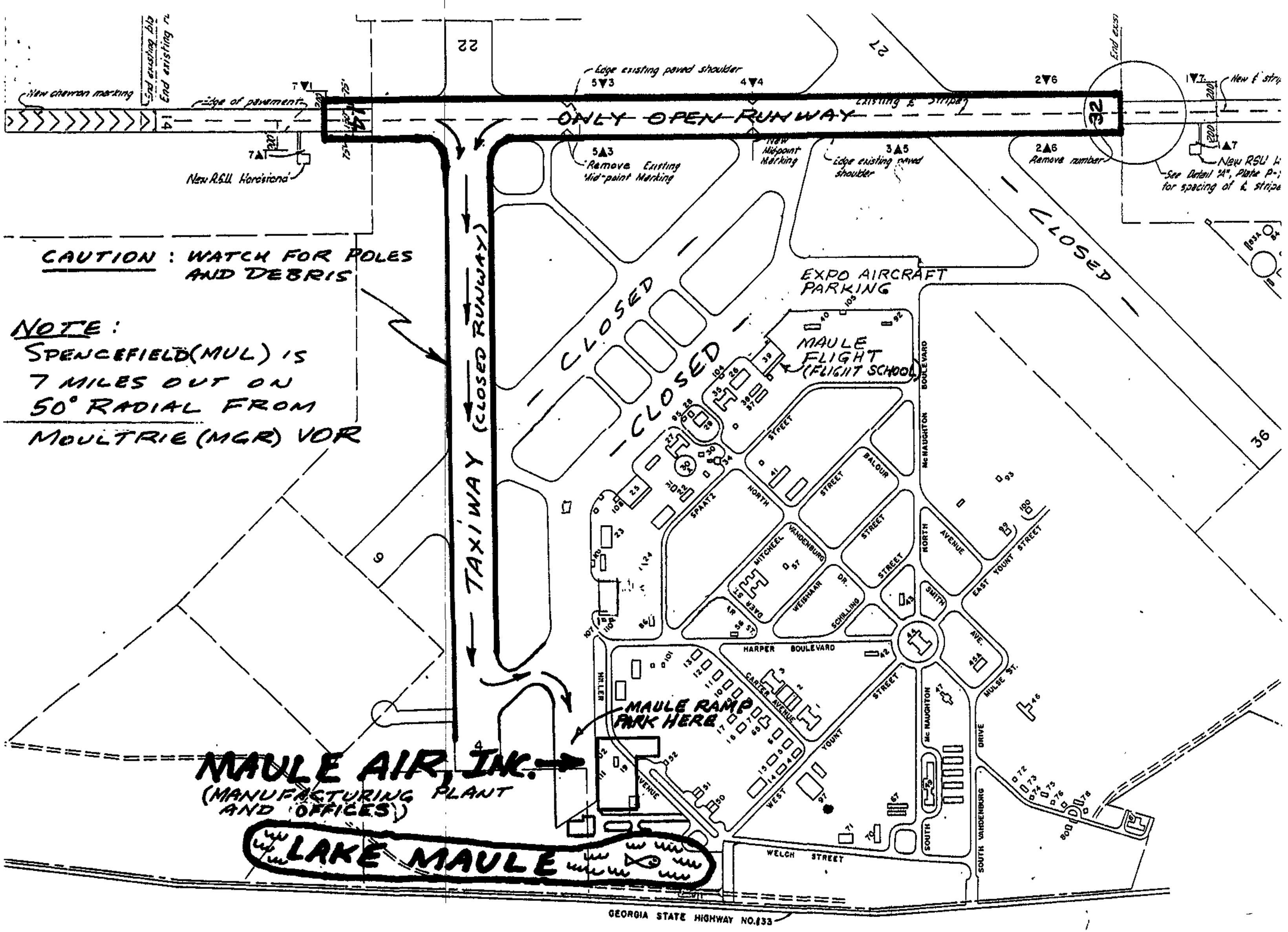
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MOULTRIE GEORGIA

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ONLY OPEN RUNWAY
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TAXIWAY (CLOSED RUNWAY)
22
27
32
36
9
End existing pvmt
End existing pvmt
New chevron marking
Edge of pavement
New R.S.U. Horizontal
Edge existing paved shoulder
Existing 6" Stripe
Remove Existing "Mid-point Marking
New Midpoint Marking
Edge existing paved shoulder
Remove number
New R.S.U.
See Detail "A", Plate P-
for spacing of 6" stripe
CAUTION : WATCH FOR POLES AND DEBRIS
NOTE :
SPENCEFIELD(MUL) IS 7 MILES OUT ON 50° RADIAL FROM MOULTRIE (MGR) VOR
EXPO AIRCRAFT PARKING
MAULE FLIGHT (FLIGHT SCHOOL)
MAULE RAMP PARK HERE
MAULE AIR, INC.
(MANUFACTURING PLANT AND OFFICES)
LAKE MAULE
GEORGIA STATE HIGHWAY NO. 133
HARPER BOULEVARD
EAST YOUNT STREET
WELCH STREET
SOUTH VANDENBURG DRIVE
McNAUGHTON BOULEVARD
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SPAATZ STREET
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WEISHAAR DR.
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SMITH
NORTH AVENUE
CARTER AVENUE
YOUNT STREET
WEST
SOUTH
MILLER
DAER ST.
56 ST.

PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: ~~99-294-SPHX~~ 98-294-SPHX	*	Civil Action No. 03-C-00-002648

PETITIONER'S REPLY MEMORANDUM OF LAW

Petitioners, Edgar Lucas through his personal representative, Dale Lucas, and Dale Lucas, individually ("Lucas"), by and through their attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submit this Reply Memorandum of Law as their Reply to Protestants' Response to Petitioners' Memorandum of Law, and state as follows:

INTRODUCTION

Preliminarily, Protestants mislead this Court by stating that "Petitioner's decedent had applied for two types of use", and that "[t]herefore, the Board addressed two questions". Protestants' Brief, pp. 10-11. Petitioner applied for the special exception use of an airport. See the subject petition for special exception, and attached hereto as **Exhibit 1**. The Board's decision to break down its analysis of this case into two questions was in no way related to the petition for a special exception use filed by Lucas.[1]

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1 Protestants begin with an incorrect summary of the zoning regulations in the statements "Petitioner could not get a Special Exception if his use was an 'airstrip', 'heliport', type I or II, or 'helistop', because the BCZR do not allow those uses in any R.C. zone"

Protestants' arguments in this case fall into two categories. The first category is the definitional issue – whether helicopter operations are allowed at airports under the Baltimore County Zoning Regulations ("BCZR"). The second category contains numerous sub-issues all related to Special Exceptions – the parties' burden of proof and the correct Standard to be applied in reviewing petitions for special exception uses.

As to the definitional issue, Protestants' arguments fail for the following two reasons. 1) : The BCZR definition of airport provides for the landing and taking off of *aircraft*, which the BCZR defines, through Webster's dictionary, as including helicopters. There is no ambiguity. The plain meaning rule applies in this analysis. 2) : If there was a need to look beyond the plain meaning rule, (a) common sense dictates that the facility is an airport under BCZR; and (b) the Board of Appeals attempted to piece together legislation in a comprehensive fashion. The County Council never comprehensively regulated the use of aircraft. The effect of the Board's action, whether intentional or not, was to fill in gaps of perceived legislation and create comprehensive legislation for aircraft use. The Board's action constitutes an attempt to legislate, which is outside the authority of the Board's power.

As to the second category of arguments, Protestants assert an incorrect interpretation of the Special Exception Standard that has been explained numerous times in Maryland appellate case law. Yet, what remains is the fact that the Board erred as a matter of law in its review of the inherent adverse impacts associated with the Helmore Farm airport, and evaluated the Helmore Farm airport in light of a faulty analysis of the law.

(Protestants' Brief, p. 10); and "The only aircraft landing use permitted in an R.C. zone, and then only by Special Exception, is an 'airport'." (Protestants' Brief, p. 3) As explained by Petitioners above, the Baltimore County Zoning Regulations ("BCZR") *do* allow

DISCUSSION

I. Is the proposed use an "airport" and are helicopter operations permitted at airports?

Protestants incorrectly summarized Petitioners' arguments. Petitioners have not asserted that simply "the location of an airstrip next to a helipad makes the area an 'airport'". Protestants' Brief, p. 10. The facility at Helmore Farm is an airport and contains, in addition to the landing area for fixed wing aircraft and the concrete landing pad for helicopters, in Protestants' own words, " a windsock, lights, a guidance beam, and all-weather observation system." Protestants' Brief, p. 3.

Protestants complain that "Petitioner's proposition that 'plain meaning' controls context is precisely backwards." Protestants' Brief at p. 12. The Protestants are asserting that helicopter uses are not allowed at airports, and that the only way an R.C. 2 property owner could have airplane operations would be to propose a fully equipped airport – one that is *not* restricted like the one Petitioners have proposed – but rather one that contains *all* the items usually associated with an airport, such as fueling tanks, hangars, parking lots, and maintenance facilities.

An obvious question this Court should ask the Protestants is – where do they propose the line be drawn such that an airport "qualifies" as an airport? Another obvious question is – do the Protestants want (and do they really think the County Council intended) property owners to *not* be allowed to impose self-restrictions on a proposed airport in order to attempt to minimize the airport's inherent adverse impacts on neighbors? Are crop dusting operations not permitted in RC-2 zoned land – the principal agricultural zone in Baltimore County?

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helistops by special exception in the R.C. 3 zone. (BCZR § 1A02.2.B.14)

II. The Board's Decision Amounts to an Attempt to Legislate.

Petitioners have not "urged that the general definition of 'airport' includes the four other types [of landing uses]." Protestants' Brief, p.12. The Helmore Farm facility is an airport, which contains separate landing areas for airplanes and helicopters.[2] Petitioners have not suggested anything with regard to the definition of "airport". The Board, sua sponte, ruled that helicopter uses are not included within the BCZR definition of "airport". Petitioners contend that this ruling is erroneous since the BCZR definition of "airport" provides for the landing and taking off of *aircraft*, which the BCZR does not define, but for which the BCZR directs readers to utilize Webster's dictionary, which clearly includes helicopters in its definition of aircraft. The Council's decision to allow certain aircraft operations in certain zones does not affect this issue.

Protestants assert that the Board needed to "give effect to the helicopter provisions". Id. On the contrary, the Board's role was to interpret the regulations in order to rule on the subject petition for a special exception for an *airport*. However, the Board's analysis resulting in its decision in this matter amounts to an attempt to legislate. Unlike the situation with trucking facilities or fuel service stations or adult entertainment operations, the County Council has not enacted comprehensive regulations for aircraft or airports. There are no comprehensive regulations under which to analyze this subject petition for special exception.

There are piecemeal regulations for aircraft and airports in Baltimore County. The Board of Appeals effectively acted as the legislative branch of government by attempting to fill in the gaps created by the BCZR's lack of comprehensive regulations on aircraft. The County Council has provided a broad definition for an "airport" and has provided more detailed definitions for different types of helicopter operations. BCZR §

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2 Protestants' assertion, in their Statement of Facts, that the facility at Helmore Farm "*lacks* facilities", is an attempt to convince this Court that the facility is not an airport. Protestants' Brief, p. 3 (emphasis added). The airport at Helmore Farm does not *lack* anything. Rather, the Petitioners placed *self-imposed* restrictions on their proposed use in an attempt to limit the inherent adverse impacts, not because Petitioners had to, but simply because they wanted to be neighborly. The land at Helmore Farm is large enough, and Petitioners are able to accommodate facilities for fueling, storage, aircraft repair, and parking; but Petitioners attempted to create a less intrusive airport.

101. While gaps in the regulations exist, it is within the Council's powers to enact comprehensive legislation on aircraft and airports. It is not within either the Board of Appeals' or this court's powers to attempt to fill in gaps left by the Council in the BCZR. The Council has had the opportunity, and still does, to create comprehensive regulations for aircraft and airports, which could for example include the creation of different classifications of airports, and/or what additional items are needed for an airport besides a landing area.

In ruling that airports do not include helicopter operations, the Board of Appeals relied on the testimony of former Baltimore County planning department personnel and their opinions as to the Council's intent on this issue. Specifically, in attempting to determine the legislative history, the Board of Appeals relied on a former planning staff's testimony regarding the staff's recommendation to the planning board. The planning board then made a recommendation to the Council. The Baltimore County Planning Staff serve as an agency of the executive branch of government. An executive branch recommendation on an issue is not legislative history. Any reliance of an executive agency's recommendation as legislative history is an error of law.

The *Smith* decision.

Protestants argue that the fact that the County Council never enacted a bill overruling Deputy Zoning Commissioner Nastarowicz' decision in the 1989 *Smith* case is support for their interpretation of the Council's intent to not allow helicopter operations at airports. Protestants' Brief, p. 14. The *Smith* case does not provide the authority Protestants suggest. The question of whether by definition an airport includes helicopter operations was never a relevant issue in the *Smith* case. Although Mr. Smith identified this issue in his petition, Deputy Commissioner Nastarowicz found that Mr. Smith wanted to operate *only* helicopters and *his property was not equipped with a working airstrip*. Mr. Smith did not have an airport at his property. Furthermore, the *Smith* case is distinguishable from this matter. As noted by Deputy Zoning Commissioner

Kotroco in his decision on this matter, the Helmore Farm airport "poses a different scenario." *See* Kotroco's Opinion at p. 11, attached as Exhibit 1 to Petitioners' Memorandum of Law. As explained by Mr. Kotroco, "What sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the *Smith* case is not directly applicable to the special exception request before me." Id.

Finally, Petitioners are at a loss as to the relevancy of Protestants' mention of the purpose of Bill 85 or BCZR Section 420.1. Section 420.1 is not applicable to this case as it deals with emergency helicopter operations, and nothing in Petitioners' arguments contradict the purpose of Bill 85. Protestants' Brief, p. 16.

III. The Special Exception Standard.

It is Protestants' burden, not Petitioners', to show that the Helmore Farm airport would have an adverse impact on the relevant area different than the adverse impact that is expected from airports.

> Because there [are] 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 would 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.

Sharp v. Howard County Board of Appeals, 98 Md.App. 57, 79 (1993), *quoting*, *Schultz*, 291 Md. at 13-14.

Contrary to Protestants' suggestion, there is no requirement that Petitioners demonstrate any *need* for the proposed airport. Protestants state "Petitioner did not state *why* the decedent had sought a Special Exception ..., or *why* the decedent's horse farm *needs* to have an aircraft landing or taking off every forty-five minutes." Protestants' Brief, p. 2 (emphasis added).[3] The showing of need is not a requirement for such a special exception pursuant to the regulations.[4]

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[3] Petitioners have never suggested they plan to have aircraft landing or taking off every forty-five minutes and Petitioners have no idea from where Protestants obtained this figure.

[4] There is a requirement of a showing of need for certain uses in other jurisdictions, such as mini-storage facilities in Prince George's County. Additionally, in Baltimore County, the BCZR does require a showing of need for approval of a petition for special exception for a fuel service station proposed to be located within a half mile radius of one abandoned fuel service station or within a one mile radius of two abandoned stations. BCZR § 405.3. However, the BCZR does not treat the approval of a special exception use for an airport in this manner. Similarly,

IV. The Board's failure to identify the proper neighborhood.

The 4,800 acre Greenspring Valley does not qualify as the relevant area for the purpose of evaluating the facility's inherent adverse impacts. Protestants claim "[t]his argument lacks a basis in the facts," and point out that the Board considered the testimony of the neighboring property owners. Id. Yet, whether the Board put credence in the testimony of the adjoining property owners makes no difference since the Board then erred in its analysis.

Citing the *People's Counsel v. Mangione* case, 85 Md.App. 738, 752 (1991), Protestants' claim that "[a] Board may also consider [sic] larger area, such as 'the residential community of Dulaney Valley.'" Protestants' Brief, p. 23. The full quote from page 752 of the *Mangione* case is : "[the proposed use] would represent 'the deepest intrusion into the residential community of Dulaney Valley.'" The size of the area that a board may consider in evaluating a special exception was not an discussed in the *Mangione* case. Thus, there is no legal basis for Protestants' support of the Board's utilization of the entire Greenspring Valley for its evaluation of this matter.

V. The Board erred in considering the impact of the airport on Helmore Farm on *potential future uses*.

The Helmore Farm airport will not prevent any future uses on the adjoining properties. The airport does not create any legal constraints on the neighboring property owners. The Helmore Farm airport does not prevent the existence of horse farm operations on the adjoining properties. The Federal Aviation Administration ("FAA"), the relevant authority for airport regulations, mandates that horse farm operations are allowed within 65 Ldn. See, FAA regulations, Part 150.

Protestants contend that "Petitioners cite no law requiring the Board to find that Dr. Carroll and Ms. Immelt now have horse operations." Protestants' Brief, p. 24. Yet, Petitioners explained in their Memorandum that the law prohibits such consideration of future uses. The Court of Special Appeals held, in *Mossburg*, that evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impacts that would be different ... in other [R.C. 2] areas of [Baltimore County]." 107 Md. App. at 18.[5]

VI. The Board failed to identify adverse impacts sufficient to deny the petition for special exception.

The Board was required to articulate what harm, if any, would arise in the relevant neighborhood from the Helmore Farm airport that would not ordinarily be expected from the operation of an airport anywhere else in the R.C. 2 zone. The Board's discussion of noise from the Helmore Farm facility was not sufficient since noise is an inherent adverse impact that will exist from all airports regardless of where they are located. *See* *Sharp v. Howard County Board of Appeals*, 98 Md.App. 57, 79 (1993). The Board's discussion of potential harm to a future horse farm on the neighboring property is also insufficient, as discussed above, since speculative uses are not to be considered.

VII. Dr. Knio's testimony and the FAA's regulations.

The litigation of this matter is not the proper forum for Protestants and their expert, Dr. Knio, to attempt to influence the law standard for evaluating noise levels. Clearly, the two noise experts provided the Board with conflicting testimony as to which standard should have been utilized by the Board for the analysis of the noise created by the Helmore airport. As Mr. Lamb[6] explained, the FAA has dictated that the

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5 Additionally, contrary to Protestants' statement that Petitioners' did not cite support in their Memorandum for the argument that the Board erred in considering the adverse impacts from the airport on Helmore Farm itself, Petitioners explained in their Memorandum that the *Hayfields*' case holds that the Board of Appeals is not supposed to conduct an "examination of on-site impacts." Petitioners' Memo, p. 21, *Hayfields*, 122 Md.App. at 647.

6 Protestants state, on page 8 of their recitation of relevant facts, that "The Board noted that Mr. Lamb had not visited the site (Op. 46), ...". As correctly explained by Petitioners in their Memorandum of Law, Mr. Lamb did, in fact, visit Helmore Farm on multiple occasions, and actually flew in and out of the facility. *See*, Petitioners' Memo of Law, footnote 7, *citing* T 4/27/99, p. 99.

Integrated Noise Model (INM) is the correct standard. Since the government and case law agree that the area of noise regulations has been preempted, this issue is not debatable. The Board of Appeals erred as a matter of law in utilizing a standard not recognized in the law for their analysis of noise impacts.

VIII. The Helmore Farm airport does not violate BCZR § 1A01.2.C.

Protestants' incorrectly state that Petitioners' did not meet their burden in this case, claiming that "Petitioner did not prove a lack of detriment to the primary agricultural uses in the vicinity." Protestants' Brief, p. 28. Preliminarily, it was not Petitioners' burden to "prove a lack of detriment". It was Petitioners' burden to introduce testimony that the requested special exception use is not detrimental to the primary agricultural uses in its vicinity. Petitioners' expert, Timothy Madden, testified that "the airport would not be detrimental to the agriculture use of the adjacent properties." T 5/4/99 at 28.

Additionally, Protestants' reference to Mr. Lippincott's comment on a petition for special exception filed by Mr. Martin Grass is not relevant to this matter. Yet, in any event, Protestants' quote from Mr. Lippincott's letter only benefits Petitioners' case since the quote demonstrates that even Baltimore County recognizes that Helmore Farm is a major horse operation. Protestants' attempt to convince this Court that the Helmore Farm horse operation is not a viable business is without any factual basis.[7]

CONCLUSION

Protestants assert, on pages 9 – 10 of their Response Memorandum, that this Court's review of the Board of Appeals' opinion is limited to a review of the agency's findings of fact. However, this Court is empowered to review both the Board's findings of fact *and* the Board's analysis of the law and conclusions of

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[7] Protestants misrepresent the Board of Appeals' statement on page 50 of its Opinion when Protestants state "The Board also 'found it interesting' that 'nor [were there] any horses present on [the Deputy Zoning Commissioner's] site visit.'" Protestants' Brief, p. 2, citing, Op. 50. The Board's statement from page 50 of its Opinion is : ""The Board found it interesting that on the day of the visit there were no horses visible nor, within the Deputy Zoning Commissioner's reference, any horses present on his site visit." This statement by the Board does not provide information as to whether there were or were not horses present at Helmore Farm during Mr. Kotroco's visit, but only provides that Mr. Kotroco does not mention in his Opinion whether there were horses present

law. Where, as is the case here, the Board of Appeals' decision is based on erroneous analysis of the law, the reviewing court must reverse the administrative agency's faulty decision. *Peoples Counsel v. Mangione*, 316 Md. 491, 497 (1989).

Contrary to Protestants' contention, Petitioners are *not* asking this Court to review this case *de novo*. Petitioners have requested that this Court review the Board's decision and reverse it as it is fraught with erroneous conclusions of law.

WHEREFORE, for the aforementioned reasons, Petitioners respectfully requests this Honorable Court reverse the Board of Appeals' decision.

Respectfully submitted,

G. Scott Barhight
David K. Gildea
Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorneys for Petitioners

during his visit or not. In fact, nowhere in Mr. Kotroco's Opinion is there any reference to this issue and therefore, the record is devoid of evidence as to whether horses were present during his visit to the farm.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2000, a copy of Petitioners' Reply Memorandum of Law was mailed first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, Maryland 21204
Attorney for Protestants

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

Jennifer R. Busse

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned 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

Legal non-conforming use for an airport and/or helicopter operation.

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.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:
Whiteford, Taylor & Preston, L.L.P.
G. Scott Barhight, Esquire
(Type or Print Name)

Signature

210 W. Pennsylvania Ave, 4th Floor
Address Phone No.

Towson, MD 21204
City State Zipcode

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.

Legal Owner(s):

(Type or Print Name) Edgar Lucas

x
Signature

(Type or Print Name)

Signature

901 Greenspring Valley Road
~~Brooklandville, MD 21022~~
Address Phone No.

City State Zipcode
Name, Address and phone number of representative to be contacted.

G. Scott Baright, Esquire
Name
210 W. Pennsylvania Ave., 4th Floor
Address
Towson, MD 21204 (410)832-2000
Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 DAY

unavailable for Hearing
the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

98-294-SPHX

SET FOR MAR. 5, 98 DER AJ

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 901 Greenspring Valley Road

which is presently zoned RC-2

This Petition shall be filed with the Department of Permits & 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 herein described property for

an airport.

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.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:
G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
(Type or Print Name)

Signature

210 W. Pennsylvania Ave. 832-2000
Address Phone No.

Towson, MD 21204
City State Zipcode

DROP-OFF
NO REVIEW
2/11/98 ADL

Revised 9/5/95

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.

Legal Owner(s):
Edgar Lucas
(Type or Print Name)

Edgar M Lucas
Signature

(Type or Print Name)

Signature

901 Greenspring Valley Rd 410-821-5125
Address Phone No.

Brooklandville, MD 21022
City State Zipcode
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98-294-SPHX

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Re: In The Matter of Edgar Lucas
Case #: 03-C-00-002648

Dear Sir/Madam:

Enclosed please find an original and one copy of Petitioner's Reply Memorandum in this matter, replying to Protestants' Response to Petitioner's Memorandum of Law. Please date stamp the copy and return it to the courier.

Thank you for your cooperation in this matter.

Sincerely yours,

Jennifer R. Busse

JRB:dpp
Enclosures
cc: Mr. Dale Lucas
Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Board of Appeals
G. Scott Barhight, Esquire
David K. Gildea, Esquire
201622

PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: 99-294-SPHX 98-294-SPHX	*	Civil Action No. 03-C-00-002648

PETITIONER'S REPLY MEMORANDUM OF LAW

Petitioners, Edgar Lucas through his personal representative, Dale Lucas, and Dale Lucas, individually ("Lucas"), by and through their attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submit this Reply Memorandum of Law as their Reply to People's Counsel's Memorandum, and state as follows:

DISCUSSION

I. The Scope of this Court's Review.

The People's Counsel argue that "the CBA decision here involved application of law to facts, or mixed question of law and fact. ... It did not turn on pure issues of law. There is thus no reason to depart from the usual deferential scope of review." P.C. Brief, pp. 6 - 7.[1] Although People's Counsel kindly provide us with a

---

[1] People's Counsel's discussion of a petition for special hearing related to this matter is irrelevant. See, People's Counsel's Memorandum (herein after referred to as "P.C. Brief") at pp. 1 - 2. While Petitioners had filed a petition for special hearing which was heard by Deputy Zoning Commissioner Timothy M. Kotroco, the only issue that was before the Board of Appeals was an appeal of

plethora of case law on the standard of review of an agency's decision, they assert an incorrect application of this standard.

Petitioners do not contest the principle that a reviewing court should defer to an agency's fact-finding, and Petitioners are not asking this Court to reverse the Board's decision based on its factual findings.[2] Where People's Counsel are wrong is in their failure to explain that a reviewing court must overrule an agency's decision if it is based on an incorrect application of legal principals and standards. Thus, as is the case here, a reviewing court cannot give deference to an agency's erroneous conclusions of law, and must overrule decisions based on incorrect legal analysis. *People's Counsel v. Mangione*, 316 Md. 491, 496-97 (holding that a reviewing court is under no constraint in reversing an administrative decision that is premised upon an erroneous conclusion of law.)

As more fully explained in Petitioners' Memorandum of Law and Reply to Protestants' Response Brief, the Board erred as a matter of law in failing to identify the relevant 'neighborhood', failing to analyze this matter in light of the proper special exception standard, and failing to properly allocate the parties' burden of proof. This Court is charged with reviewing the Board of Appeals' analysis of the special exception standard, the Board's application of the facts to that standard, and the Board's decision to deny the petition for special exception based on that analysis. The Board erred as a matter of law in its analysis, and as a result its decision must be overruled.

---

the grant of the petition for *special exception* for an airport in the R.C. 2 zone. In fact, the petition for special hearing is no longer an appealable issue.

2 Additionally, People's Counsel allege that the focus of this matter was on a neighbor of Mr. Lucas'. P.C. 1. To the contrary, Martin Grass is not and never was a party to this matter. Finally, during the hearings on this matter, the focus was on Mr. Lucas' request for approval for an airport, on which Mr. Lucas proposes both fixed wing aircraft and helicopter operations. The discussion of fixed wing aircraft was absolutely not "incidental" as suggested by People's Counsel. P.C. 1.

II. The Board Erroneously Denied the Petition for Special Exception on Two Preempted Issues : Noise and Flight Patterns.

People's Counsel attempts to convince this Court that no consideration should be given to federal preemption of aircraft operations. Ironically, People's Counsel's statement that "[t]he Supreme Court, federal, and state decisions on preemption identify problems where local authorities attempt to control directly the flight patterns, times, and operational details", only serves to benefit Petitioners' argument. P.C. Brief, pp. 3 – 4.

The Board of Appeals denied the petition for special exception on, among other things, flight patterns for aircraft coming from and going to the Helmore Farm Airport, and the noise that would be created by the airport. However, both flight patterns and noise are issues which the federal government has preempted control, and thus cannot be proper bases for a decision to deny the petition. See, FAA Regulations, Part 150.

III. The Board's Reasons for its Denial of the Petition for Special Exception Are Legally Insufficient.

People's Counsel assert that the Board of Appeals found that the Helmore Farm Airport "failed to satisfy relevant special exception standards." P.C. Brief, p. 3. People's Counsel identify three "significant problems" (of the Helmore Farm Airport) they believe the Board correctly analyzed, "noise, detriment to agriculture, and incompatibility with the historic Greenspring Valley". Id. As Petitioners have fully explained in both their Memorandum of Law and Reply to Protestants' Response Brief, arguments that the Board properly denied the subject petition for special exception based on these issues fail as a matter of law.

A. The Airport's Inherent Adverse Impact, Noise

Noise is an inherent adverse impact of airports. See, *Sharp v. Howard Co. Board of Appeals*, 98 Md.App. 57, 87 (1993)(holding that the Board below had correctly treated noise as an inherent adverse effect regardless of its location in the R-District). The FAA regulates airport created noise, as the area of aviation

has been preempted by federal regulations. See, City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973).

While local zoning authorities have the authority to regulate the zones in which airports are permitted, local authorities cannot deny a petition for special exception for an airport on account of the airport created noise. The Burbank case held that local jurisdictions cannot enforce their own regulations over aircraft noise, and since then, the federal courts have held that "various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted." Price v. Chartered Township of Fenton, 909 F.Supp. 498, 502 (E.D. Mich. 1995). Clearly, the Board erred as a matter of law in considering noise to be an adverse effect on which they could deny the petition for special exception.

B. The Airport's Impact on Potential Agricultural Uses

With regard to People's Counsel's argument that the Board correctly determined that the Helmore Farm Airport was a "detriment to agriculture", Petitioners' Memorandum of Law fully explains that the Board erred as a matter of law in considering the *potential* impact from the airport on *potential, future uses.* Petitioners' Memorandum of Law, pp. 18 - 20.

The Court of Special Appeals held, in Mossburg v. Montgomery Co., that evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impacts that would be different ... in other [R.C. 2] areas of [Baltimore County]." 107 Md. App. 1, 18 (1995). Similarly, in Schultz v. Pritts, the Court of Appeals explained that "testimony revealing the possibility of future residential development of this land ... does not come close to showing a future deleterious effect upon the health, safety or general welfare." 291 Md. 1, 12-13 (1981), quoting, Deen v. BG&E, 240 Md. 317, 330-31 (1965).

C. **The Airport's Impact on the Greenspring Valley**

People's Counsel asserts that the Board correctly determined that the Helmore Farm Airport is "incompatib[le] with the historic Greenspring Valley." P.C. Brief, p. 3. Yet, as Petitioners' explain in their Memorandum of Law, the Board's decision on this issue was erroneous as a matter of law. The Board failed to identify what about the Helmore Farm Airport imposes a greater adverse impact on the Greenspring Valley than on other areas in the R.C. 2 zone. Petitioners' Memorandum of Law, pp. 21 - 23. Furthermore, the only evidence in the record, that could be interpreted as factors which would cause the airport to be an incompatible use, was insufficient to support the Board's denial of the petition for special exception. Specifically, the impact on potential uses and the airport created noise, as explained above, are not legally allowed considerations.

Additionally, as explained in Petitioners' Memorandum of Law, the Board failed to identify the relevant neighborhood necessary to property analyze this matter. Instead, the Board erroneously analyzed alleged detriments to the entire Greenspring Valley and the entire adjacent R.C. 2 zone. Petitioners' Memorandum of Law, pp. 11 - 13. The 4,800 acre area that is the Greenspring Valley is much too large an area to properly be considered as the relevant neighborhood. *See*, *Burgess v. 103-29 Limited Partnership*, 123 Md.App. 293, 300 (1998)(holding that "the neighborhood in any area must be an area which reasonable constitutes the immediate environs of the subject property.", *quoting*, *Clayman v. P.G. Co.*, 266 Md. 409, 418 (1972)).

IV. Solomon and Gerber's Testimony Does Not Constitute "Prior Administrative Practice".

People's Counsel contend that "the history and practice adduced from [Solomon and Gerber's testimony] is part of the legislative context and body of administrative practice." P.C. Brief, p. 11. However, there is no prior administrative practice for analysis in this matter. The testimonies of Messrs. Solomon and Gerber do not constitute *prior administrative practice*. Prior administrative practice would be the manner in

which other petitions for special exception for an airport in the R.C. 2 zone were handled. No such evidence was submitted to the Board. Thus, the Board erred in relying on the testimony of Messrs. Solomon and Gerber in finding that the Council's decision to exclude helistops but leave airports as special exceptions in the R.C. 2 zone evidences any intent to rid the R.C. 2 zone of helicopter operations.

CONCLUSION

For the aforementioned reasons, and as explained in Petitioners' Memorandum of Law, Petitioners respectfully request this Honorable Court reverse the Board of Appeals' decision.

Respectfully submitted,

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Jennifer R. Busse
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2000, a copy of Petitioners' Reply Memorandum of Law was mailed first class, postage prepaid to:

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Re: In The Matter of Edgar Lucas
Case #: 03-C-00-002648
98-294-SPHX ?

Dear Sir/Madam:

Enclosed please find an original and one copy of Petitioner's Reply To People's Counsel's Memorandum of Law in this matter. Please date stamp the copy and return the copy to the courier.

Thank you for your cooperation in this matter.

Sincerely yours,

Jennifer R. Busse

JRB:jcc
Enclosures
cc: Mr. Dale Lucas
Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Board of Appeals
G. Scott Barhight, Esquire
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IN THE

CIRCUIT COURT FOR BALTIMORE COUNTY

Civil Action No.: 03-C-00-002648

In the Case Of:
In the Matter of Edgar Lucas
For a Special Hearing and Special Exception
on Property located at 901 Greenspring Valley Rd.,
N/S Hillside Rd., 2000' W of Falls Rd.
3rd Election District
3rd Councilmanic District
Case No.: ~~99-294-SPHX~~
98-294-SPHX

MEMORANDUM OF LAW OF PETITIONERS EDGAR LUCAS and DALE LUCAS

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PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: 99-294-SPHX	*	Civil Action No. 03-C-00-002648

* * * * * * * * * * *

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PETITION OF EDGAR LUCAS and DALE LUCAS 901 GREENSPRING VALLEY ROAD BROOKLANDVILLE, MARYLAND 21022	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	FOR BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF EDGAR LUCAS FOR A SPECIAL HEARING and SPECIAL EXCEPTION ON PROPERTY LOCATED AT 901 GREENSPRING VALLEY ROAD 3rd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT CASE NO.: 99-294-SPHX	*	Civil Action No. 03-C-00-002648

* * * * * * * * * * *

PETITIONER'S MEMORANDUM OF LAW

Petitioners, Edgar Lucas through his personal representative, Dale Lucas, and Dale Lucas, individually ("Lucas"), by and through their attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submit this Memorandum of Law and states as follows:

I. STATEMENT OF THE CASE

Petitioner filed a petition for special exception for the Helmore Farm Airport pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (herein "BCZR"). Approval was granted for that petition by the Baltimore County Deputy Zoning Commissioner in August of 1998. *See* Deputy Zoning Commissioner Timothy M. Kotroco's Opinion in this case dated August 5, 1998 (attached as **Exhibit 1** to Petitioner's Memorandum of Law presented in lieu of closing argument before the Board of Appeals)[1].

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[1] Hereinafter, all references to Exhibits attached to Petitioner's Memorandum presented to the Board shall simply be noted as "(Ex __)".

Protestants appealed this case to the Baltimore County Board of Appeals (herein "the Board"). The Board heard testimony in this matter on five (5) days, beginning on April 27, 1999, and ending on July 1, 1999. The Board publicly deliberated its decision in this matter on September 16, 1999. On February 25, 2000, the Board issued its Opinion, denying the Petition for Special Exception.

Petitioners filed a timely appeal of the Board's decision, on behalf of Dale Lucas as Personal Representative of the Estate of Edgar Lucas, to this Honorable Court on March 15, 2000, and then filed a Supplemental Petition for Judicial Review on March 24, 2000 on behalf of Dale Lucas, individually. Both the Protestants and the People's Counsel for Baltimore County filed Responses to the Petitions for Review.

II. STATEMENT OF FACTS

A. HELMORE FARM – ITS LOCATION, GEOGRAPHY, USE AND THE SURROUNDING AREA.

The Board found that Dale Lucas is the owner of Helmore Farm, a 87 acre farm which breeds, raises, and trains thoroughbred horses; and assists "in the 'laying up' of injured thoroughbred horses during their rehabilitation process." Bd. Op. 2, 45. The Board noted that Helmore Farm is in the Greenspring Valley area of Baltimore County, in the R.C. 2 zone, "immediately adjacent to the urban rural development associated with Baltimore City and Baltimore County. It is on the fringe of that area; and it's aligned very close, residing adjacent to more heavily developed property, the Baltimore Beltway, I-83, etc." Bd. Op. 52.

Providing little else in the way of findings regarding the subject property in its Opinion, the Board stated that, "Mr. Lucas described the general character of Helmore Farm and the area which encompassed the property,...". Id.[2]

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[2] Since few other additional details describing the subject property are provided in the Board's Opinion, Petitioners provide the following relevant information. Helmore Farm is a rectangular shaped property comprised of approximately 87 acres in Baltimore County. The property is bordered by Greenspring Valley Road on its north side, while Falls Road is located just east of the property. Just south of the property is Hillside Valley Road. Additionally, the Baltimore Beltway and I-83 are both located just beyond Hillside Valley Road. Helmore Farm is improved with two primary residences, several tenant dwellings, stables and outbuildings. The topography of the site is such that the property is at its highest elevation along Greenspring Valley Road and then drops down into a

From the testimonies of Timothy Madden and James Matis, the Board found that the parcel is zoned R.C. 2, as is all of the surrounding area except that to the south side of Hillside Road which is zoned R.C. 5. The Board further found that east of the property, up to Falls Road, is land currently under consideration by Baltimore County for recreational purposes. South of the property is a floodplain, and west and north are principal residences and agricultural uses. Bd. Op. 8-10. Referencing Mr. Matis' testimony, the Board noted that the Immelt property is adjacent to the west portion of Helmore Farm, and in the area nearest to the proposed helicopter pad, the Immelt property is approximately 25 feet from the edge of the fence on the subject property. Bd. Op. 8.[3]

B. THE AIRPORT AT HELMORE FARM.

The Board quoted Dale Lucas' description of the location of "the horse operation as 'generally the whole back of the farm up in the middle of the farm around the barns, up into the front of the farm.'" Bd. Op, 50. Further, the Board noted Mr. Lucas' testimony that there has been aircraft operating out of Helmore Farm since at least 1956, and that the airport has been used for business purposes through flying to horse races out of state. Bd. Op. 2. The Board further noted Mr. Lucas' testimony that he purchased a Maul M-7235 aircraft, that he takes flying lessons out of the Baltimore Airpark, and is "hopeful of becoming a helicopter pilot in the near future." Bd. Op. 2-3.

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stream valley at the rear of the property. The Jones Falls stream runs across the back of the parcel, which is a heavily wooded area. Treelines are located on both the east and west sides of the property. See testimony of James Matis, pp. 176-178, 4/27/99 hearing, (Ex 2); and the testimony of Timothy Madden, pp. 10-13, 5/4/99 hearing (Ex 3).

3 The distances of the primary residences from the special exception area of Helmore Farm were measured and submitted to the Board. Id. at 15-16. Additionally, the distances of these surrounding residences from the helicopter pad at Helmore Farm were measured. Specifically, Douglas Carroll, who owns 65 acres on parcels to the south, southwest, and west of Helmore Farm, owns a principal residence that is 2080', over a third of a mile, from the Helmore airport. Id. Three other large parcels of property lie between Mr. Carroll's residence and Helmore Farm. Other than his primary residence, all of Mr. Carroll's property is used for agricultural purposes, and is all included in the Maryland Agricultural Preservation Program with the exception of a portion along Hillside Road that is part of the Maryland Environmental Trust. See testimony of Douglas Carroll, pp. 85, 105, 5/18/99 hearing (Ex 5). The Immelts have a primary residence on the property they jointly own that is 1480', the distance of approximately five football fields, from the Helmore airport. Id. at 83; See testimony of Susan Immelt, pp. 146-148, 6/23/99 hearing (Ex 6).

As to the specifications of the proposed use, the Board found that the runway at Helmore Farm is approximately 1,200 feet long and that "a helipad [is] at one end of the facility." Bd. Op. 6. The Board further found that the "FAA recommended width usage for light wing aircraft is 120. The actual field width was estimated at 200 feet." Id. Regarding facilities at the proposed use, the Board found a "paved area, building wind cone, automatic weather station". Id.[4]

Furthermore, the Board referenced Mr. Lucas' testimony that there is a concrete paved helipad, "located about 85 feet from the property line from the closest neighbor because about 35 feet additionally lay across the span of the road to the tree line to the fence and then the edge of the pad is about 50 feet back from edge of the fence...". Bd. Op. 4.[5]

C. THE AIRPORT'S SELF-IMPOSED RESTRICTIONS.

The Board found that Petitioners had voluntarily placed self-imposed restrictions on the Helmore Farm Airport. Bd. Op. 3. "Indeed, the Appellant's 'self imposed restrictions' acknowledged that the present site does not permit the fueling of aircraft, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter 'events' per day, ...". Bd. Op. 42.[6] In addition to the self-imposed

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4 Petitioners' expert Charles Lamb also testified that in addition to the runway, paved helipad, lighted wind cone/sock, and automated weather station that relays information to pilots, the proposed airport also had airport facility lighting. T 4/27/99 at 102-103. Furthermore, Mr. Lamb testified that the airport is registered with the state as an airport (T 7/1/99 at 86-87), has been approved by both the Federal Aviation Administration (FAA) and the Maryland Aviation Administration (MAA), and exceeds all relevant FAA and MAA requirements (T 4/27/99 at 106-107).

5 The helipad is 20 x 20 in size and is located within an 150' x 150' paddock T 4/27/99 at 100-101.

6 The Seven of the eight restrictions Petitioner voluntarily agreed to are listed on the plat that was submitted to the Board as Petitioner's Exhibit #1. They are as follows:

1. There be no fueling of aircraft at the airport;
2. There will be no aircraft storage at the airport for more than 14 consecutive days;
3. There will be no aircraft repair at the airport, except emergency repairs;
4. There will be no sale of aircraft at the airport;
5. The hours of taking off and landing of aircraft will be between 7:00 a.m. and 10:00 p.m.;
6. The airport use shall be limited to no more than five (5) fixed wing aircraft events per day and five (5) helicopter events per day. An event consists of landing, idling, take-off and fly by; and
7. The airport shall meet the Zoning Commissioner's Policy Manual ("ZCPM" Section 420.1, page 4-85) in regard to helipad construction and safety standards approved May 13, 1992.

restrictions which the Board found noted on the Special Exception Plan, the Board found that Dale Lucas agreed that "the airport shall not exceed 65 Ldn." Bd. Op. 4-5.

III. ISSUES PRESENTED

1) Whether the Board erred as a matter of law by utilizing an incorrect interpretation of the Special Exception Standard.

2) Whether the Board erred as a matter of law in ruling that the proposed use at Helmore Farm is an "airstrip" and not an "airport".

IV. STANDARD OF REVIEW

This Court's standard of review of the Board of Appeals' decision was articulated by the Court of Appeals in State Ins. Comm'r v. National Bureau of Casualty Underwriters, 248 Md. 292, 309 (1967) where the Court stated, "The standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached." see also Nnoli v. Nnoli, 101 Md. App. 243, 261 (1994). Said another way, "the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven." Peoples Counsel v. Mangione, 316 Md. 491, 496-97 (1989).

A reviewing court, however, is under no constraint in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Id.* at 497. Once the court determines that the administrative agency applied the proper legal standards, judicial review of the agency's conclusions is then tested by the substantial evidence test. Montgomery County v. Buckman, 333 Md. 516, 519-20 (1994).

Accordingly, in the instant matter, this court's role 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." Cromwell v. Ward, 102 Md. App. 691, 709 (1995).

V. DISCUSSION

I. THE BOARD ERRED AS A MATTER OF LAW BY UTILIZING AN INCORRECT INTERPRETATION OF THE SPECIAL EXCEPTION STANDARD.

A. THE BOARD'S ANALYSIS AND DENIAL OF THE PETITION FOR SPECIAL EXCEPTION.

The Board denied Petitioners' application for approval of a airport as a special exception, and explained its decision as follows : "the Board has determined that the impact of the ***proposed facility*** at the subject site would be greater there than at any other location in the R.C. 2 zone." Bd. Op. 45 (emphasis added). The Board identified the standard it used in its analysis. "The question is one of whether or not the adverse effects are greater at the proposed site than they would be elsewhere in the County where they may be established, i.e., the other areas within the R.C. 2 zones." Bd. Op. 44. After setting forth its holding on this issue, the Board reiterated its view of the special exception standard. "The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone)." Bd. Op. 56. The Board applied an incorrect special exception standard in its analysis of this matter, and therefore erred as a matter of law.

B. THE CORRECT SPECIAL EXCEPTION STANDARD.

Special exception uses are "expressly permissible." *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995). "*[T]he legislature has determined special exception uses to be permissible absent any fact or* circumstance negating the presumption." *Schultz v. Pritz*, 291 Md. 1, 11 (1981). The fact that special exception uses may have adverse effects at their proposed locations is not an issue involved in the approval of a special exception use. Special exception uses are recognized to have *inherent* adverse effects. *See Mossburg*, 107 Md.App. at 8. The conditions imposed on special exception uses and the proper standard used to evaluate their approval was explained in *Mossburg*. The special exception at issue in *Mossburg* was

for a solid waste transfer station. The Court, recognizing the inherent adverse effects of a solid waste transfer station, stated:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. As Judge Davidson opined in *Schultz*:
>
> 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, 432 A.2d 1319 (emphasis added). 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 other few I-2 Industrial Zones.

Id. at 8 - 9.

Special exception uses inherently involve factors that many would consider to be detrimental. However, special exception uses are nonetheless "valid". *Schultz*, 291 Md. at 11. The legislature has determined that special exception uses, such as an airport in an R.C. 2 Zone, are "desirable and necessary ... provided certain standards are met." *Mossburg*, 107 Md.App. at 8.

The Baltimore County legislature has determined that airports are to be allowed by special exception in R.C. 2 zones, including in the Greenspring Valley. *See* BCZR § 1A01.2.C.1. The legislature has provided conditions which all special exception uses must meet before being properly approved. *See* BCZR § 502.1.

Special Exceptions and their approval are governed by § 502 of the Baltimore County Zoning Regulations, and the review of those conditions set forth in that Section are further subject to the special

exception standard set forth through case law, first in the *Schultz v. Pritts* case, and then in numerous cases by the Maryland Courts. See e.g., *Mossburg*, 107 Md.App. at 22 (holding that "such general conditions 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").

As explained in the recent case of *Hayfields v. Valleys Planning Council*, 122 Md.App. 616 (1998):

> 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, 666 A.2d 1253. 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].

Id., at 641.

The *Hayfields* Court demonstrated how the BCZR § 502.1 conditions are analyzed in conjunction with the special exception standard. Id. at 641. Thus, in this instant case, the Board was supposed to analyze the BCZR § 502.1 conditions as follows in determining whether the Helmore airport will:

A. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with an airport would be generally elsewhere in the zone];
B. Tend to create [more] congestion in roads, streets or alleys therein [than the congestion normally inherent with an airport generally elsewhere in the zone];
C. Create [more] potential hazard from fire, panic or other dangers [than the potential hazard normally inherent with an airport generally elsewhere in the zone];
D. Tend to overcrowd land and cause undue concentration of population [more than would be expected with an airport generally elsewhere in the zone];
E. Interfere [more] with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements [than the interference normally inherent with an airport generally elsewhere in the zone];

F. Interfere [more] with adequate light and air [than the interference normally inherent with an airport generally elsewhere in the zone];

G. Be [more] inconsistent with the purposes of the property's zoning classification [or] in any way [more] inconsistent with the spirit and intent of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone];

H. Be [more] inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone].

See, BCZR Section 502.1; *Mossburg*, 107 Md.App. at 21-22; *Hayfields*, 122 Md.App. at 641.

Petitioner thoroughly demonstrated to the Board, through the use of expert testimony, that the airport at Helmore Farm met all of the above listed conditions, and that the airport does not involve adverse impacts "greater than or above and beyond the effects normally inherent with [an airport] anywhere within the relevant zones ...". *Mossburg*, 107 Md.App. at 22.

Lastly, it is clear that in performing the above explained analysis, the standard requires a comparison of the proposed use's adverse impacts with "the inherent ones ordinarily associated with such uses." *Schultz*, 291 Md. at 14; *Mossburg*, 107 Md.App. at 21. Therefore, the focus in this regard is on the adverse impacts that would be expected from, in this case, any airport that would be allowed by special exception in the R.C. 2 zone. *Id.*

In *Sharp v. Howard County Board of Appeals*, 98 Md.App. 57 (1993), the Court of Special Appeals affirmed the grant of a special exception use for an airport in a R (Rural) zone in Howard County. In explaining the relevant special exception standard, the *Sharp* Court provided the following excerpt from the *Schultz* case which included a quote from *Anderson v. Sawyer*, a case which dealt with a special exception use for a funeral home in a residential zone.

> Because 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 a way other than would result from the location *of any funeral home in a residential zone*, the evidence presented by the protestants was, in effect, no evidence at all.

Sharp, 98 Md.App. 57, 79, *quoting* *Schultz*, 291 Md. at 13-14, *quoting* *Anderson*, 23 Md.App. at 624-25 (emphasis added).

As was done in *Sharp*, the Board in this instant case should have looked at the inherent adverse impacts that would result from a typical airport. The Court of Special Appeals in *Sharp* noted that the Board had correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Id.* at 87.

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind or degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such adverse effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id. at 86.

C. THE BOARD ERRED AS A MATTER OF LAW IN FAILING TO COMPARE THE EFFECTS OF THE PROPOSED USE TO THAT OF A TYPICAL AIRPORT.

The Board held that adverse impacts from the airport, as proposed with restrictions, on the surrounding area would be less if the airport was located elsewhere in the R.C. 2 zone. "The Board believes that the Appellant has the burden of establishing that the impact factor caused by the proposed use is no greater at the site than the same use elsewhere in the zone (R.C. 2 zone)." Bd. Op. 56.

The Board confused the requisite standard to be applied. What is relevant to the examination of special exception uses is whether the adverse impacts from the proposed use are greater than "the effects normally inherent with **such a use** would be generally elsewhere in the zone." *Hayfields*, 122 Md.App. at 640 (emphasis added).

Therefore, in performing this analysis, the Board should not have compared the **Helmore airport** impacts at Helmore Farm with those that may exist if the **Helmore airport** existed elsewhere. Instead, the Board should have looked at what the effects would be of **a typical airport** *anywhere in the zone* and compared those effects to Helmore airport's effects at Helmore Farm. The Court in *Mossburg* clarified this issue as "the requirement that such adverse effects be greater, i.e., above and beyond, the adverse impact generally in other areas where such special exceptions are permitted." *Mossburg*, 107 Md.App. at 13. The Board utilized an incorrect special exception standard and erred as a matter of law in its analysis of this matter. Therefore, the Board's decision cannot stand and must be reversed.

D. THE BOARD ERRED AS A MATTER OF LAW BY VIEWING THE ENTIRE GREENSPRING VALLEY AND R.C. 2 ZONE AS THE RELEVANT "NEIGHBORHOOD".

The Board "recognize[d] that noise is an adverse effect inherent in the operation of an 'airport' or 'airstrip'". Bd. Op. 46. However, the Board failed to correctly apply the special exception standard as it did not review the "detriment to adjoining and surrounding properties" (*Hayfields*, 122 Md.App. at 656), but rather reviewed the alleged detriment to the entire Greenspring Valley and the entire adjacent R.C. 2 zone. For example, in its discussion of the impact of the proposed use on horse operations in the R.C. 2 zone, the Board relied upon Mr. Solomon's testimony that "the intended use by the Appellant 'has the very real potential to conflict and be detrimental to, depending on various factors, *the horse industry in the area*'." Bd. Op. 48-49, 54. Additionally, the Board stated,

> The Board concludes that the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other areas of the R.C. 2 zones. Relying considerably on the expertise of Messrs. Dillon, Solomon and Gerber, there are individual areas in the Northern part of the county that would be less impacted than at the present site. ... Acknowledging that airport and helicopter uses have inherent negative impacts, ***the detrimental effects upon the smaller Greenspring Valley district*** would clearly have a greater negative impact than if located elsewhere in the vast acreage constituting the R.C. 2 zone of Baltimore County.

Bd. Op. 55-56. Clearly, the Board failed to analyze the impacts on the relevant area, *the neighborhood*. It was an error of law for the Board to view the entire Greenspring Valley as the relevant neighborhood. The Board found that the Greenspring Valley contains "approximately 4800 acres." Bd. Op. 53.

As explained by the Court of Special Appeals in Hayfields, "[t]he duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected ...*". 122 Md.App. at 647. See also, Board of County Comm'rs v. Holbrook, 314 Md. 210, 217-18 (1988)("Where 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*, ...".)(emphasis added).

The 4800 acre area that is the Greenspring Valley does not qualify as the relevant neighborhood for purposes of analyzing the proposed use's inherent adverse impacts. As recently reiterated by the Court of Special Appeals in Burgess v. 103-29 Limited Partnership, "[N]evertheless, the neighborhood in any area must be an area which reasonably constitutes the ***immediate environs*** of the subject property." 123 Md.App. 293, 300 (1998), quoting, Clayman v. Prince George's Co., 266 Md. 409, 418 (1972).

In Burgess, the Petitioner sought a rezoning based on a change in the neighborhood. The Court of Special Appeals held that the City Commissioners' decision to reject a proposed neighborhood should have been upheld. The Court explained that the Commissioners,

> rejected the neighborhood proposed before it as **too expansive, consisting of approximately seven square miles**. The size of this proposed neighborhood is approximately twenty (20) times the size of the subject property and includes much more than the immediate environs of the subject property. ... **Instead, the Commissioners adopted a neighborhood that includes the subject property and all adjoining and adjacent properties and subdivisions**. ... The neighborhood is limited to the immediate environs of the subject property and is not as expansive as the other proposed neighborhoods.

123 Md.App. at 300-01 (internal quotations omitted)(emphasis added).

The entire Greenspring Valley and surrounding R.C. 2 zone cannot legally constitute the proper neighborhood for the purposes of the special exception analysis. The Board erred as a matter of law by failing to identify the proper neighborhood for the purposes of analyzing the adverse effects inherent in the proposed use and as a result, its decision must be reversed.

E. THE BOARD BASED ITS ERRONEOUS DENIAL OF THE SPECIAL EXCEPTION ON THREE GROUNDS.

Beginning on page 45 of its Opinion, the Board discussed three issues that it analyzed in deciding to *deny the proposed special exception use : (1) Location of the site; (2) The impact of an airport facility on horse* operations in the R.C. 2 zone; and (3) The impact on the Greenspring Valley District.

1. The Board Erroneously Analyzed The Impact Of Noise On "The Location".

a. The Board Evaluated The Noise Created By The Proposed Use In Light Of A Faulty Analysis Of The Special Exception Standard.

In denying the special exception, the Board discussed three issues. The first issue was identified as "Location of the site". Bd. Op. 45. The Board addressed the impact of the proposed use in general on the surrounding area in the discussion of the first of these three issues. Failing to properly compare the adverse effects of the proposed use with those typically associated with an airport located elsewhere in the zone, the Board simply held that "the testimony of Dr. Knio compared to that of Mr. Lamb was superior in demonstrating that the impact level of noise at this site was greater than elsewhere in the zone." Bd. Op. 47. The Board improperly analyzed the inherent adverse effect of noise created by the proposed use.

As explained above, in the *Sharp v. Howard County Board of Appeals* case, the Court of Special Appeals affirmed the grant of a special exception use for an airport in a R (Rural) zone in Howard County. The Court noted that the Board had correctly treated "noise generally as an adverse

effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." 98 Md.App. 57, 87 (1993).

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind or degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such adverse effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id. at 86 (emphasis added).

Noise created by the proposed airport is one adverse effect that is "common" to all airports. The *Sharp* case explains that "the zoning body may, in the application of its expertise, recognize effects of a proposed use that it considers common to that use regardless of where it may be located in the applicable zone(s)." *Id.* While the Board in this matter stated that it "recognizes that noise is an adverse effect inherent in the operation of an 'airport'", the Board failed to actually analyze the noise created by the Helmore airport as an *inherent* adverse effect.

Additionally, the Board evaluated the impact of noise as an inherent adverse effect in light of a faulty analysis of the special exception standard. The Board relied on the testimony of Protestants' expert, Dr. Knio. "The totality of the testimony of Dr. Knio compared to that of Mr. Lamb was superior in demonstrating that the impact level of noise at this site was greater than elsewhere in the zone." Bd. Op. 47. Clearly, for the reasons explained above, this statement demonstrates that the Board incorrectly applied the special exception standard in this case. It was improper for the Board to compare the "level of noise at [Helmore airport]" in this manner. Instead, the Board should have compared the impact of the Helmore airport on the surrounding properties to the impact of a typical airport anywhere else in the R.C. 2 zone.

b. The Area Of Aviation Is Preempted By Federal Regulations And Thus The Board Erred As A Matter Of Law In Considering Dr. Knio's Testimony In Denying The Petition For Special Exception.

In evaluating the impact of noise and in denying the special exception, the Board relied on the testimony of the Protestant's expert, Dr. Knio. Bd. Op. 47. Specifically, the Board decided to rely on Dr. Knio's opinion that the FAA, EPA and HUD standard of analysis method was not appropriate. "The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility." Bd. Op. 46. Instead, the Board agreed with Dr. Knio's opinion that "a 'peak' would be the more appropriate factor to be considered." Bd. Op. 27.

The Board disagreed with Petitioners that the FAA regulations Part 150 provide the appropriate standard for the analysis of noise created by the proposed use.

> The Appellants would have the Board disregard Dr. Knio's finding in that he failed to base his analysis on FAA regulations. The Board views differently. Unlike Mr. Lamb, Dr. Knio had made a site visit and observed the Helmore operations and disagreed with Mr. Lamb's analysis. The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility.

Bd. Op. 46.[7]

Instead, the Board relied on Dr. Knio's testimony that estimating the peak noise created by the proposed airport was a better measure than using the measure established in the Federal Aviation Regulations, Part 150, which use the Ldn measurement that is computed on an average. Bd. Op. 46-47. Dr. Knio based his analysis on a calculation based on "an engineering correlation that falls under SAES. That standard comes from the Society of Automotive Engineering Standards." Bd. Op. 27. Therefore, instead of basing his analysis on regulations for transportation noise promulgated by the FAA, HUD and EPA, Dr. Knio's were based on a standard generated by car makers.

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[7] Mr. Lamb testified that he visited Helmore Farm on multiple occasions, and flew in and out of the facility. (T 4/27/99 p. 99)

The area of aviation has been preempted by federal regulations. It was erroneous for the Board to disregard the analysis of noise created by the proposed use under the standard mandated by the federal government. The FAA, EPA and HUD government agencies have instituted the Integrated Noise Model (INM) which looks at the Ldn level. The Board found that "the Ldn standard [was] adopted by the FAA, HUD, and EPA federal agencies for airport generated noises." Bd. Op. 46. "Ldn" stands for level day-night average. (T 4/27/99, pp. 112-119) The Board acknowledged that even Dr. Knio was aware that the Ldn analysis "come from a long review of hearings, regulations, energy and noise experts, and psychologists, which were in the area of very large airports, such as BWI, and that's where these guidelines came from."[8] Bd. Op. 28, 47, quoting T 7/1/99, p. 28. Furthermore, the FAA produced the Part 150 of the Federal Air Regulations which dictate that the Ldn averaging model is to be employed in analyzing noise created by an airport. (T 4/27/99, pp. 112-119)[9]

"The Supreme Court, in its *City of Burbank* decision is the preeminent authority regarding Federal Preemption in the area of aviation." Bd. Op. 57. The *Burbank* case held that local jurisdictions cannot enforce their own regulations over aircraft noise emissions due to the Aviation Act of 1958. "Federal courts, in the wake of *City of Burbank*, have held that various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted." *Price v. Chartered Township of Fenton*, 909 F.Supp. 498 (E.D. Mich. 1995). Since the area of aviation has been preempted by federal regulations, the Board erred as a matter of law in considering Dr. Knio's testimony that the FAA regulations were not the appropriate standard and by relying on Dr. Knio's testimony analyzing this matter under a different standard.

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[8] No testimony or evidence was supplied to the Board by Dr. Knio or anyone else to support Dr. Knio's implication that the FAA's Ldn standard for analysis was intended to apply only to large airports.

c. The Board Erred in Relying on Dr. Knio's Testimony that the Board Should Ignore the FAA's Standard for Analysis of the Noise Created at Helmore Farm Because Dr. Knio Based His Opinion on Nothing *Other Than His Personal Belief.*

The Board relied on Dr. Knio's testimony that the Board should utilize his peak noise analysis and his HNM analysis[10], rather than the FAA imposed Ldn standard analysis.[11], [12] Importantly, however, Dr. Knio provided no authority for his opinion that the estimated peak measurements were more valid, other than his own opinion.[13] Thus, Dr. Knio's testimony did not provide the Board with evidence on which it could have properly denied the special exception. See *Beatty v. Trailmaster*, 330 Md. 726, 740 (1993)(holding that an expert's testimony that was based solely on personal opinion and without regard to the relevant statutory standard, did not provide admissible evidence).[14]

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9 "The goal of coming up with a common matrix for describing transportation sound or noise impacts was so that you had a common parameter that you could accurately predict human reaction to the noise generated by the highways, airports, or other transportation facilities." (T 4/27/99 pp. 118-119)

10 Dr. Knio "opined that the HNM ("helipad noise model") was more appropriate for usage at the Helmore Farm ... 'it would have been more appropriate for the fixed wing, but not the helicopters.'" Bd. Op. 28. However, the Board's reliance on Dr. Knio's analysis using the HNM which is based on *helicopter use* is illogical in light of the Board's holding that the proposed use at Helmore Farm is an "airstrip".

11 "The Appellants would have the Board disregard Dr. Knio's finding in that he failed to base his analysis on FAA regulations. The Board views differently. Unlike Mr. Lamb, Dr. Knio had made a site visit and observed the Helmore operations and disagreed with Mr. Lamb's analysis. The Board concurs with Dr. Knio's opinion that the 'average' noise analysis is not appropriate for the analysis of noise at the Helmore Farm facility." Bd. Op. 46.

12 In response to Dr. Knio's testimony that the HNM was more appropriate for analysis of this proposed airport, Charles Lamb explained that the FAA standard for analyzing noise from fixed wing aircraft and helicopters is to use the "current version of the Integrated Noise Model Version 5", and for that reason he employed the INM in his analysis and not the HNM. T 7/1/99 at 77. "[T]he standard of the industry, if you have mixed uses, is to use, with the Current Version 5, to use the Version 5 Model for both types of operations." Id. at 77-78. Furthermore, Mr. Lamb testified that the FAA instructed him to use the INM per the Part 150 regulations. Id. at 78.

13 During the hearing for this matter, Dr. Knio stated that this was the first time he acted as a consultant for airport noise. T 7/1/99 at 54, Ex. 9. Furthermore, he admitted that he did not look at the compatibility of land uses when performing his noise analysis for this case. Id. at 56-57.

14 In *Beatty v. Trailmaster*, the plaintiff was injured in an automobile accident and subsequently brought negligence and products liability claims against numerous corporate defendants. One of the key issues was what effect the height of the Ford Bronco bumper that collided with plaintiff's vehicle had on the Bronco's safety. Defendants demonstrated that the Bronco's bumper height complied with the statutory bumper height standard. Plaintiff provided an expert who opined that the "statutory standard was not the safest; that it was too liberal ... too high." *Id.* at 740 (internal quotations omitted).

The Court of Appeals in *Beatty* ruled that plaintiff's expert's testimony did not provide evidence "creating a genuine issue of material fact" because the testimony was only based on the expert's background, training and experience. *Id.* The Court further clarified its holding stating that,

> Without more, [plaintiff's expert's] opinion that the defendants were negligent and their product unreasonably dangerous, despite compliance with the statutory standard, is insufficient evidence ... particularly when the expert cites neither developing consensus nor sound data to buttress his opinion.

Id.

The Court's analysis of the plaintiff's expert's testimony in *Beatty* is analogous to this matter. Protestant's expert, Dr. Knio, based his opinion, that the relevant federal regulations supplying the standard for measurement of airport generated noise were not sufficient, on nothing other than his own personal feelings. As a result, the Board erred as a matter of law by relying on Dr. Knio's testimony and his testimony should not have been used by the Board in making its decision to deny the special exception.

Where, as was the case before the Board in this matter, "there is no 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 use is arbitrary, capricious, and illegal." *Schultz*, 291 Md. at 12. Therefore, the Board's decision denying the petition for special exception must be reversed.

2. The Board Erred as a Matter of Law in Holding that the Proposed Use Negatively Impacted any Horse Farms.

There was no evidence properly before the Board that any horse farms are affected by the inherent adverse effect of noise at Helmore airport. Absolutely no testimony was provided to the Board that would support the Board's holding that "the impact of the proposed operation would be greater at the subject

location than elsewhere in the R.C. 2 zone where the thoroughbred horse industry is less developed and the daily operations as proposed would be of considerably diminished proportion." Bd. Op. 50.

The Board erroneously relied on the testimony of Mr. Solomon, quoting, "in his opinion 'the adverse effect would be less in other areas of the R.C. 2 zones. You have less of an impact, with the fact that you do not have a concentration of horse farms, or the potential for concentration of horse farms.'" Bd. Op. 49, 54.

a. The Board Erred As a Matter of Law by Basing its Opinion on Factually Unsupported Testimony that Any Horse Operations Exist in the Relevant Surrounding Area.

First, there was no evidence before the Board that any horse farm other than the one at Helmore Farm exist within the relevant surrounding area. The Board cited testimony from Mr. Solomon that the horse industry in Baltimore County is "centered in the southern part of Baltimore County, 'most notably in the Valleys, in Greenspring Valley, Worthington Valley, and Western Run Valley.'" Bd. Op. 48. But nowhere in their Opinion does the Board point to any evidence of the existence of a neighboring horse operation, and that is because there was no testimony on this issue.

In fact, during the hearing for this matter, Mr. Gildea cross examined Mr. Solomon, asking him :

Q: What is the closest thoroughbred horse farm in the vicinity to this proposed airport?

A: At this time, I didn't do a survey to determine that. And there are thoroughbred horse farms in the Valley. And, as I told the Board, we are looking at the long range here. And this has historically been a thoroughbred horse farm, and one is there now. And because it's not a farm ... someone may come along, want to buy that for that use. So that's the important thing to remember, we have to maintain the potential for these uses, and maintain an infrastructure in the valley to maintain and service the thoroughbred industry.

(T Day 4, 108-109)

Mr. Lucas testified that he was proposing the airport in an effort to maintain his horse industry. But in any event, the Board erred by denying the special exception on the allegation of impact on other horse farms

without any probative evidence that any other horse farms actually exist in the relevant area and that any such operations would even be adversely impacted by the proposed use.

b. The Board Erred As a Matter of Law by Considering the Impact on Potential Future Horse Operations.

Second, it was improper for the Board to take potential future uses into consideration. The Board relied on Mr. Solomon's testimony that the proposed use "'poses a serious problem for anybody to starting and maintaining a horse operation.'" Bd. Op. 49. Mr. Solomon also opined, during the hearing for this matter, that "someone may come along, want to buy [a neighboring property] for [use as a horse farm]. So that's the important thing to remember, we have to maintain the potential for these uses," (T Day 4, 108-109, emphasis added).

The Board erred as a matter of law by considering any testimony regarding such a possible future land. "[T]estimony revealing the possibility of future residential development of this land ... does not come close to showing a future deleterious effect upon the public health, safety or general welfare." *Schultz*, 291 Md. at 12-13, *quoting Deen v. BG&E*, 240 Md. 317, 330-31 (1965).

Furthermore, evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impact that would be different ... in other [R.C. 2] Zone areas of [Baltimore County]." *Mossburg*, 107 Md.App. at 18 (holding that the Board's statement regarding a possible traffic hazard was "not a finding of what is, but what *may* be", and such a finding is "mere speculation". *Id.*). Therefore, the Board erred as a matter of law by speculating about potential adverse effects that may impact potential future uses.

c. The Board Erred As a Matter of Law in Considering the Impact on the Helmore Farm Horse Operation.

Third, it was improper for the Board to take into consideration any adverse impacts from the proposed use on Helmore Farm's horse operations. As explained in the recent decision by the Court of Special Appeals in *Hayfields*, *supra*,

> [N]one 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.

122 Md.App. at 647.

Notably though, the only evidence in the record of the existence of any thoroughbred horse farm in the Greenspring Valley was that from Dale Lucas regarding Helmore Farm. Mr. Lucas specifically testified that the proposed airport would not have an adverse impact on his horse operation. "Well, once they have seen [the aircraft], there's little or no reaction. The planes or helicopters are flying in. They're in the bottom. They won't stop eating or walk away. Most of the time, they stay laying down." (T Day 1, 46)

3. The Board Erred As A Matter Of Law By Improperly Analyzing The Adverse Impact On The Greenspring Valley.

As explained above, the Board failed to identify the relevant neighborhood, necessary to properly utilize the special exception standard. The entire Greenspring Valley is not Helmore Farm's relevant "adjoining and surrounding properties". *Holbrook*, *supra*, 314 Md. at 217-218. As cited by the Board, the Greenspring Valley contains "approximately 4800 acres." Bd. Op. 53. Maryland case law required the Board to review the proposed use in light of the "detriment to adjoining or surrounding properties". *Hayfields*, *supra*, 122 Md.App. at 656.

Petitioners respectfully submit that this erroneous analysis requires reversal of the Board's decision. Yet, in any event, the Board failed to make a necessary finding of fact in failing to articulate the reasons they believe the proposed airport negatively affects the Greenspring Valley. While the Board found the Greenspring Valley to be a "unique" area (Bd. Op. 52-56), *it failed to identify what about the proposed use imposed a greater adverse impact on the Greenspring Valley than on other areas in the R.C. 2 zone.* "[T]he Board concludes that the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones." Bd. Op. 56.

The Board's holding is insufficient since the Board failed to provide reasons for its decision. Simply stating that the proposed use's impact on the Greenspring Valley would be greater in the Greenspring Valley is not enough. As recently as last September, the Court of Special Appeals, in *Eastern Outdoor Advertising Co. v. Baltimore*, explained , "[t]he Board cannot be affirmed for findings of fact that it did not make or rely on as a basis to deny the conditional use permit." 128 Md.App. 494, 517 (1999). In reversing the Circuit Court's affirmance of the City Board's denial of the conditional use permit[15], the Court of Special Appeals held :

> [T]he Board's "findings" and rationale for its decision contained no true findings of fact.
>
> ...
>
> Instead, the Board based its decision on conclusions of law as to the legal effect of the Urban Renewal Plan vis a vis the City Zoning Ordinance provisions ....
>
> ...
>
> Nowhere in its decision did the Board make any findings of fact regarding the billboard's adverse impact on "residences, churches and historical and preservation uses in the area" or that the sign would be hazardous to motorists using the interstate highway.

Id. at 516-17.

Similar to the City Board in that case, the Board here arbitrarily held that the proposed use has a greater impact on the Greenspring Valley without explaining which adverse impacts (if any) it considered. Instead of correctly analyzing the proposed use's inherent adverse impacts, the Board based its opinion on

large amounts of testimony that the proposed use does not belong in the Greenspring Valley. The Board's holding must be reversed.

II. THE BOARD ERRED AS A MATTER OF LAW IN RULING THAT THE PROPOSED USE IS NOT AN "AIRPORT".

A. *THE BOARD'S HOLDING THAT THE PROPOSED USE DID NOT QUALIFY AS AN AIRPORT IS ILLOGICAL AND IGNORES THE COMMON SENSE CONCLUSION.*

Petitioners sought approval for a special exception as an airport. Denying the petition, the Board held that "[t]he Board, considering the testimony, evidence and record as a whole, concludes that the proposed use cannot, by any stretch of the imagination, be construed as an airport." Bd. Op. 43[16]. Knowing that the Board did not believe the proposed use is an airport, a fair review of the Board's Opinion draws three conclusions as to what the Board believed is the classification for the proposed use at Helmore Farm – (1) a helicopter operation; (2) an airstrip; or (3) that the proposed use is both, yet separately, a helicopter operation and an airstrip. However, as explained below, none of these three conclusions make sense. It is clear that by breaking this matter down and only analyzing the components of the proposed use, the Board failed to see the sum of the parts. Only through such a short sighted review could the Board ignore the obvious conclusion that the combination of the elements of the proposed use equate to an airport.

One possible conclusion from a reading of the Board's Opinion is that the Board believed the proposed use was simply a helicopter operation. The Board held "a second question is also raised in connection with the helicopter operations." Bd. Op. 39. The Board found that Petitioners had been flying a helicopter in and out of the property, and that the property contained a "helicopter facility ... constructed close to the roadway ...." (Bd. Op. 45). Presumably, based on this finding, the Board denied the special exception

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15 A conditional use permit in Baltimore City is analogous to a petition for special exception in Baltimore County.

16 Interestingly, in the two sentences ahead of this conclusion, the Board implies that it partly based its decision to deny the special exception on its belief that the reason for the petition for special exception was to allow Martin Grass to commute to work. Yet, this rationale falls apart since the appellant here is Mr. Dale Lucas.

since, according to the Board, "helicopter operations [do] not come within the definition of an 'airport'". Bd. Op. 39. This view of the Board's Opinion fails though, in light of the Board's finding that Petitioners were using an "airstrip" at the property. "Indeed, even the use of the airstrip based on the totality of the testimony reflects that only limited usage of the airstrip is employed in the horse operation or 'agricultural' pursuits of the farm." Bd. Op. 46.

A second possible conclusion from a reading of the Board's Opinion is that the Board believed Petitioners' proposed use at Helmore Farm was only an "airstrip". The Board defined "airstrip" as "a runway without normal airbased or airport facilities"; and as "a cleared landing area serving a landing strip." Bd. Op. 35.

> Indeed, the [Petitioners'] "self imposed restrictions" acknowledged that the present site does not permit the fueling of aircraft, there is no aircraft storage, there is no aircraft repair, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter "events" per day, helipad construction and safety standards lend credibility to the fact that the subject site is an airstrip and not an airport.

Bd. Op. 42-43.[17] The problem here is that the Board's definition of "airstrip" does not allow the existence of helicopter operations. A helicopter operation does not utilize a runway or a landing strip, but rather operates off of a helipad. Since the Board acknowledged that Petitioners had been flying a helicopter in and out of the property, and that the property contained a "helicopter facility ... was constructed close to the roadway ...." (Bd. Op. 45), a finding that the proposed use is simply an "airstrip" is impossible. Therefore, this conclusion fails as well since it does not accommodate the Board's finding that Helmore Farm contains a helicopter operation.

Lastly, a reading of the Board's Opinion allows the conclusion that the Board believed that both a helicopter operation and an airstrip exist independently at Helmore Farm. This conclusion lacks common

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[17] This quote from the Board's Opinion is exact. It appears that the word "acknowledged" should read "acknowledging", and that the Board intended to insert a comma after "safety standards".

sense and logic. When a use contains only an airstrip or only a helicopter operations, the use is not an airport. But when there is a proposed use such as the one at Helmore Farm, which contains both an airstrip, facilities for a helicopter operation, and other airport supporting facilities such as an automatic weather station and airport lighting, the use is obviously an airport. To expend so much effort separating the components of this proposed use was ludicrous. Additionally, to purposefully ignore the plain meaning definition of airport in order to deny this special exception was a clear error of law.

B. THE BOARD ERRED AS A MATTER OF LAW BY RULING THAT HELICOPTER OPERATIONS ARE NOT INCLUDED WITHIN THE DEFINITION OF AN "AIRPORT".

The Board identified one of the "questions which need to be addressed" as "are helipads and helistops permitted uses within the meaning and definition of an 'airport'". Bd. Op. 30-31.[18] The Board analyzed this question and held that :

> The Board does not concur that helicopter operations come within the definition of an 'airport', where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C. 2 subject site.

Bd. Op. 39.

1. The Board's Decision Violates The "Plain-Meaning Rule".

The Board erroneously held that helicopter operations are not included within the Baltimore County Zoning Regulations' ("BCZR") definition of "airport". The BCZR defines an airport as "any area of land or water designated and set aside for landing or taking off of aircraft", and defines a helicopter as "any rotary wing aircraft ...", BCZR § 101, Bd. Op. 31, 36. However, the word "aircraft" itself is not defined by the regulations. The Board stated that "[o]ne would assume that the defining term 'aircraft' would include usage for helicopter functions." Bd. Op. 31. But the Board recognized that a term "not specifically defined [] under

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18 Petitioners have never asserted that helipads and helistops are permitted uses within the R.C. 2 zone, and Petitioners submit that whether or not these uses are "within the meaning and definition of an 'airport'" is a nonsensical question. An airport is a

Section 101 ... then requires defining in the Miriam Webster Collegiate Dictionary, 10th Edition (1994) and Webster's II New Revised University Dictionary (1984, 1988)".[19] Bd. Op. 35.[20] These authorities include helicopters in their definitions of "aircraft".[21] Yet, the Board held differently, explaining its ruling as :

> While the BCZR describes an airport as "any area of land or water designated and set aside for landing or taking off of aircraft", and a helicopter fits the definition of "any rotary aircraft", nevertheless this Board concludes that the legislative history and intent of the uses permitted by special exception in the R.C. 2 zone clearly precludes such uses by helicopters.

Bd. Op. 36.[22]

The principals of statutory construction provide that "[w]hen 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). Since here the meaning of a BCZR provision was at issue, the Board's inquiry should began and ended with the words of the statute. "[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 v. Connors*, 339 Md.24, 35 (1995).

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use of its own which includes *helicopter operations*. The way the Board phrased this issue evidences the Board's illogical view and lack of common sense application to the entire matter. Petitioners explain the Board's faulty analysis herein.

19 In actuality, The BCZR, § 101 advises that *Webster's Third New International Dictionary* is to be consulted for words not defined within that section.

20 There are innumerable places in the regulations where the County Council chose to limit definitions and exclude permissible uses. The County Council was free to limit their definition of airport but they chose not to do so. Similarly, the Council was free to provide a definition for aircraft but instead chose to reference regulation users to *Webster's Dictionary*. "[I]n the absence of statutory definition, we must give the term ... its plain and ordinary meaning". *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc., 117 Md.App. 290, 310 (1997)*..

21 *Webster's* definition for "aircraft" is: A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces – used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats.

22 Notably, from a comparison of the FAA's definition of airport with that of the Baltimore County Zoning Regulations, it is obvious that the two are extremely similar. Mr. Lamb testified that the FAA's definition of "airport" was, "[a]n area on land or water used or intended to be used for the landings and take-offs of aircraft, including its buildings and facilities, if any." (T 7/1/99, at 86.) It is certainly no coincidence that these two definitions are so similar. Obviously, the County Council drafted the BCZR definition from the FAA's definition, as is extremely proper considering that the FAA is a clear authority on airports. The Board acknowledged that "there are striking similarities" between the BCZR definition of "airport" and that of the FAA. Bd. Op. 39-40. Yet, the BCZR definition is slightly broader than that of the FAA. The County Council was fully capable of drafting a definition for airports that limited the

The principals of statutory construction mandate that if the meaning of a word is questioned, ***common sense should dictate***. The Court in Kaczorowski v. City of Baltimore, addressing a statutory construction issue stated, "The court, in seeking to ascertain legislative intent, may consider the consequence 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***." 309 Md. 505, 513 (1987)(emphasis added). The Board's decision is a result that is "unreasonable, illogical [and] inconsistent with common sense". It concludes that the County Council intended only large scale airports for the R.C. 2 zone.

The Board's opinion must be reversed since it erroneously relies on the Board's belief of the Council's intent. Since there is no clear authority on the Council's intention other than the plain meaning of the statute, the Board should have analyzed this matter under the plain meaning rule.

The Board referenced various case law in support of its decision to wander from the plain meaning rule and theorize on the Council's intent. Petitioners take no exception to the quotes cited by the Board and in fact the legal tenement explained by the Board supports Petitioners' argument that the Board erred as a matter of law in its analysis of this petition for special exception.

> "The meaning of the plainest language is controlled by the context in which it appears."
> Kaczorowski v. Baltimore, 309 Md. 505, 513-516 (1987)
>
> .....
>
> "Thus results that are unreasonable, illogical or inconsistent with **common sense** should be avoided ... with the real legislative intention prevailing over the intention indicated by the literal meaning." Id. at 516 (emphasis added).

Bd. Op. 37.

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inclusion of helicopter operations. However, the County Council chose not to do so, and it was not in the Board's power to impose an artificial interpretation of a term defined by the County Council.

> "Thus, we have said that a statute must be construed in context, ... consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment... **consider the consequences that may result from one meaning rather than another.**" *Baltimore County Coalition Against Unfair Taxes v. Baltimore County*, 321 Md. 184, 203-04 (1990).

Bd. Op. 38.[23]

Common sense is exactly what the Board should have applied in its analysis. Common sense dictates that to deny this special exception because the Petitioners propose to limit the airport's inherent adverse impacts by eliminating fueling and storage facilities, is nonsensical. The Board failed to recognize that by ruling that the proposed use is not an airport, "the consequences that result from [that] meaning" are ludicrous. When a use contains only an airstrip or a helicopter operation, the use is not an airport. But when there is a proposed use which contains both an airstrip, facilities for a helicopter operation, and other airport supporting facilities such as an automatic weather station and airport lighting, the use is obviously an airport.

2. The Board Erroneously Relied on The Planning Office's Recommendation to Eliminate Airports and Helistops in R.C. 2 Zones in Attempting to Ascertain The Intent of The Council Regarding Its Decision to Retain Only Airports.

The Board determined that "the legislative history and intent of the uses permitted by special exception in [the] R.C. 2 zone clearly precludes such uses by helicopters. See, Board's Opinion at p. 36. Summing up its holding, the Board stated :

> The Board does not concur that helicopter operations come within the definition of an "airport", where elsewhere the Council has seen fit to designate them specifically, and hence have no legitimate function in the instant R.C. 2 subject site.

Id. at 39.

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[23] The Board accused the Deputy Zoning Commissioner of legislating instead of regulating. "It is evidence to this Board that, in reaching his decision, the Deputy Zoning Commissioner did not consider the legislative history of uses ...". Bd. Op. 38. However, it is actually the Board that is attempting to legislate through its interpretation of the County Council's intent. It is the Board who

Yet, in making this decision, the Board recognized that (1) "One would assume that that defining term 'aircraft' would include usage for helicopter functions."; (2) the Baltimore County Zoning Regulations ("BCZR") define an "airport" as "any area of land or water designed and set aside for landing or taking off of aircraft,"; (3) that the BCZR instructs Webster's New International Dictionary be consulted for words not specifically defined in § 101 of the BCZR, such as "aircraft"; (4) that Webster's defines "aircraft" as "[a] weight-carrying machine ... used of airplanes, balloons, helicopters, ..."; and (5) that "a helicopter fits the definition of "any rotary aircraft". Nevertheless, the Board ruled that under the Baltimore County Zoning Regulations, the term "airport" does not include helicopter operations. *Id.* at p. 31, 36.

The Board believed the legislative history to be the following.

- The 1955 Comprehensive Revisions of zoning regulations provided for airports as special exceptions in the B.R. zone and in what is now the D.R. 1 zone.
- The definition of "airport" has never included a specific provision for helicopter uses.
- Bill 56 in 1961 provided for "airstrips" and "heliports" as special exceptions in the M.L.R. zone.
- On August 11, 1966, the Planning Board issued a final report recommending the regulations define "heliport Type I", "heliport Type II", and "helistop".
- Bill 85 in 1967 enacted definitions for these three terms.
- Through Bill 100 in 1970, the Council permitted both airports and helistops by special exception in the R.D.P. and R.S.C. rural zones.
- Bill 98-75 permitted airports and helistops as special exceptions in the R.C. 2 and R.C. 3 zones (formerly the D.P.P. and R.S.C. zones).
- The Planning Board's final report in August of 1979 proposed repealing both helicopter and airport special exception uses in the R.C. 2 zone.
- Through Bill 178-79, the County Council deleted helistops as a special exception use in the R.C. 2 zone. The Bill did not delete airports as a special exception use in the R.C. 2 zone.
- Since 1979, other bills have amended the R.C. 2 zone regulations but none relative to airport, airstrip or helicopter uses.

Bd. Op. 31-34.

What the Board relied most heavily on in interpreting the County Council's intent was the Baltimore County Planning Board's final report on this issue. The Board found : "as part of the growth management in

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declined its obligation to regulate and went beyond analyzing this matter through use of the plain meaning rule. The Deputy Zoning Commissioner did not need to "consider the legislative history of uses" since the meaning of the statute is clear.

the R.C. zone, [the Baltimore County Planning Board] submitted its final report in August 1979". Bd. Op. 33.

The Board recited the following excerpts from that final report.

> The proposed amendments ... repeal[ed] both the airport and helistop special exception uses. Thereafter, Bill 178-79 deleted "helistops" as a special exception use, but allowed continuation of the "airport" use. The R.C. 3 zone special exception for both airports and helistops were left intact. Since 1979, there have been significant amendments to other R.C. 2 zones, but no further amendments to the provisions relative to "airports", "airstrips", and helicopter uses.

Bd. Op. 34.

The Board did an extensive analysis of what it believed the relevant legislative history was. However, the Board ignored the actions of the Council, which comprise the true legislative history. The Council specifically chose to keep airports as a use permitted by special exception in the R.C. 2 zone. See Bill 178-79.

The Board's Opinion clearly provides that the Board's decision on this issue rested on the Board's interpretation that the Council's intent in Bill 178-79 was to remove helicopter operations as a special exception use in the R.C. 2 zone. On page 36 of the Board's Opinion, the Board states :

> Had the County Council not sought to specifically separate and define helicopter uses in the various zones, this Board might believe differently, and in so doing, adopt the Appellant's belief that the interpretation of an "airport" includes a "heliport or helistop".

See Board's Opinion at p. 31.[24]

The Board inappropriately relied on the testimony of Messrs. Solomon and Gerber in ascertaining the Council's alleged intent with regard to the Council's decision in Bill 178-79 to exclude helistops but retain airports as special exceptions. Numerous times in its Opinion, the Board states that the "*intent* of the uses permitted by special exception in R.C. 2 zone clearly precludes such uses by helicopters." See Board's Opinion at p. 36.

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[24] Preliminarily, the Petitioner never asserted that the BCZR definition of an "'airport' includes a 'heliport or helistop'". Petitioner does contend that helicopter operations are included within the BCZR definition of "airport". Heliports and helistops are

However, the impropriety of the Board's analysis as to that *intent* is demonstrated in the following statement.

> [T]o the extent that the Appellant argues that one should 'resolve any ambiguity as to the relevant definition of an airport, through an analysis of the County Council's intent', the Board also believes a significance must attach to the testimony of those planning experts who expressed great influence and control over the creation and development of the R.C. zones.

Bd. Op. 40 (emphasis added).

The Board's reliance on those planning experts' opinion that the Planning Board's August of 1979 final report imputes to the Council's intent was erroneous as a matter of law. In the recent case *Eastern Outdoor Advertising Co. v. Baltimore*, Baltimore City urged the Court of Special Appeals to uphold the Board's denial of the conditional use permit for a billboard in Mt. Vernon, a designated urban renewal district, asserting that the proposed sign was prohibited under the Mount Vernon Renewal Plan. The Court of Special Appeals explained why the Board's decision was erroneous as a matter of law as follows :

> Appellee [Baltimore City on behalf of the Board] focuses on the legislative purpose of the Plan which it asserts is to list expressly all of the uses permitted in the District. Any use not listed, appellee claims, is not permitted. Appellee points to § C of the Plan text which enumerates permitted uses in the Urban Renewal District, but does not include billboards .... The Board found the opposition's view of the Plan to be dispositive as a matter of law in *denying the conditional use permit, ... We believe that the Board's conclusion implicitly* equates the adoption of the Urban Renewal Plan with an amendment to the Zoning Ordinance .... We hold, therefore, that the Board erred as a matter of law in concluding that Eastern's proposed general advertising sign is prohibited, as a matter of law, within the Mt. Vernon Urban Renewal Area.

128 Md.App. 494, 518-19 (1999).

The Court of Special Appeal's holding in *Eastern Outdoor Advertising* is analogous to this matter. Just as it was erroneous as a matter of law for the Board in *Eastern* to "equate the adoption of the Urban Renewal Plan with an amendment to the Zoning Ordinance", the Board in this case erred as a matter of law

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types of helicopter uses that Petitioners acknowledge have been separately identified in the BCZR. Nevertheless, Petitioners maintain that helicopter operations are included within the BCZR's definition of "airport".

by relying on the Planning Board's August of 1979 report in a finding as to the Council's intent as to the operation of helicopter operations in the R.C. 2 zone and the provisions of Bill 178-79.[25]

The Planning Board's recommendation to the Council for Bill 178-79 does not provide authority as to the Council's intent in leaving airports as special exception uses in the R.C. 2 zone. What is crystal clear is that the Council simply chose not to accept the Planning Board's recommendation. Instead of properly reviewing this matter, the Board illegally attempted to query into the motives of the Council in the enactment of Bill 178-79. "The judicial branch of government **cannot institute an inquiry into the motives of the legislature** in the enactment of laws." *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 704 (1975)(emphasis added) *See also*, *O'Hara, III v. Kovens*, 92 Md.App. 9, 27 (1992)(holding that "the separation of powers doctrine bars judicial inquiry into a governor's motives for his veto."), *citing*, *District Land Corp.* at 24.

Finally, the Board's chart on page 34 of the Opinion is not a clear source of the legislative branch's intent on this issue. The Board utilization of the chart resulted in mere speculation as to whether the County Council intended to allow helicopter operations at airports.[26] Such an act by the Board is prohibited by law.

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[25] For the same reasons, the opinions of Messrs. Solomon and Gerber do not qualify as authority on the council's intent. The Board outlined testimony provided by Paul Solomon and Norman E. Gerber, both of whom testified on behalf of the Protestants. The Board notes on p. 20 of its Opinion that Mr. Solomon, "wrote substantial parts of the actual language that's currently in the zoning regulations"; and is "the one who actually drafted the words that describe the purposes of the R.C. 2 zones." The Board then quoted *Solomon's testimony on this issue : "Mr. Solomon also did not believe that a special exception use of an airport included use of a* helicopter operation as a collateral use."[25] Bd. Op. 19-25. However, it was erroneous for the Board to rely on these opinions. The Board's reliance on the above statements led to the Board's improper decision.

[26] One could read the chart and opine that the Council meant to restrict carving up the large chunks of R.C. 2 zoned land by allowing a number of helistops and heliports, and that the Council intended to reserve this land for the more expansive airport use since there is a much more restricted amount of other zoned land, thereby promoting the development of the best uses for each zone. For example, to allow airports in M zoned land could result in tying up large portions of the scarce amount of M zoned land. Additionally, airports are a use that promote the R.C. 2 policy of agricultural development. As explained by Mr. Lucas, the airport is needed to allow his thoroughbred horse operation to succeed. Such an "reading" of the chart actually allows a result that is more consistent with the plain meaning of the BCZR and the relevant legislative history, and more importantly is not inconsistent with these authorities while the Board's analysis is. In any event though, any "reading" into the Council's intent is speculation, not sufficient for the base of the Board's Opinion.

The Board's analysis violated the plain-meaning rule provided via case law, erroneously relied on the opinions of Messrs. Solomon and Gerber, and erroneously equated the Planning Board's final report with the intent of the County Council. For these reasons, the Board's decision must be reversed.

C. THE SELF-IMPOSED RESTRICTIONS DO NOT TAKE AWAY THE PROPOSED USE'S STATUS AS AN AIRPORT.

In reaching its decision that the proposed use was simply an airstrip, the Board penalized the Helmore facility for attempting to respond to community concerns by limiting the impact of an airport's inherent adverse effects. The Board used the self imposed restrictions against the Petitioners and classified the proposed use as an airstrip after stripping it of its supporting facilities.

> Indeed, the [Petitioners'] "self imposed restrictions" acknowledged that the present site does not permit the fueling of aircraft, there is no aircraft storage, there is no aircraft repair, no sale of aircraft, limited takeoffs between 7:00 a.m. and 10:00 p.m., five fixed wing and five helicopter "events" per day, helipad construction and safety standards lend credibility to the fact that the subject site is an airstrip and not an airport.

Bd. Op. 42-43.[27]

The Board further stated that "[i]t is obvious to the Board that there are distinctions between an 'airport' and an 'airstrip'." Bd. Op. 43. Yet, the Board fails to identify what it believes is lacking at the Helmore facility to keep it from being classified as an airport. "The Board, considering the testimony, evidence and record as a whole, concludes that the proposed use by Hillside Realty LLC cannot, by any stretch of the imagination, be considered as an airport." Id.[28]

In support of its decision, the Board states its belief that "the subject site has always been intended to be a private airstrip with none of the usual auxiliary functions associated with the airport." Id. However, the

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[27] *This quote from the Board's Opinion is exact. It appears that the word "acknowledged" should read "acknowledging", and that the Board intended to insert a comma after "safety standards".*

[28] Hillside Realty LLC is not a party to this case. Hillside Realty LLC has not proposed anything at the subject site. Petitioner submits that either the Board intended to refer to the subject property, Helmore Farm, or the Board did not intend to deny the proper *Petitioners' petition for special exception.*

proposed use was found by the Board to include a number of the "usual auxiliary functions" identified by Mr. Solomon as "characteristics typically found in an airport use". Bd. Op. 41. The Board relied on Mr. Solomon's testimony in defining the characteristics of a typical airport.

> Solomon :(1) strip or strips to land an aircraft; (2) gas tanks; (3) support facilities; (4) hangars, gas tanks, diesel tanks; (5) the facilities to land and to service a plane; (6) the facilities to service the passengers; (7) parking lot (or lots); and (8) infrastructure by way or road access.

Bd. Op. 41.

Petitioners were not forced to limit the proposed use with the self imposed restrictions. The Deputy Zoning Commissioner did not grant the special exception based on the existence of the self imposed restrictions. Rather, Mr. Kotroco properly evaluated the restrictions as efforts to simply "insure that the use of the property as an airport does not become too excessive or burdensome on the surrounding community." Ex. 1, p. 14. Petitioner could have sought approval to construct the additional items not proposed for the Helmore airport that Mr. Solomon listed as typically being at an airport, such as gas tanks and facilities to store and service aircraft. Instead, Petitioner offered the self imposed restrictions in an effort to limit the impact of the inherent adverse effects of an airport, a use specifically permitted in the R.C. 2 zone. Just as BWI would still be an airport if it self imposed restrictions on its operations, the self imposed restrictions do not negate this proposed use's status as an airport.

Although completely nonsensical, based on the Board's Opinion, it appears that the petition for special exception would have been granted if the proposed use contained more structures that are generally found at airports, and if Petitioners proposed a more intrusive use on the neighborhood. For example, nothing other than Petitioners' self imposed restrictions limit Petitioners from constructing storage facilities and fueling facilities. Obviously, Petitioners' attempts at mitigating the inherent adverse impacts of the proposed use did nothing but allow the Board to break down the proposed use into its components, thereby ignoring the

obvious, common sense result. Obviously an airstrip is not a helicopter operation, and obviously a helicopter operation does not utilize an airstrip. However, when one proposes a use which involves both an airstrip for the operation of fixed wing aircraft and a helipad for helicopter operations, the use is obviously an airport.

VII. CONCLUSION

WHEREFORE, for the aforementioned reasons, Petitioners respectfully requests this Honorable Court reverse the Board of Appeals' decision.

Respectfully submitted,

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I HEREBY CERTIFY that on this 16th day of June, 2000, a copy of Petitioners' Memorandum of Law was mailed first class, postage prepaid to:

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Circuit Court for Baltimore County
401 Bosley Avenue
Towson, MD 21285-6754

Re: In The Matter of Edgar Lucas
Case #: 03-C-00-002648

Dear Sir or Madam:

Please accept for filing the enclosed original and one copy of Petitioners' Memorandum of Law. Please date stamp the copy and return it to the courier.

Thank you for your attention to this matter. Please contact me with any concerns.

Sincerely yours,

Jennifer R. Busse

Enclosure
cc: Mr. Dale Lucas
Macy Nelson, Esquire
Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Baltimore County Board of Appeals

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IN RE:		
HELMORE FARM		
SPECIAL HEARING/	*	BEFORE THE COUNTY
SPECIAL EXCEPTION		
	*	BOARD OF APPEALS
	*	FOR
	*	BALTIMORE COUNTY
LEGAL OWNER/PETITIONER	*	CASE NO.: 98-294 SPHX
ESTATE OF		
EDGAR LUCAS	*	

****

MEMORANDUM OF LAW
IN LIEU OF CLOSING ARGUMENT

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COUNTY BOARD OF APPEALS
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Respectfully submitted by:
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IN RE: HELMORE FARM SPECIAL HEARING/ SPECIAL EXCEPTION 901 Greenspring Valley Rd, S/S Greenspring Valley Rd., N/S Hillside Rd, 2000' W of Falls Rd, 3rd Election District, 3rd Councilmanic	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
LEGAL OWNER/PETITIONER: Estate of Edgar Lucas	*	Case No: 99 - 294 - SPHX

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

MEMORANDUM OF LAW
IN LIEU OF CLOSING ARGUMENT

The Estate of Edgar Lucas, ("Lucas") Petitioner, by and through his attorneys, G. Scott Barhight, David K. Gildea, Jennifer R. Busse, and Whiteford, Taylor & Preston L.L.P., hereby submits this Memorandum of Law In Lieu of Closing Argument and states:

I. INTRODUCTION

For the reasons set forth herein, Petitioner's request for the special exception use of a private airport at Helmore Farm must be granted. The Helmore Farm Airport satisfies the requisite special exception conditions set forth in the Baltimore County Zoning Regulations. Furthermore, the Helmore Farm Airport meets the special exception standard set forth by the Maryland Courts through case law. As explained below, a denial of Petitioner's request would be improper.

II. STATEMENT OF THE CASE

Petitioner filed a petition for special exception for the Helmore Farm Airport pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (herein "BCZR"). Approval was granted for that petition by the Baltimore County Deputy Zoning Commissioner in August of 1998. *See* Deputy Zoning Commissioner Timothy M. Kotroco's Opinion in this case dated August 5, 1998, and attached hereto as **Exhibit 1.**

Deputy Commissioner Kotroco held that Petitioner "has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest." Id. at p. 15. Importantly, citing the Maryland Court of Appeals case of *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), Deputy Commissioner Kotroco concluded:

> The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone.

Id.

Looking to *Webster's Third New International Dictionary, Unabridged*, Deputy Commissioner Kotroco found that helicopters are "aircraft". *Id.* at p. 12. He noted that Baltimore County Zoning Regulation ("BCZR") § 101, defines an airport as an area for "landing and taking off of aircraft", and thus ruled that "helicopters would, in fact, be included within the special exception request for an airport operation." *Id.* at pp. 11-12. He further recognized that the Helmore airport has been in operation for over 40 years

and that until the filing of this case, no one had complained about the airport and its operation. Id. at p. 14.

Protestants appealed this case to the Baltimore County Board of Appeals (herein "the Board"), and the Board heard testimony in this matter on five (5) days, beginning on April 27, 1999, and ending on July 1, 1999. The Board will publicly deliberate its decision in this matter on September 16, 1999.

III. STATEMENT OF FACTS

A. HELMORE FARM – ITS LOCATION, GEOGRAPHY, AND USE.

Petitioner, the Estate of Edgar Lucas, is the owner of Helmore Farm, a rectangular shaped property comprised of approximately 87 acres in Baltimore County. The property is bordered by Greenspring Valley Road on its north side, while Falls Road is located just east of the property. Just south of the property is Hillside Valley Road. Additionally, the Baltimore Beltway and I-83 are both located just beyond Hillside Valley Road.

The parcel is zoned R.C. 2, as is all of the surrounding area except that to the south side of Hillside Road which is zoned R.C. 5. *See* testimony of James Matis, pp. 176-178, 4/27/99 hearing, and attached hereto as **Exhibit 2**, and the testimony of Timothy Madden, pp. 10-13, 5/4/99 hearing and attached hereto as **Exhibit 3**.

Helmore Farm is used to breed, raise and race thoroughbred racehorses. In addition, horses recovering from injury are boarded at the farm. *See* testimony of Dale Lucas, p. 37, 4/27/99 hearing and attached hereto as **Exhibit 4**. Helmore Farm is improved with two primary residences, several tenant dwellings, stables and

outbuildings. The topography of the site is such that the property is at its highest elevation along Greenspring Valley Road and then drops down into a stream valley at the rear of the property. The Jones Falls stream runs across the back of the parcel, which is a heavily wooded area. Treelines are located on both the east and west sides of the property. *Id.*

B. THE SURROUNDING PROPERTIES.

The majority of the surrounding land is used for agricultural purposes, with the property to the east of Helmore Farm being in row crops, the property to the west being in cover crops, and the property to the north being in pasture for the care of livestock. Both Helmore Farm and the property immediately to its west are contained within agricultural preservation easements owned by the State of Maryland through the Agricultural Preservation Foundation, an agency of the Maryland Department of Agriculture. *See* testimony of Timothy Madden, p. 20-22, 5/4/99 hearing. (Ex. 3).

Primary residences are located on the parcels on the north, west and south sides of Helmore Farm. *Id.* at pp. 12, 20-22. The distances of the primary residences from the special exception area of Helmore Farm were measured and submitted to the Board. *Id.* at 15-16. Additionally, the distances of these surrounding residences from the helicopter pad at Helmore Farm were measured.

Specifically, Douglas Carroll, who owns 65 acres on parcels to the south, southwest, and west of Helmore Farm, owns a principal residence that is 2080', over a third of a mile, from the Helmore airport. *Id.* Three other large parcels of property lie between Mr. Carroll's residence and Helmore Farm. Other than his primary residence,

all of Mr. Carroll's property is used for agricultural purposes, and is all included in the Maryland Agricultural Preservation Program with the exception of a portion along Hillside Road that is part of the Maryland Environmental Trust. *See* testimony of Douglas Carroll, pp. 85, 105, 5/18/99 hearing and attached hereto as **Exhibit 5.**

Susan Immelt owns two parcels to the west of Helmore Farm. The property adjacent to the Farm is titled in her name only, and is unimproved land used for agricultural purposes. The parcel to the west of that is owned by Susan Immelt and her husband Stephen Immelt. Susan Immelt's two parcels combined total 40 acres. The Immelts have a primary residence on the property they jointly own that is 1480', the distance of approximately five football fields, from the Helmore airport. *Id.* at 83; *See* testimony of Susan Immelt, pp. 146-148, 6/23/99 hearing and attached hereto as **Exhibit 6.**

C. THE AIRPORT AT HELMORE FARM.

There has been aircraft operating out of Helmore Farm since at least 1956. Dale Lucas, Edgar Lucas' son, is one of the personal representatives of Edgar Lucas' estate and resides on the farm. He testified that his father made improvements to the property in 1956 so that aircraft could safely and conveniently fly into and out of Helmore Farm. Mr. Lucas further testified that the airport has been used for business purposes through flying to horse races out of state. Mr. Lucas explained that the airport is necessary for his horse business' success.

Specifically, Mr. Lucas needs to be able to fly to other racing tracks to observe the horses he manages and observe mares for the farm's breeding program. He also needs

to be able to offer clients and potential clients the opportunity to fly into the farm to view its operation. *See* testimony of Dale Lucas, pp. 39-41, 4/27/99 hearing. (Ex. 4). The airport allows functions as a marketing tool for Mr. Lucas that allows him to attract and retain clients which are obviously essential to the success of the farm. The use of the airport as a marketing tool is but one innovative technique that Mr. Lucas has fashioned to maintain the viability of the agricultural use at Helmore Farm.

The Helmore Farm Airport is located midway towards the rear of the property. *See* Petitioner's Exhibit 1, Plat to Accompany Petition for Special Exception. The airport's runway is 1200' in length and approximately 200' in width. Along the western boundary of the property, and at the end of the airstrip, there is an 150' x 150' paddock upon which a 20' x 20' helicopter touchdown pad is located. *Id.; See also* testimony of Charles Lamb, pp. 100-101, 4/27/99 hearing and attached hereto as **Exhibit 7**; Findings of Fact and Conclusions of Law issued in this case by Deputy Zoning Commissioner Timothy M. Kotroco, at p. 2. (Ex. 1).

Since its origination, the airport has been improved with some of the typical airport structures and accessories. Charles Lamb, Petitioner's expert on airport construction, explained the physical condition and capabilities of the Helmore airport. In addition to the airport's runway, the airport has a paved area for helicopter touch down and lift off, a lighted wind cone/sock, an automated weather station that relays information to pilots, and airport facility lighting. *See* testimony of Charles Lamb, pp. 102-103, 4/27/99 hearing. (Ex. 7).

The airport has other aviation facilities such as obstruction lighting, and taxi landing. Furthermore, the airport is registered with the state as an airport. *See*, testimony of Charles Lamb, pp. 86-87, 7/1/99 hearing. (Ex. 7). Finally, the Helmore airport has been approved by both the Federal Aviation Administration (FAA) and the Maryland Aviation Administration (MAA), and exceeds all relevant FAA and MAA requirements. *See*, testimony of Charles Lamb, pp. 106-107, 4/27/99 hearing. (Ex. 7).

D. THE AIRPORT'S SELF-IMPOSED RESTRICTIONS.

Petitioner voluntarily placed self-imposed restrictions on the Helmore Farm Airport. Seven of the eight restrictions Petitioner has voluntarily agreed to are listed on the plat submitted to the Board as Petitioner's Exhibit #1. They are as follows:

1. There be no fueling of aircraft at the airport;
2. There will be no aircraft storage at the airport for more than 14 consecutive days;
3. There will be no aircraft repair at the airport, except emergency repairs;
4. There will be no sale of aircraft at the airport;
5. The hours of taking off and landing of aircraft will be between 7:00 a.m. and 10:00 p.m.;
6. The airport use shall be limited to no more than five (5) fixed wing aircraft events per day and five (5) helicopter events per day. An event consists of landing, idling, take-off and fly by; and
7. The airport shall meet the Zoning Commissioner's Policy Manual ("ZCPM" Section 420.1, page 4-85) in regard to helipad construction and safety standards approved May 13, 1992.

Additionally, Petitioner voluntarily agreed to move the airport or change its operation if, at any point in the future, the Ldn level of the airport renders the special exception use incompatible with existing surrounding land uses. For example, if a dwelling was constructed on Susan Immelt's property to the west of Helmore Farm that would be inside the 65 Ldn line, Petitioner would relocate the airport facility or

otherwise change the nature of the airport operation to ensure that the noise level was compatible with the residential land use. [1]

IV. SPECIAL EXCEPTIONS

The Baltimore County legislature designated airports in the R.C. 2 Zone as valid special exception uses that are in the interest of the general welfare. To be approved as a proper special exception, the Petitioner has the burden to show that the Helmore airport meets the statutory conditions set forth in BCZR § 502. Maryland case law has set forth a standard by which special exception uses are to be reviewed. This special exception standard is an "overlay" of the statutory conditions with the restrictions provided through the case law.

A. SPECIAL EXCEPTION USES ARE PRESUMED TO BE IN THE INTEREST OF THE GENERAL WELFARE.

Special Exception uses are "expressly permissible." *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995). In fact, "the legislature has determined [special exception uses] to be permissible absent any fact or circumstance negating the presumption." *Schultz v. Pritz*, 291 Md. 1, 11 (1981). Furthermore, as explained and reiterated again by the Maryland Courts:

---

[1] Notably, as explained by Petitioner's expert on noise generated by the airport, the 65 Ldn line falls 15' into Susan Immelt's property. *See*, testimony of Charles Lamb, p. 161 from 4/27/99 hearing. (E. 7). Therefore, because the setback requirement in an R.C. 2 Zone for a principal dwelling is 35', in order for her to construct a residence that would fall within the 65 Ldn line, she would have to obtain a variance. The Courts have held that variances are presumptively impermissible. See, Cromwell v. Ward, 102 Md.App. 691, 699-703 (1995)("The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances ... A variance should be strictly construed ...").

> [A] special exception 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. ... The duties given the Board are to judge ... whether the use in the particular case is in harmony with the general purpose and intent of the plan.

See Anderson v. Sawyer, 23 Md.App. 612, 617 (1974)(affirming the approval of a funeral home as a special exception use in Baltimore County); *Schultz*, 291 Md. at 11 (establishing the standard for review of a petition for special exception).

In the *Schultz* case, *supra*, the Court of Appeals was faced with a petition for special exception for the development of a funeral home in a residential district. In addressing the Baltimore County legislature's intent regarding uses permitted by special exception, the Court stated:

> By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community.

Schultz at 14.

The Court in *Schultz* further noted that there were obvious "inherent deterious effects" involved in funeral homes. *Id.* However, the Court explained that those effects do not overcome the presumption that the general welfare is benefited by allowing funeral homes in a residential district "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." *Id.*

The fact that special exception uses may have adverse effects at their proposed locations is not an issue involved in the approval of a special exception use. Special

exception uses are recognized to have inherent adverse effects. *See* *Mossburg*, 107 Md.App. at 8. The conditions imposed on special exception uses and the proper standard used to evaluate their approval was explained in *Mossburg*. The special exception at issue in *Mossburg* was for a solid waste transfer station. The Court, recognizing the inherent adverse effects of a solid waste transfer station, stated:

> [I]t is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency. As Judge Davidson opined in *Schultz*:
>
> 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, 432 A.2d 1319 (emphasis added). 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 other few I-2 Industrial Zones.

Id. at 8 - 9.

In sum then, special exception uses inherently involve factors that many would consider to be detrimental. However, special exception uses are nonetheless "valid". *Schultz*, 291 Md. at 11. The legislature has determined that special exception uses, such

as an airport in an R.C. 2 Zone, are "desirable and necessary ... provided certain standards are met." *Mossburg*, 107 Md.App. at 8.

B. AN AIRPORT IS SPECIFICALLY ALLOWED AS A SPECIAL EXCEPTION IN THE R.C. 2 ZONE.

The Baltimore County legislature has determined that airports are to be allowed by special exception in R.C. 2 zones. *See* BCZR § 1A01.2.C.1. The legislature has provided conditions which all special exception uses must meet before being properly approved. *See* BCZR § 502.1.

C. SPECIAL EXCEPTION USES MUST MEET THE STATUTORY CONDITIONS PROVIDED IN BCZR § 502.

Special Exceptions and their approval are governed by § 502 of the Baltimore County Zoning Regulations. Before a hearing officer can grant a petition for special exception, the petitioner must demonstrate that certain conditions have been met. Specifically, the proposed use cannot:

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 way inconsistent with the spirit and intent of these zoning regulations; nor

H. Be inconsistent with the impermeable surface and vegetative retention provision of these zoning regulations.

BCZR Section 502.1.

D. THE SPECIAL EXCEPTION STANDARD IS AN "OVERLAY" OF THE STATUTORY CONDITIONS WITH THE RESTRICTIONS PROVIDED THROUGH CASE LAW.

The Board's review of a petition for special exception in light of the above conditions is further subject to the special exception standard set forth through case law, first in the *Schultz v. Pritts* case, and then in numerous cases by the Maryland Courts. *See e.g., Mossburg*, 107 Md.App. at 22 (holding that "such general conditions 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").

As explained in the recent case of *Hayfields v. Valleys Planning Council*, 122 Md.App. 616 (1998):

> 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, 666 A.2d 1253. 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].

Id., at 641.

Therefore, the *Hayfields* Court demonstrated how the BCZR § 502.1 conditions are analyzed in conjunction with the special exception standard. Id. at 641. Thus, in this instant case, the Board must analyze the BCZR § 502.1 conditions as follows in determining whether the Helmore airport will:

A. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with an airport would be generally elsewhere in the zone];

B. Tend to create [more] congestion in roads, streets or alleys therein [than the congestion normally inherent with an airport generally elsewhere in the zone];

C. Create [more] potential hazard from fire, panic or other dangers [than the potential hazard normally inherent with an airport generally elsewhere in the zone];

D. Tend to overcrowd land and cause undue concentration of population [more than would be expected with an airport generally elsewhere in the zone];

E. Interfere [more] with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements [than the interference normally inherent with an airport generally elsewhere in the zone];

F. Interfere [more] with adequate light and air [than the interference normally inherent with an airport generally elsewhere in the zone];

G. Be [more] inconsistent with the purposes of the property's zoning classification [or] in any way [more] inconsistent with the spirit and intent of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone];

H. Be [more] inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations [than any inconsistencies normally inherent with an airport generally elsewhere in the zone].

See, BCZR Section 502.1; *Mossburg*, 107 Md.App. at 21-22; *Hayfields*, 122 Md.App. at 641.

As is explained below, Petitioner thoroughly demonstrated to the Board, through the use of expert testimony, that the airport at Helmore Farm meets all of the above listed conditions, and that the airport does not involve adverse impacts "greater than or above and beyond the effects normally inherent with [an airport] anywhere within the relevant zones ...". *Mossburg*, 107 Md.App. at 22.

E. THE SPECIAL EXCEPTION STANDARD AS DEFINED THROUGH CASE LAW REQUIRES THAT A SPECIAL EXCEPTION USE ONLY BE DENIED WHEN THE PROPOSED USE'S ADVERSE IMPACTS ARE "GREATER THAN OR ABOVE AND BEYOND THE EFFECTS NORMALLY INHERENT *WITH SUCH A USE ANYWHERE WITHIN THE RELEVANT ZONES".*

As part of the analysis involved in determining whether a proposed special exception satisfies the general conditions of BCZR § 502.1, the Board applies the balancing test set forth by the Court of Appeals in *Schultz v. Pritz*, 291 Md. 1 (1981). The *Schultz* case, "remains the standard by which special exception questions are resolved." *Mossburg v. Montgomery County*, 107 Md.App. 1, 8 (1995).

The subject of the petition for special exception in *Schultz* was the proposed development of a funeral home in a residential district. In addressing special exception uses, the Court of Appeals stated:

> The 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 ***that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses.***

Schultz, 291 Md. at 14 (emphasis added).

The Court formed the current standard by which special exception uses are judged through the above quoted language. More recently, in the case of *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995), the Court of Special Appeals fully explained the *Schultz* standard and stated,

> By reasons of the holdings in *Schultz v. Pritts*, 291 Md. 1 (1988) and its progeny, [the general conditions listed in BCZR Sections 502.1(a) through (h)] 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 ([Baltimore County]) in this case.

Mossburg, 107 Md. App. at 21.

The standard then, for the approval of special exception uses, has clearly been defined by precedent Maryland case law. A special exception use may not be approved if its adverse effects are "greater than or beyond" those that are typical to such a use. *Id.* Furthermore, after providing an analysis of the special exception standard as defined through precedent case law, the Court in *Mossburg* stated:

> We also keep in mind the standard of review we reiterated in *Mangione*, at 750, 584 A.2d 1318:
>
> . . .
>
> Specifically, we 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.

Mossburg, 107 Md.App. at 11-12, *quoting* *People's Counsel v. Mangione*, 85 Md.App. 738, 750 (1991), *citing* *County Commissioners for Cecil County v. Holbrook*, 314 Md. 210, 217-18 (1988).

Lastly, it is clear that in performing the above explained analysis, the standard requires a comparison of the proposed use's adverse impacts with "the inherent ones ordinarily associated with such uses." *Schultz*, 291 Md. at 14; *Mossburg*, 107 Md.App. at 21 ("the adverse effects must be greater than or above and beyond the effects normally inherent with such a use ..."). Therefore, the focus in this regard is on the adverse impacts that would be expected from, in this case, any airport that would be allowed by special exception in the R.C. 2 zone. *Id.*

In *Sharp v. Howard County Board of Appeals*, 98 Md.App. 57 (1993), the Court of Special Appeals affirmed the grant of a special exception use. The special exception use approved was an airport in a R (Rural) Zone in Howard County. In explaining the relevant special exception standard, the *Sharp* Court provided the following excerpt from the *Schultz* case which included a quote from *Anderson v. Sawyer*, a case which dealt with a special exception use for a funeral home in a residential zone.

> Because 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 a way other than would result from the location *of any funeral home in a residential zone*, the evidence presented by the protestants was, in effect, no evidence at all.

Sharp, 98 Md.App. 57, 79, *quoting* *Schultz*, 291 Md. at 13-14, *quoting* *Anderson*, 23 Md.App. at 624-25 (emphasis added).

The *Sharp* case provides valuable insight into the manner in which this Board must evaluate the inherent adverse impacts of this proposed special exception. As was done in *Sharp*, this Board must look at the inherent adverse impacts that would result from a typical airport. In reviewing the Board's opinion in *Sharp*, the Court of Special

Appeals held that there was no evidence that the Board applied "an erroneous understanding of *Schultz*, no matter how unartfully the Board framed the language of the decision." *Id.* at 86. The Court of Special Appeals explained the Board's decision in *Sharp* as follows:

> In any case-by-case analysis, the zoning body may, in the application of its expertise, recognize effects of a proposed use that it considers common to that use regardless of where it may be located in the applicable zone(s).
>
> . . .
>
> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind and degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District. Thus, the Board's finding that Glenair will have no adverse effect on vicinal properties should not be interpreted as literally meaning that there will not be any adverse effects, but that such effects as were demonstrated led it to a conclusion that the effects were inherent in the use and were not made atypical of where Glenair is actually located.

Id.

The Court of Special Appeals in *Sharp* noted that the Board had correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Id.* at 87.

Finally, again demonstrating the correct manner in which to analyze adverse impacts under the *Schultz* standard, the Court of Special Appeals noted that the Board properly "resolved that the actual noise generated by Glenair's operations did not rise to the level of adverse effects beyond those inherent in such an airfield located anywhere in the R-District." *Id.*

Below, Petitioner applies the Special Exception Standard to Helmore Airport. Preliminarily though, it is necessary to understand petitioner's burden and protestant's burden in a special exception case.

F. PETITIONER HAS THE BURDEN TO DEMONSTRATE THAT HELMORE AIRPORT MEETS THE SPECIAL EXCEPTION STATUTORY CONDITIONS.

Before addressing the conditions the legislature has established in regard to approval of special exception uses, it is important to note exactly what Petitioner's burden is in a case such as this. "The applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements." *Schultz*, 291 Md. at 11. These statutory conditions and the proper way to analyze them is fully explained above, and Petitioner demonstrates in the following section that the Helmore Airport does in fact meet these statutory conditions.

However, a petitioner "does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community." *Id.* In fact, it is the protestant's burden to show that the proposed use would have an adverse impact on the relevant area(s) different than the adverse impact that would be expected from the specific type of special exception use. As set forth in the *Anderson* case, and noted in both the *Schultz* case and the *Sharp* case:

> Because there [are] 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 would 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.

Id.

V. THE APPLICATION OF THE SPECIAL EXCEPTION STANDARD TO HELMORE AIRPORT

As shown below, the Helmore Airport satisfies the requisite statutory conditions for special exception uses. Additionally, the Helmore Airport does not have a greater detrimental impact on the surrounding areas than the detrimental impact ordinarily associated with an airport. Since there is no legally sufficient evidence that Helmore Airport's detrimental effects are above and beyond those inherently associated with an airport, a denial of Petitioner's request would be arbitrary and capricious.

A. THE HELMORE AIRPORT SATISFIES THE SPECIAL EXCEPTION STATUTORY CONDITIONS.

The Airport at Helmore Farm is a privately owned and operated airport. As explained above, Petitioner has voluntarily placed self-imposed restrictions on the airport, its structure and its use. There is no evidence that the Helmore Farm Airport fails to meet the requisite conditions involved with special exceptions. The self-imposed limitations Petitioner has placed on the airport only further diminish the detrimental effects inherent with the special exception use of an airport. The testimony from Petitioner's experts clearly evidences that the airport meets all the of BCZR § 502.1 and does not detrimentally affect the surrounding areas.

Timothy Madden testified on behalf of the Petitioners and was accepted as an expert in the fields of landscape architecture, land planning, and zoning. Mr. Madden testified that the Helmore airport met all the conditions of BCZR § 502.1. *See* testimony of Timothy Madden at pp. 33-38, from the 5/4/99 hearing. (Ex. 3).

Specifically, Mr. Madden gave his opinion that the Helmore airport would not tend to create congestion in roads beyond what he would ordinarily expect for an airport in the R.C. 2 zone because "the use proposed here is a very lightly used and controlled facility, that will generate well below what you normally find as an airport impact in the R.C. 2 zone. He further testified that the Helmore airport "operation will not affect the adjacent land uses negatively." *Id.* at 33-34. Regarding whether the airport at Helmore Farm will create a potential hazard from fire, panic or other dangers beyond what he would ordinarily expect for an airport use in this zone, Mr. Madden gave his opinion that "this airport use will generate an impact well below what you would normally expect to find of airports, ... [t]hat greatly reduces those potential hazards. *Id.* at 34. Further, as to whether the Helmore airport will tend to overcrowd the land beyond what he would normally expect for an airport use in this zone, Mr. Madden testified, "I believe that those congestions and/or other impacts associated with an airport in the R.C. 2 zone will not be created at this facility." *Id.* at 34-35. Additionally, with regard to whether the airport will interfere with provisions for schools, water, sewage and transportation beyond what he would expect for an airport use in this zone, Mr. Madden stated, "there will be no impact. ... [I]t will have no impact on those facilities." *Id.* at 35-36.

Madden also testified as to his opinion regarding the Helmore airport's impact on the surrounding area.

> [C]omparing this specific proposed airport to what I would expect to see of an airport in the R.C. 2 Zone, I believe since the facilities, or activity, are so greatly reduced in this case, that I do not see any impact greater than

> what we would expect. On the contrary, I would find the impact from this facility to be much lower than expected of that of an airport in an R.C. 2 Zone.

Id. at 38.

Additionally, Petitioner submitted testimony from James Matis as an expert in civil engineering and zoning. Mr. Matis explained that the Helmore airport met all the conditions of BCZR § 502.1. *See* testimony of James Matis at pp. 182-186 from 4/27/99 hearing. (Ex. 2).

Mr. Matis testified that the airport at Helmore Farm would not tend to create congestion in roads, streets, or alleys above and beyond what would normally expect for an airport use in the R.C. 2 zone "based on the self-imposed restrictions on the plan ...". *Id.* at 182-183. He further testified that the Helmore airport would not create a potential hazard from fire or other dangers beyond what he would expect from an airport use in this zone based on "the limitations imposed on the plan, for example, with respect to fire, there [is] no fuel storage proposed on the site, no fueling of aircraft." *Id.* at 183. As to whether the Helmore airport would overcrowd the land beyond what he would normally expect for an airport use in this zone, Mr. Matis gave his opinion that it would not since "there will be a very limited number of flights, very few people embarking or arriving on flights, ...". *Id.* at 183-184.

In sum, he opined that the airport would meet all the requisite conditions since based on the airport's self imposed restrictions the intensity of the airport's use is much less than a typical airport. *Id.* Mr. Matis explained that because of the self-imposed

restrictions, the Helmore airport will not have all of the things he would expect with a typical airport.

> [B]ased on the self-imposed restrictions on the plan; the fact the facility is a private facility as opposed to a commercial facility, and, as such, there are no ground support or hangers or aircraft control towers associated with this proposed use.
>
> . . .
>
> I don't believe it will overcrowd the land in that there will be a very limited number of flights, very few people embarking or arriving on flights, no ground support staff, that type of thing that I normally associate with an airport.
>
> . . .
>
> [O]nce again, the intensity of this use, the limitations imposed on the plan are such, there's not – once again – there's very few passengers. Also, there's not ground support staff in terms of transportation. There are no failing intersections in the area.
>
> . . .
>
> [T]here are no buildings associated with this particular proposal and, therefore, there should not be any interference with the light and air.

Id. at 183 – 186.

B. THE APPLICATION OF THE *SCHULTZ* STANDARD TO THE HELMORE FARM AIRPORT – THE AIRPORT DOES NOT HAVE A GREATER DETRIMENTAL IMPACT THAN THAT ORDINARILY ASSOCIATED WITH AN AIRPORT IN AN R.C. 2 ZONE.

Protestants submitted no evidence that the Helmore Farm Airport manifests any detrimental effects above and beyond those ordinarily associated with an airport. In fact, Protestant's own expert, Paul Solomon, who testified as an expert on land planning, not only agreed that there are different types of airports, but testified that the Helmore Farm Airport is a less intensive use of an airport than what is typically expected for an airport. *See* pp. 117 and 119 of 6/23/99 testimony from Paul Solomon and attached hereto as **Exhibit 8**.

Furthermore, when Mr. Solomon was asked a series of questions regarding the types of characteristics he would expect to typically be related with an airport, he answered as follows:

A. "You would find a strip to land an airplane, or series of strips and support facilities, including hangars, gas tanks, d[i]esel tanks. So it would include the facilities to land a plane and to service a plane, and service the passengers that are involved with that airport, so it could be a very large airport, it could be a small airport, it could be simply fixed – wing."

Q. Do you normally expect a parking lot to park the cars, would [that] be a typical aspect?

A. Consistent with an airport, yes.

Q. You could typically expect some infrastructure by way of roads to access?

A. Yes. Most likely.

Id. at pp. 117-118.

Clearly, the self-imposed restrictions that Petitioner has instituted on the Helmore Farm Airport have caused the airport to have less detrimental effects than those typically associated with an airport.

C. EVIDENCE OF DETRIMENTAL EFFECTS ABOVE AND BEYOND THOSE INHERENTLY ASSOCIATED WITH AN AIRPORT IS REQUIRED TO DENY PETITIONER'S PETITION FOR SPECIAL EXCEPTION.

Protestants put forth testimony from neighbors of Helmore Farm. Those individuals oppose the airport based on the noise generated from the airport. However, the fact that there is opposition to the airport, and that there arguably may be some detrimental effect resulting from the airport, does not defeat the petition for special exception. Only in the event that this particular airport is shown to have detrimental

effects "above and beyond the inherent [detrimental effects] ordinarily associated with [an airport]" would the petition correctly be denied. *Mossburg*, 107 Md.App. at 22.

> As explained by the Court of Appeals in *Mossburg*, *supra*,
>
> We therefore 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***.

Mossburg, 107 Md.App. at 13 (emphasis added).

Although the *Mossburg* case dealt with a petition for a different type of special exception use that was proposed in a differently zoned area, the analysis and standard are the same. Therefore, applying this standard to this instant matter, the focus required of the Board must be to "look for evidence ... of the adverse effects and impact that could generally be expected as an inherent adverse impact anywhere in the [R.C. 2] Zone in order to determine whether the ... impact at the subject site is greater." *Id.*

In this case, Protestants have failed to provide testimony that the adverse effects from Helmore airport were greater than those that would generally be expected from a typical airport anywhere in an R.C. 2 Zone. Paul Solomon, who testified on behalf of Protestants as an expert in land use planning, was asked by counsel on direct examination:

> Q: [D]o you have an opinion as to whether the proposed use at this site has an effect, adverse effect, on the adjoining and surrounding properties that is above and beyond those inherently associated with the same use elsewhere in the 129,000 acres of R.C. 2 land of Baltimore County, do you have an opinion?
>
> A: Well, my opinion is that this use can more consistently be accommodated in other parts of the R.C. 2 zone, that there are better – there are locations where it would be consistent with the agricultural use, more consistent with the purpose

and intent of the agricultural zone.

Q: Let me rephrase my question. My question is whether – do you have an opinion as to whether the adverse effect with respect to this site is the same as or greater than the adverse effect at another site elsewhere in the R.C. 2 zone?

A: The adverse impact would be less in other areas of the R.C. 2 zones.

See testimony of Paul Solomon, pp. 83-84, from 6/23/99 hearing. (Ex. 8).

In the first question asked of Mr. Solomon by Protestants' counsel, Mr. Solomon declines to fully answer the question by not giving an opinion as to whether Helmore airport's adverse effects are above and beyond those inherently associated with the same use. Instead, Mr. Solomon opines that an airport "can more consistently be accommodated in other parts of the R.C. 2 zone ... where [the airport] would be more consistent with the agricultural use ..." *Id.* Mr. Solomon's answer clearly did not address the question and therefore, Protestants' counsel asked the follow-up question (provided above). However, this time, in "rephras[ing]" his question, Protestants' counsel left out important language that was included in the first question. *Id.* In the rephrased question, Protestants' counsel declined to ask Mr. Solomon whether Helmore airport's adverse effects are greater than the adverse effects "**inherently associated with the same use elsewhere in the 129,000 acres of R.C. 2 land ...**", language that was included in the first question but obviously did not obtain the result Protestants' counsel was seeking. *Id.*

Further, Mr. Solomon's response to this follow-up question did not address whether the adverse impacts at this particular location were greater than one would ordinarily expect. Mr. Solomon only stated the obvious, that there are other locations

that are more suitable. His testimony misses the point of *Schultz* and *Mossburg*. The Petitioner need not prove that there is no better location. The Petitioner only needs to prove that the special exception standard is met.

There is simply no evidence that the detrimental effects that can be ordinarily expected from an airport are greater at the areas surrounding the Helmore Farm Airport than would be expected to exist at an airport in other R.C. 2 Zones. Without such evidence, the standard set forth in *Schultz* and recognized as the existing standard regarding the approval of special exception uses dictates that Petitioner's petition be granted.

D. THERE IS NO LEGALLY SUFFICIENT EVIDENCE THAT THE AIRPORT GENERATED NOISE IS AN ADVERSE IMPACT ON THE SURROUNDING AREAS BEYOND THE ADVERSE IMPACT INHERENT IN SUCH A USE LOCATED ANYWHERE IN THE R.C. 2 ZONE.

1. NOISE IS AN ADVERSE EFFECT INHERENT IN THE OPERATION OF AN AIRPORT.

Obviously, the operation of all airports inherently produces some degree of noise. The Court of Special Appeals, in the *Sharp* case, noted that the Howard County Board of Appeals correctly treated "noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it was located in the R-District in Howard County." *Sharp*, 98 Md.App. at 87.

> As we read the Board's decision, it treated, or equated, the adverse effects resulting from the existing or proposed operations of Glenair as those, in kind and degree, inherent in the operation of a private airfield and airplane storage use regardless of where it may be sited in the R District.

Id. at 86.

The Board in *Sharp* approved the Glenair airport as a special exception use, and "resolved that the actual noise generated by Glenair's operations did not rise to the level of adverse effects beyond those inherent in such an airfield located anywhere in the R-District." *Id.*

However, the finding that the operation of a private airport inherently involves noise as an adverse effect does not preclude the approval of the special exception request. In *Sharp*, the Board found that the noise generated at Glenair was an inherent adverse effect but approved the special exception use since they also found that the noise generated "did not rise to the level of adverse effects beyond those inherent in such [a use] ...". *Id.* at 87.

Similarly, in this instant matter, while the operation of the airport at Helmore Farm naturally causes some degree of noise during the taking off and landing of aircraft, Deputy Zoning Commissioner Kotroco approved the special exception request. He noted that [t]he effects of an airport at this location are very limited in duration. The arrival of an airplane takes only seconds." *See*, Deputy Commissioner Kotroco's Opinion at p. 12. (Ex. 1). He further noted that "[t]he sound of an airplane was not offensive, even when standing on the edge of the runway." *Id.* As to the helicopter operations, he stated that while "[s]tanding directly aside the landing area, I found the noise from the helicopter to be offensive, but only for "about 10-15 seconds." *Id.* at 13. Importantly, Mr. Kotroco held that:

> I believe longer periods of noise will be generated by the development of the Elder tract, ... low drone of traffic on I-695 and I-83; the newly acquired traffic and news helicopters put into service ...; the heavy farm equipment; and traffic in general on Greenspring Valley Road, then the limited operation of this airport at this location.

Id. at 13 – 14.

The self-imposed restrictions Petitioner has placed on this private airport will clearly limit the impact of the inherent adverse effect of airport generated noise on the surrounding communities. Since as held by Deputy Commissioner Kotroco and as testified to by Petitioner's experts, the airport generated noise does not adversely impact the surrounding areas in a manner beyond that normally associated with such a use, a denial of Petitioner's special exception request would be wrong as a matter of law.

2. PETITIONER'S EXPERT CHARLES LAMB TESTIFIED THAT THE HELMORE AIRPORT HAS THE LEAST AMOUNT OF NOISE IMPACT ON *SURROUNDING COMMUNITIES THAT HE HAS EVER SEEN.*

Charles Lamb, who was accepted as an expert on behalf of Petitioner in the field of airport engineering design which included noise impact, testified as to the compatibility of the current land uses at and around Helmore Farm that are affected by the airport generated noise. He explained the research his firm conducted and the sound exposure analysis regarding Helmore airport that his firm prepared. *See* Petitioner's Exhibit #2.

Mr. Lamb testified that the Federal Aviation Administration ("FAA"), Housing and Urban Development ("HUD"), and Environmental Protection Agency ("EPA") have all accepted an Ldn standard for evaluation of airport generated noise. *See*

testimony of Charles Lamb, pp. 113, 164-165, from the 4/27/99 hearing. (Ex. 7). He further explained that an Ldn standard is the average from noise levels taken with nighttime operations being penalized by ten decibels. Id. at 113. (Ex. 7)

Mr. Lamb testified that at Helmore Farm, the area within the 65 Ldn noise line encompasses only land uses that are compatible with that level of noise. Specifically, agricultural uses and horse breeding with riding stables are all uses which are compatible with land subject to noise levels up to 75 Ldn. Id. at pp. 114-117. (Ex. 7)

Regarding the noise levels at all of the surrounding residences, Mr. Lamb testified that none of the levels were close to 65 Ldn, which is the national limit at which land may be used residentially. Id. at 116, 120-121. (Ex. 7).

Furthermore, Mr. Lamb testified that in his opinion the Helmore airport has no adverse impact on the adjacent community. Id. at 124. (Ex. 7). In fact, Mr. Lamb explained that comparing the Helmore airport to all the other airports he has studied, "this airport has the least amount of noise impact on the adjacent residence that [he] has seen ...." See, testimony of Charles Lamb at p. 155, 4/27/99 hearing. (Ex. 7). Earlier in his testimony, Charles Lamb stated that, "In the twenty-seven years I have been working ..., I have not done a project where the impact of the airport were less than this on adjacent residential structures." Id. at 122. (Ex. 7). He also testified that the Helmore airport has the least sound impact on *the surrounding community* that he has ever seen. Id. at 125. (Ex. 7).

Lastly, only one neighboring property is affected by the noise generated by the Helmore airport by having a portion of the property fall within the 65 Ldn line. As

testified to by Charles Lamb, the property to the west of the airport that is owned by Susan Immelt includes 15' of which is encompassed within the 65 Ldn line. *Id.* at 161. (Ex. 7).

However, the Ldn value thirty-five feet off of the Helmore Farm property line into Susan Immelt's property was calculated by Charles Lamb to be 61.3 Ldn. *Id.* at 120. (Ex. 7). As previously stated, residential uses are compatible with an Ldn level below 65 Ldn. Additionally, the setback requirements for a dwelling in an R.C. 2 area is thirty-five feet from a lot line other than a street line. *See*, BCZR § 1A01.3.B.3.

Therefore, a dwelling could be constructed on Susan Immelt's property as close as permitted under the Baltimore County zoning regulations to the airport at Helmore Farm, and the noise generated by the airport still would not cause a situation where any land use was incompatible with the federal noise compatibility requirements.

In order for Susan Immelt to construct a residence that would fall within the 65 Ldn line, she would have to obtain a variance. The Courts have held that variances are presumptively impermissible. *See, Cromwell v. Ward*, 102 Md.App. 691, 699-703 (1995)("The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances ... A variance should be strictly construed ...").

In spite of those facts which demonstrate that it would not be possible for the airport to generate noise which would be incompatible with residential use, Petitioner has voluntarily agreed to relocate whatever portions of the airport would be necessary

or to alter the airport operation in the event that a land use is ever incompatible with the airport generated noise levels.

3. PROTESTANTS' EXPERT DR. KNIO FAILED TO BASE HIS ANALYSIS ON THE FAA REGULATIONS.

Protestants offered Dr. Knio as an expert in regard to the computation of the noise generated by the Helmore airport. *See* pp. 11-12 from transcript dated 7/1/99 and attached hereto as **Exhibit 9**. Dr. Knio opined that in contrast to the testimony of Charles Lamb, it is more appropriate to view the peak noise levels as the appropriate measure, rather than the average noise levels. *Id.* at 17-18. (Ex. 9). Dr. Knio testified that estimating the peak noise was a better measure than using the measure established in the Federal Aviation Regulations, Part 150. *Id.* at 17-18, 28,61. (Ex. 9).

Petitioner's expert, Charles Lamb, explained that his measurements were taken from Federal Aviation, Part 150 Regulations developed and adopted by the FAA and in concurrence with HUD and the EPA. *See* testimony of Charles Lamb, p. 112 of 4/27/99 transcript. (Ex. 7). As Mr. Lamb explained, those regulations use the Ldn measurement, which is computed on an average. *Id.* Furthermore, Mr. Lamb testified that he based his analysis on regulations produced by the FAA regarding noise compatibility planning and found in the *Federal Air Regulation Part 150 Airport Noise Compatibility Plan*. *Id.* at 115. (Ex. 7).

However, Dr. Knio chose to base his analysis on "a simplified calculation based on an engineering correlation that falls under SAES, Society of Automotive Engineering Standards." *See* Dr. Knio's testimony on p. 18-19 from the 7/1/99 hearing. (Ex. 9).

Therefore, while Mr. Lamb's analysis was based on regulations promulgated by the FAA, HUD and EPA, Dr. Knio's were based on a standard used by car makers.

Dr. Knio provided no authority for his opinion that the estimated peak measurements were more valid, other than his own opinion. Looking to Dr. Knio's experience with airport noise, Dr. Knio stated that this was the first time he acted as a consultant for airport noise. Id. at 54. (Ex. 9). Furthermore, he admitted that he did not look at the compatibility of land uses when performing his noise analysis for this case. Id. at 56-57. (Ex. 9).

4. DR. KNIO'S TESTIMONY SHOULD NOT BE GIVEN ANY PROBATIVE VALUE AND SHOULD NOT AFFECT THE BOARD'S DECISION IN THIS MATTER.

Dr. Knio's testimony regarding the proper standard to be used in evaluating the airport noise is solely based on his own personal beliefs. His opinion in this regard lacked any scientific or evidentiary support. As a result, Dr. Knio's testimony simply does not provide evidence that should be afforded any probative value. *See* *Beatty v. Trailmaster*, 330 Md. 726, 740 (1993)(holding that an expert's testimony that was based solely on personal opinion and without regard to the relevant statutory standard, did not provide admissible evidence).

In *Beatty v. Trailmaster*, the plaintiff was injured in an automobile accident and subsequently brought negligence and products liability claims against numerous corporate defendants. One of the key issues was what effect the height of the Ford Bronco bumper that collided with plaintiff's vehicle had on the Bronco's safety. Defendants demonstrated that the Bronco's bumper height complied with the statutory

bumper height standard. Plaintiff provided an expert who opined that the "statutory standard was not the safest; that it was too liberal ... too high." Id. at 740 (internal quotations omitted).

The Court of Appeals ruled that plaintiff's expert's testimony did not provide evidence "creating a genuine issue of material fact" because the testimony was only based on the expert's background, training and experience. Id. The Court further clarified its holding stating that,

> Without more, [plaintiff's expert's] opinion that the defendants were negligent and their product unreasonably dangerous, despite compliance with the statutory standard, is insufficient evidence ... particularly when the expert cites neither developing consensus nor sound data to buttress his opinion.

Id.

The Court's analysis of the plaintiff's expert's testimony in Beatty is analogous to this matter. Protestant's expert, Dr. Knio, based his opinion, that the relevant federal regulations supplying the standard for measurement of airport generated noise were not sufficient, on nothing other than his own personal feelings. As a result, Petitioner submits that Dr. Knio's testimony holds no probative value and should not influence the Board's decision in this matter.

"[I]f there is no 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 use is arbitrary, capricious, and illegal." Schultz, 291 Md. at 12.

VI. PROTESTANTS ASSERT AN INCORRECT INTERPRETATION OF THE SPECIAL EXCEPTION STANDARD.

At the beginning of these proceedings before the Board, Protestants' attorney provided opening statements identifying his clients' arguments in this matter. One of these concerns the impact the Helmore airport has on the surrounding properties. As explained below, whether the Helmore airport would have less impact if it were located in other areas is not the proper focus for this Board to consider.

A. THE CORRECT FOCUS REGARDING ADVERSE IMPACTS IS ON THOSE ASSOCIATED WITH A TYPICAL AIRPORT. IT IS INCORRECT TO LIMIT THE ANALYSIS TO THE SUBJECT AIRPORT'S ADVERSE IMPACTS.

Maryland case law provides ample discussion regarding the standard to be used in considering special exception uses. There is no need for the Board to look to any source other than the *Schultz* standard which has been thoroughly explained in recent case law. *See e.g., Mossburg, supra; Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.App. 616 (1998); *AT&T Wireless Services v. Baltimore*, 123 Md.App. 681 (1998).

Protestants assert that it is relevant to analyze whether or not the Helmore airport would have less of an impact on surrounding areas if it were located elsewhere in an R.C. Zone. *See* Opening Arguments of Macy Nelson, Counsel for Protestants, pp. 14-15, 4/27/99 hearing and attached hereto as **Exhibit 10**. To perform such an analysis would be to incorrectly apply the *Schultz* standard and therefore should not be considered by the Board.

A special exception use is only to be denied if it "is properly determined to have an adverse effect upon neighboring properties in the general area." *AT&T Wireless*

Services, 123 Md.App. at 691. Maryland Courts have, numerous times, explained how to properly determine this. The case law requires that the reviewing agency examine the adverse effects of the proposed special exception use "at the particular location proposed", and then compare those to the adverse effects "ordinarily associated" with that **type** of special exception use. *Id.* at 692 (holding that, "The standard to be considered by the Board is whether the adverse effects of the use at the particular location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the R-1 Zone. ").

Therefore, the correct focus in this case is a comparison of Helmore airport's adverse impacts with those of a typical airport. As demonstrated through expert testimony, the adverse impacts resulting from Helmore airport are considerably less than those of a typical airport based on Petitioner's self-imposed restrictions. Helmore airport, while meeting all relevant regulations as an airport, simply does not have all of the deterious effects that are inherent in a typical airport.

B. THERE IS NO NEED TO CONSIDER WHETHER HELMORE AIRPORT'S ADVERSE IMPACTS WOULD BE LESS IF THE AIRPORT WAS IN A DIFFERENT LOCATION. THE PROPER ANALYSIS IS WHETHER HELMORE AIRPORT'S ADVERSE IMPACTS ARE GREATER THAN THE ADVERSE IMPACTS THAT WOULD RESULT FROM THE EXISTENCE OF A TYPICAL AIRPORT "ELSEWHERE IN THE ZONE".

Protestants brought much attention to the possibility that Helmore airport's adverse impacts on the surrounding area could be less if the airport was located elsewhere. Again, Protestants are confusing the requisite standard to be applied. What is relevant to the examination of special exception uses is whether the adverse impacts

from the proposed use are greater than "the effects normally inherent with **such a use** would be generally elsewhere in the zone." *Hayfields*, 122 Md.App. at 640 (emphasis added).

Therefore, in performing this analysis, one does not compare the **Helmore airport** impacts at Helmore Farm with those that may exist if the **Helmore airport** existed elsewhere. Instead, one looks at what the effects would be of **a typical airport** *anywhere in the zone* and compares those effects to Helmore airport's effects at Helmore Farm. The Court in *Mossburg* clarified this issue as "the requirement that such adverse effects be greater, i.e., above and beyond, the adverse impact generally in other areas where such special exceptions are permitted." *Mossburg*, 107 Md.App. at 13.

Maryland Courts have made it clear that only if the adverse effects of Helmore airport are greater than those of a **typical airport located anywhere in the zone**, should the petition for special exception should be denied. *See e.g., Schultz*, 291 Md. at 22-23, ("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**." (emphasis added)); *Hayfields*, 122 Md.App. at 642 (quoting *Schultz* at 642); *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18 (1988)("Where 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 application should be denied."); *AT&T Wireless Services v. Baltimore*, 123 Md.App. 681, 692 (1998)(quoting *Holbrook* at 217-18);

Petitioner submitted expert testimony that the adverse effects that would be associated with a typical airport far exceed those of Helmore airport. Therefore, the Deputy Zoning Commissioner's approval of Helmore airport as a special exception must be affirmed. To apply the standard asserted by the Protestants would actually penalize the Petitioner for self imposing certain operational restrictions, and render the results of any analysis absurd.

C. PROPOSED FUTURE AND SPECULATIVE USES OF THE LAND SURROUNDING HELMORE FARM ARE IRRELEVANT TO THE APPLICATION OF THE SPECIAL EXCEPTION STANDARD.

During the hearings in this matter, Protestants introduced testimony from Douglas Carroll and Susan Immelt, owners of property adjacent to Helmore Farm, regarding a possible future use for the Carroll and Immelt properties. Specifically, both Carroll and Immelt testified that they have considered using their properties for horse operations. *See*, testimony of Douglas Carroll, pp. 105-108, 5/18/99 hearing (Ex. 5); testimony of Susan Immelt at pp. 162-171, 7/23/99 hearing. (Ex.6) . Both Douglas Carroll and Susan Immelt further testified that they believed that the helicopter operation would negatively affect the ability for them to use their land for horse operations. Id.

Both Carroll's and Immelt's testimony regarding such a possible future land use may not be considered by this Board. "[T]estimony revealing the possibility of future

residential development of this land ... does not come close to showing a future deleterious effect upon the public health, safety or general welfare." Schultz, 291 Md. at 12-13, *quoting* Deen v. BG&E, 240 Md. 317, 330-31 (1965)(affirming a grant of a special exception use for a portion of proposed transmission lines that traversed a rural area not then serviced by public facilities).

Furthermore, evidence of "what may be ... is mere speculation, and not a finding of present or future adverse impact that would be different ... in other [R.C. 2] Zone areas of [Baltimore County]." Mossburg, 107 Md.App. at 18 (holding that the Board's statement regarding a possible traffic hazard was "not a finding of what is, but what *may* be", and such a finding is "mere speculation". Id.).

Therefore, Douglas Carroll's and Susan Immelt's testimony regarding the possibility of using their land for a purpose other than the current agricultural use cannot properly be considered by this Board to have any probative value. Similarly, the testimony from another of Protestants' witnesses, Dennis Potts, also cannot properly have any probative value.

Mr. Potts testified that he has spoken with Douglas Carroll about the possibility of setting up a horse operation on Douglas Carroll's property. See testimony of Dennis Potts, pp. 136-137, 5/18/99 hearing and attached hereto as **Exhibit 11**. Counsel for Protestants asked Mr. Potts if having a helicopter operation next door to a horse operation would effect the ability to run the horse operation. Id. at 140-141. In response, Mr. Potts stated, "I certainly would think so. My opinion, it would." Id. Later Mr. Potts was asked if he would advise a "hypothetical client" to invest in a

hypothetical horse operation on Douglas Carroll's property. *Id.* at 144-145. Mr. Potts responded that he would no so advise a "hypothetical client" because Mr. Potts was "not sure you can get an umbrella [insurance] policy, and I think that would be a limiting factor." *Id.*

Dennis Potts testimony cannot properly be considered as having any probative value in this matter because he failed to provide any relevant testimony. Mr. Potts could not provide any evidence that there was any detrimental impact on the current agricultural business on Carroll's property.

Further, although as explained above future possible uses of the property surrounding Helmore Farm is not relevant to this Petition for Special Exception, Mr. Potts also could not provide any evidence that there would be any detrimental impact on a horse operation business. All that Mr. Potts essentially testified to was his personal opinion which was not based on any relevant experience with the relationship between the horse operation business and airport operations. Mr. Potts did not even provide any evidence that the airport operation at Helmore Farm had a detrimental effect on the current and fully operating horse business being performed at Helmore Farm.

Finally, Mr. Potts admitted that he had only "been by [Helmore Farm]", and was not familiar with the FAA's Part 150 Regulations. *Id.* at 146. Clearly, Mr. Potts testimony fails to provide any relevant evidence which should be considered as having any probative value in this matter. The testimony of Mr. Potts completely ignores that a successful horse farm is operated on the same site as the airport today.

As explained above, there is no relevant, probative evidence before this Board that would allow a reversal of Deputy Zoning Commissioner Kotroco's Opinion in this matter.

> [I]f there is no 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 use is arbitrary, capricious, and illegal.

See e.g., Schultz, 291 Md. at 11; *Richmarr Holly Hills, Inc. v. American PCS*, 117 Md.App. 607 (1997).

VII. THE DEFINITION OF AN "AIRPORT" INCLUDES HELICOPTER OPERATIONS.

Protestants argue that the BCZR do not allow a special exception use of an airport to include helicopter activity. However, Protestants contention is incorrect and without basis. Deputy Zoning Commissioner Timothy M. Kotroco, as part of his Decision in this matter, reviewed the definition of an airport in both the BCZR and Webster's Dictionary. Deputy Commissioner Kotroco held that "helicopters would, in fact, be included within the special exception request for an airport operation." *See* Deputy Commissioner Kotroco's Opinion in Case 99-294-SPHX at p. 12. (Ex. 1)

A. THE BCZR DEFINITION OF "AIRPORT" IS CLEAR ON ITS FACE.

To begin an analysis of the definition of an airport, the Baltimore County Zoning Regulations are the primary authority. Specifically, BCZR § 101 defines "airport" as:

"Any area of land or water designated and set aside for landing or taking off of

aircraft." While the regulations define a helicopter as "any rotary wing aircraft ...", the word "aircraft" itself is not defined by the regulations.

"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 v. Connors*, 339 Md.24, 35 (1995)(quoting *Jones v. State* 36 Md. 255, 261 (1994)).

Furthermore, the principals of statutory construction mandate that if the meaning of a word is questioned, common sense should dictate. The Court in *Kaczorowski v. City of Baltimore*, 309 Md. 505, 513 (1987), addressing a statutory construction issue stated, "The court, in seeking to ascertain legislative intent, may consider the consequence 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.***" (emphasis added).

Principals of statutory construction also mandate that when "interpreting a statute, we assume the words of the statute have their ordinary and natural meaning, absence some indication to the contrary." *Atkinson v. State*, 331 Md. 199, 215 (1993). "A principal rule of statutory construction is that 'when the legislature uses commonly

accepted words or terms in a statute without qualification, courts construing the statute can and should assume that the legislature was aware of the commonly accepted meaning of the word{s} or terms{s}.' " *In re Douglas P.*, 333 Md. 387, 392 (1994); (citation omitted) *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md.App. 290, 310 (1997)("in the absence of statutory definition, we must give the term ... its plain and ordinary meaning").

Lucas proposes to place an airport on Helmore Farm which is zoned RC-2, where airports are permitted by special exception. The Baltimore County Zoning Regulations, § 101 advises that *Webster's Third New International Dictionary* is to be consulted for words not defined within that section. *Webster's* definition for "aircraft" is:

> A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces – used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats.

Therefore, the definition of "airport" adopted by the Baltimore County Zoning Regulations clearly includes helicopter operations.

B. ANY AMBIGUITY AS TO THE RELEVANT DEFINITION OF "AIRPORT" IS RESOLVED THROUGH AN ANALYSIS OF THE COUNTY COUNCIL'S INTENT.

As explained above, the zoning regulations clearly adopt the definition of "airport" to include helicopter operation. However, in the event there is any perceived ambiguity in the definition of "airport", further analysis demonstrates the legislature's intent on this issue.

There are innumerable places in the regulations where the County Council chose to limit definitions and exclude permissible uses. The County Council was free to limit their definition of airport but they chose not to do so. Similarly, the Council was free to provide a definition for aircraft but instead chose to reference regulation users to *Webster's Dictionary*.

In 1979, the Baltimore County Planning Board adopted its final report entitled, Growth Management Legislation, Phase I. [Petitioner's Ex. 10] Within that report, the Planning Board did not recommend airports be permitted by special exception in R.C. 2 Zones. *Id.* at p. 4. Later that same year, the County Council passed County Council, Baltimore County, Maryland Bill No. 178-79. [Petitioner's Ex. 11] Bill 178-79 permits airports as special exception uses in R.C. 2 Zones.

As was the case with all R.C. Zones, the Baltimore County Council was free to exclude airports from R.C. 2 Zones. However, as testified to by Jack Dillon who appeared on behalf of the Protestants, the County Council chose to allow airports as a special exception use in the R.C. 2 Zone. *See* testimony of Jack Dillon, pp. 78-80, 5/18/99 hearing and attached hereto as **Exhibit 11**; BCZR § 1A01.2.C.1; Maryland Bill No. 178-79. In fact, also as testified to by Mr. Dillon, the County Council took this action against the recommendation of the Baltimore County Planning Board. *See* testimony of Jack Dillon at p. 80 (Ex. 12); Baltimore County Planning Board Final Report, Growth Management Legislation, Phase I, submitted as Petitioner's Exhibit 10.

Since the legislature could have either excluded airports from R.C. 2 Zones or limited the definition of airport so as not to include helicopter operations, clearly the

legislature intended to allow the existence of airports like the Helmore Farm Airport as a special exception use in R.C. 2 Zones.[2] In light of the conditions imposed on special exception uses, along with the exclusion of various types of aircraft operations in other R.C. Zones, the County Council more than likely felt that the regulations in place were more than adequate to protect the County's interests.

C. THE BCZR DEFINITION OF "AIRPORT" WAS DERIVED FROM THE FAA DEFINITION OF "AIRPORT".

Petitioner submitted testimony from Charles Lamb, who was accepted as an expert on airport engineering design including the impact of airport generated noise, as to the FAA's definition of an airport. Mr. Lamb testified that the FAA's definition of "airport" was, "An area on land or water used or intended to be used for the landings and take-offs of aircraft, including its buildings and facilities, if any." *See* testimony of Charles Lamb, p. 108, 4/27/99 hearing and p. 86, 7/1/99 hearing. (Ex. 7).

From a comparison of the FAA's definition of airport with that of the Baltimore County Zoning Regulations, it is obvious that the two are extremely similar. The definition in the Baltimore County Zoning Regulations for an airport is found at BCZR § 101 and provides, "Any area of land or water designed and set aside for landing or taking off of aircraft." It is certainly no coincidence that these two definitions are so similar. Obviously, the County Council drafted the BCZR definition from the FAA's

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2 *See e.g., Schultz*, 291 Md. at 11 ("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.")(emphasis added).

definition, as is extremely proper considering that the FAA is a clear authority on airports.

Yet, the BCZR definition is slightly broader than that of the FAA. Again, the County Council was fully capable of drafting a definition for airports that limited the inclusion of helicopter operations. However, the County Council chose not to do so, and it is not in this Board's power to impose an artificial interpretation of a term defined by the County Council.

D. THE *SMITH* DECISION IS CLEARLY DISTINGUISHABLE AND DOES NOT REQUIRE A DENIAL OF THIS PETITION FOR SPECIAL EXCEPTION.

Protestants unsuccessfully contended, before the Deputy Zoning Commissioner, that a decision in a previous zoning case establishes that by definition, an airport does not include a helicopter facility. The decision Protestants cite to is Robert J. Smith's 1989 Petition for Special Hearing and Special Exception, Case No. 90-1-SPHX. However, as noted by Deputy Zoning Commissioner Timothy M. Kotroco, the *Smith* decision is distinguishable from this instant matter.

In the *Smith* case, the petitioner requested:

1) "a special hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) [was] permitted under the special exception requirements for an airport in an R.C. 2 Zone", and

2) "a special exception to approve the use of the property as an airport (private grass landing strip), to include the landing of a helicopter". *See*, *Smith* decision, p. 1.

The crucial difference between the facts in *Smith* and those before the Board is that Robert Smith's property was not equipped for use as an airport. Indeed, he only planned to operate helicopters on his property, and only could operate those aircraft on

his property. Mr. Smith admitted that he had only flown helicopters and did not own an airplane. Mr. Smith did not submit any expert testimony as to the ability of his property to function as an airport. In reality, Mr. Smith really was not seeking to use his land as an airport.

In his opinion in this case, Deputy Zoning Commissioner Timothy M. Kotroco stated that although he agreed with the decision in the *Smith* case, he believed the Helmore Farm Airport "pose[d] a different scenario." *See Smith* decision at p. 11. Mr. Kotroco noted that between the *Smith* case and the facility at Helmore Farm:

> What sets these two cases apart is the fact that there is a viable and working airstrip on the subject property. Therefore, the *Smith* case is not directly applicable to the special exception request before me.

Id. Unlike the facts in this matter, in the *Smith* case there was no airport but rather only helicopter activity. Therefore, the question of whether by definition an airport included helicopter operations was not a relevant matter.

In contrast, Petitioners here have demonstrated through expert testimony that the airport at Helmore Farm functions as an airport, is in full compliance with all relevant regulations, and is recognized as an airport by the FAA and the MAA. The *Smith* decision is not binding on this Board. In fact, all of the relevant precedent case law supports the findings in the Deputy Zoning Commissioner's decision.

VIII. THE AREA OF AVIATION IS PREEMPTED BY THE FEDERAL REGULATIONS.

Petitioner has voluntarily imposed restrictions on Helmore Airport and its operation. These self-imposed limitations will reduce the adverse effects on the

surrounding areas. Petitioner has the ability to limit Helmore Airport and its operation but the Board does not. The Supreme Court has held that attempts by local governments to control aviation operations are preempted by federal law.

A. THE U.S. SUPREME COURT DECISION IN *CITY OF BURBANK* IS THE PREEMINENT AUTHORITY REGARDING FEDERAL PREEMPTION IN THE AREA OF AVIATION.

The U.S. Supreme Court in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854 (1973) held that local regulation of aircraft noise emissions and flight operations at airports were preempted by federal statute, through the Federal Aviation Act of 1958. The Supreme Court in *City of Burbank* discussed at length the Congress' intent regarding the preemptive scope of the Federal Aviation Act.

In *Price v. Chartered Township of Fenton*, 909 F.Supp. 498 (E. D. Mich. 1995), the Court stated,

> **"Federal courts, in the wake of *City of Burbank*, have held that various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted.** *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F.Supp. 678 (N.D.Y. 1989) (ordinance that limits, interlia, decibel levels in flight paths of airplanes is preempted); *U.S. v. City of Blue Ash*, 487 F.Supp. 135 (S.D. Ohio 1978) (ordinance requiring aircraft to make "noise abatement turns" is preempted)"; *Command Helicopters, Inc. v. City of Chicago*, 691 F.Supp. 1148 (N.D. Ill. 1988)(ordinance regulating lifting operations of helicopters is preempted); *Gustafson v. City of Lake Angelus*, 856 F.Supp. 320 (E.D. Mich. 1993) (ordinance restricting the storage, landing and flight altitude of aircraft are preempted). (emphasis added).

The Court of Appeals of Maryland in *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528 (1990) held that the County Board of Zoning Appeals' conditions placed on approval of an airport that limited the frequency of take-offs and landing of aircraft and

established a curfew for operation of those aircraft were preempted by federal law. The *Harrison* Court, quoting *Blue Sky Entertainment, Inc. v. Town of Gardiner*, stated:

> "The Supreme Court's decision in *City of Burbank* is the 'preeminent authority on the question of federal preemption in the area of aviation' ."

The *Harrison* Court concluded that:

> "The Board's condition three -- the curfew -- falls directly within the preemption rule of *City of Burbank*, as well as that of other cases we have cited. It is plainly an intent to limit aircraft noise by regulating the operation of aircraft in navigable airspace over which the FAA has control. Condition two is a less direct effort to control noise by controlling aircraft operations, but it is one, nevertheless ... We hold that both conditions are preempted under *City of Burbank* and, therefore, unconstitutional."

B. THE FAA REGULATIONS PREEMPT ANY STATE OR LOCAL REGULATIONS ON NOISE EMISSION.

Under *City of Burbank* and its progeny, the federal regulations preempt State and local regulations regarding noise emissions. Protestants, through the testimony of their expert Dr. Knio, have attempted to persuade this Board that the regulations within the FAA's Federal Aviation Regulations Part 150 are not authoritative in this matter.

However, the Supreme Court in City of Burbank, and other courts since then, including the Maryland Court of Appeals, has held that state and local regulations are preempted by the federal regulations. Therefore, the federal regulations found in the Federal Aviation Regulations Part 150 Airport Noise Compatibility Plan are not only authoritative, but also preempt any state or local attempts at such regulation.

Accordingly, this Board is restricted from basing its opinion in this matter on any regulations regarding noise compatibility other than the FAA's Part 150 Regulations.

Dr. Knio's opinion that the Part 150 Regulations do not constitute the appropriate standard in this matter is contrary to clear legal precedent and therefore must not be given any weight by this Board.

C. THE FAA REGULATIONS PREEMPT ANY STATE OR LOCAL REGULATIONS ON FLIGHT OPERATION.

Counsel to Protestants asked a series of questions regarding flight operation issues such as length of runways, clearance of obstacles, types of planes permitted to land at the airport and the creation of the "safest" airport. All those issues raised by counsel are flight operation issues which the FAA regulates.

Lamb testified that there are extensive FAA regulations regarding all of those flight operation issues. Clearly, based on *City of Burbank*, any its progeny above-cited, the FAA regulations preempt any local regulation which attempts to regulate flight operations. The Board may not deny the special exception on the basis of flight operations issues raised by the Protestants -- to do so would be an unconstitutional act. *See Harrison v. Schwartz*, 319 Md. 360 (1990). The FAA regulates flight operation issues, and the United States Supreme Court has ruled in *City of Burbank* that any regulating of flight operations by local authorities is unconstitutional.

D. THE BOARD CAN NOT LAWFULLY IMPOSE RESTRICTIONS ON THE HELMORE AIRPORT THAT WOULD AFFECT FLIGHT OPERATIONS.

Lucas has unilaterally limited and restricted his airport use further than what this Board would be permitted to do under the law. For example, Lucas placed a self-imposed curfew on his airport which this Board would not have the power to impose. Further, Lucas unilaterally imposed a condition of the number of flights at his airport,

another condition which the Board would not have the power to impose. Similarly, several of the self-imposed restrictions, such as the fueling of aircraft and the storage of aircraft, would also be conditions which the Board would not have the ability to impose.

The *self-imposed restrictions and limitations, limitations* which even the Board could not impose as conditions for special exception approval, further demonstrate that the proposed airport use at Helmore Farm would not have an adverse impact on the surrounding community above and beyond that which you would normally expect for an airport use in the RC-2 zone. A typical airport would have an unlimited number of take-offs and landings, no curfew, and a significant amount of storage of aircraft and fueling, etc., all without the ability of the Board to place restrictions on any special exception approval to minimize the adverse impacts of the airport.

While Petitioner has placed its own restrictions and limitations on the Helmore airport and its operation, the Board has no power to impose restrictions that would affect flight operations.

IX. CONCLUSION.

WHEREFORE, for the foregoing reasons, Petitioner, the Estate of Edgar Lucas, respectfully requests this Board affirm the decision of the Deputy Zoning Commissioner which granted Petitioner's Petition for Special Exception and Petition for Special Hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 1999, a copy of this Memorandum of Law in Lieu of Closing Memorandum was mailed, first class, postage prepaid, to:

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IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - S/S of Greenspring Valley Road, N/S of Hillside Road, W of Falls Road (901 Greenspring Valley Road) 3rd Election District 3rd Councilmanic District

Edgar Lucas
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-294-SPHX
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, Edgar Lucas, through his attorney, G. Scott Barhight, Esquire. The Petitioner seeks approval of an airport and/or helicopter operation on the subject property as a legal, nonconforming use. In the alternative, the Petitioner requests a special exception for an airport, pursuant to Section 1A01.2.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plans submitted which were accepted and marked into evidence as Petitioner's Exhibit 1, 2A and 2B.

Appearing at the hearing on behalf of the Petitions were Dale Lucas, a representative of Helmore Farms, James Matis, Professional Engineer with Matis Warfield, Inc., the consulting firm which prepared the site plan for this property, Charles Lamb with Delta Airport Consultants, an expert in airport design and engineering, Kevin Miller with Miller Henning Associates, consultants in acoustical engineering, and Counsel for the Petitioners, G. Scott Barhight, Esquire and David K. Gildea, Esquire. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Susan Immelt, Stephen Howard, Deirdre Smith, Lynne Ellis, Harold Burns, Jorgen Jensen, Douglas Carroll,

and Jack Dillon, Director of the Valleys Planning Council. The Protestants were represented by G. Macy Nelson, Esquire.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel consisting of a gross area of approximately 87 acres, more or less, zoned R.C.2. The property has frontage on Greenspring Valley Road and abuts Hillside Road to the rear, and is located just west of the intersection of Falls Road and Greenspring Valley Road in Brooklandville. The property is a horse breeding farm, known as Helmore Farms, and is improved with a principal residence, several tenant dwellings, stables and outbuildings. Midway towards the rear of the property along its western boundary is a 150' x 150' paddock which is proposed to be improved with a 20' x 20' helicopter touchdown pad. In addition, the Jones Falls waterway runs through the property, just south of the proposed helicopter pad. It is the rear half of this property which is the subject of the special hearing/special exception requests. This area is approximately 1270' x 1426' in dimension.

This portion of the property consists of approximately 45-acres in area and is improved with only a farm outbuilding, 40' x 23' in dimension, in the northwest corner. Mr. Lucas uses this portion of his property as a grazing area for the thoroughbred horses which are boarded on his property. Also in this area, as noted above, is the paddock area used by Mr. Lucas as a helicopter touchdown area. The subject paddock area is enclosed with a wire mesh and wood fence. In addition, an area has been set aside as an airstrip for the take-off and landing of fixed-wing aircraft.

Testimony and evidence was offered by Dale Lucas, who operates Helmore Farms. Mr. Lucas testified that he has lived on Helmore Farms since 1969. Helmore Farms, and particularly, the Lucas family, have been

As alternative relief, the Petitioner requested a special exception for an airport. Along those lines, Mr. Lucas testified as to the airport operations that currently take place on the property. Mr. Lucas specifically testified regarding Mr. Martin Grass' use of the airport, which precipitated the Petitions filed in this case. Mr. Grass owns and operates an Augusta A-109 helicopter and has utilized the helicopter landing area on the subject site for approximately the past year. In addition, there are fixed-wing aircraft which have occasionally used the airstrip on the property for landing and taking off. Moreover, Mr. Lucas indicated that Helmore Farms intends to purchase its own fixed-wing aircraft in the near future for use in connection with its horse farm operation. In particular, they are considering a Maule aircraft, a brochure of which was submitted into evidence as Petitioner's Exhibit 6. Mr. Lucas testified that the survivability of Helmore Farms as a thoroughbred horse farm is dependent upon their ability to bring investors to the property. In addition, it is necessary to travel to various racetracks along the east coast. Mr. Lucas testified that it is common for horse breeders, trainers, and owners to visit racetracks in New York, New Jersey, Kentucky and other states to observe horses compete in races. The most efficient means of travel to those racetracks in these mid-Atlantic states is by way of aircraft, be it a fixed-wing airplane or helicopter. Furthermore, Mr. Lucas indicated that the thoroughbred racing industry and the syndication of horses now involves out-of-state investors who, from time to time, come to Helmore Farms, by way of airplane and/or helicopter. Mr. Lucas specifically identified a New York investor who travels to Helmore Farms by way of a helicopter. This investor takes off from the helipad atop the Pan Am building in Manhattan and lands at the helicopter landing area at Helmore

addition, he offered the opinion that the Maule fixed-wing aircraft, which is proposed to be purchased by Mr. Lucas in the future, is one category of aircraft which can safely land on a 1200-foot length airstrip. Furthermore, Mr. Lamb testified that the helicopter landing area at the subject airport can safely accommodate the landing and taking off of helicopters.

Mr. Kevin Miller from Miller Henning Associates, also appeared and testified on behalf of the Petitioner. Mr. Miller was accepted as an expert in acoustics. Mr. Miller performed a study concerning the noise generated by a typical fixed-wing aircraft as well as a helicopter when it utilizes the airport and airstrip at the subject site. Mr. Miller measured the decibel levels from various locations around the subject property. In addition, he offered testimony regarding the decibel levels of other more familiar types of mechanical equipment, such as tractors, combines, automobiles, and heavy trucks. Mr. Miller concluded that the amount of noise generated by the fixed-wing aircraft and helicopters utilizing the subject airport are below the national sound levels applicable to this type of use. It was his opinion that the sound generated by these aircraft would not adversely affect the surrounding community.

Mr. James Matis, the Professional Engineer who prepared the site plan of this property, also appeared and testified on behalf of the Petitioner. Mr. Matis testified relative to the exhibits prepared by his office and introduced those exhibits into evidence. Mr. Matis testified that in his opinion the proposed use of the subject property as an airport would not have any adverse effects above and beyond those normally associated with this type of use anywhere else within the R.C.2 zone.

As noted above, several residents from the surrounding community appeared and testified in opposition to the Petitioner's request, includ-

5:00 PM and 7:30 PM each evening. On weekends, this helicopter will arrive later in the morning and return at various times in the evening. Ms. Immelt stated that the take-off and landing of this helicopter does not take place every weekend. She described the noise of the helicopter as sounding like a chain saw in her back yard, even with the windows in her house closed. She indicated that the helicopter has awakened her at different times when it has landed. She further testified that at dinner time when the helicopter lands, she and her family will have to raise their voices at the dinner table in order to hear one another in the normal course of conversation.

Mr. William Brewster, who resides on Hillside Road on the south side of the property, also appeared and testified in opposition to the Petitioner's request. Mr. Brewster overlooks the Greenspring Valley from his property. Although he is unable to see the helicopter where it sits on the ground, he is able to see it as it rises into the air. Mr. Brewster testified as to his knowledge of the history of the use of Helmore Farms, given that he has lived on his property since 1961. He indicated that he has never seen any aircraft land on the subject property until recently and that he finds the landing of a helicopter at this site very offensive. Thus, he is opposed to the granting of a special exception.

Mr. Harold Burns appeared in his individual capacity and also as a representative of the Falls Road Community Association and the Greenwood Community Association wherein he lives. He indicated that he enjoys sleeping in the evening with the windows open and that from his house he is able to hear road noise from the surrounding road systems. He testified that he is bothered by the noise generated by this helicopter and that any noise generated in this area, be it automobiles or aircraft, is magnified,

Augusta A-109 helicopter, which is the helicopter that uses the airport on a daily basis. The fixed-wing aircraft was able to safely land and take off from the subject property. In addition, the Augusta A-109 helicopter landed and took off at six different times, affording me the opportunity to witness the effects of its arrival/departure from six different vantage points. I observed such landings from as far away as the Douglas Carroll home and as close as immediately adjacent to the helicopter landing area. This demonstration provided me with a greater understanding of the effects of this helicopter on the surrounding community. On my own, I attempted on several occasions, to observe the helicopter prior to this demonstration. However, I was unsuccessful in capturing the event, given the brevity of the occurrence.

The Protestants argue by way of the Memorandum submitted by their attorney, G. Macy Nelson, that the landing of helicopters in the R.C.2 zone is strictly prohibited by the B.C.Z.R. They argue that as a result of the matter involving Mr. Buzz Berg operating a helicopter in Greenspring Valley the zoning regulations were modified to prohibit heliports in the R.C.2 zones. I agree with the position of the Protestants that the operation of a heliport and/or helistop in an R.C.2 zone is not a permitted use, either as of right or by special exception. In addition, the Protestants reminded this Deputy Zoning Commissioner of a similar case involving Mr. Robert J. Smith who was landing a helicopter in the Long Green Valley. I am very familiar with the Smith helicopter case in that as an Assistant County Attorney with the Baltimore County Law Office, I prosecuted Mr. Smith in both the District Court and Circuit Court of Baltimore County for landing a helicopter on his property. Mr. Smith came before the then Deputy Zoning Commissioner, Ann M. Nastarowicz, on Petitions for Special Hearing and

word contained within that definition is, of course, "aircraft". The zoning regulations do not specifically define "aircraft". Therefore, it is necessary to review Webster's Third New International Dictionary, Unabridged for a definition. Webster's defines aircraft as follows: "A weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air, either by the buoyancy of the structure or by the dynamic action of the air against its surfaces - used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders, but chiefly of airplanes or aerostats."

As to the special exception request, an airport is specifically listed as a use permitted by special exception in the R.C.2 zones, which includes the landing and taking off of aircraft. The definition as found in Webster's includes helicopters in its category of aircraft. Having reviewed the applicable language contained within Webster's and the B.C.Z.R., I find that helicopters would, in fact, be included within the special exception request for an airport operation. Having so ruled, it must now be determined whether the Petitioner has met the burdens imposed upon him to justify the granting of the special exception request.

In order to fully understand the nature of this proceeding, it is imperative that the decision-maker personally observe the arrival/departure of aircraft from the subject property. When this case is heard by the Board of Appeals, I would strongly urge that panel to have the same demonstration performed for them, as was performed for me. It is the only way to be able to accurately rule on this issue.

The effects of an airport at this location are very limited in duration. The arrival of an airplane takes only seconds. The sound of an airplane arriving was not offensive, even when standing on the edge of the

farm equipment that is used in the farming of adjacent properties; and traffic in general on Greenspring Valley Road, then the limited operation of this airport at this location.

After reviewing all of the testimony and evidence presented, I am persuaded to grant the special exception with certain restrictions as more fully described below. These restrictions will insure that the use of the property as an airport does not become too excessive or burdensome on the surrounding community. The testimony and evidence clearly showed that the property has been used for over 40 years, although very sporadically, for the landing and taking off of aircraft. No one ever complained over the fact that an airport has existed on this property for the past 40 years. What has precipitated most of the concern of the surrounding community is the intensification of the use of this airport a this time, given its daily use. Therefore, appropriate restrictions and conditions shall be imposed upon the granting of this special exception to insure that no further intensification of this airport use takes place. In addition, restrictions shall be imposed in an attempt to mitigate the use that is currently taking place.

The Petitioner in his Memorandum indicated that this Deputy Zoning Commissioner is without authority to impose conditions and restrictions on the use of the subject property as an airport. I disagree with the argument contained in Counsel's Memorandum and would suggest that an appeal be filed in the event the Petitioner disagrees with the conditions and restrictions imposed.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner

location, then the special exception granted herein shall cease and terminate.

3) The airport operation shall be limited to one (1) landing and take-off of a fixed wing aircraft per week. This restriction shall not apply to Mr. Lucas' personal aircraft, such as the proposed Maule fixed-wing aircraft, the brochure of which was submitted into evidence as Petitioner's Exhibit 6. In the event Mr. Lucas purchases this private fixed-wing aircraft, he may come and go from his property as is necessary. However, this restriction pertains to the landing of aircraft by those other than the Petitioner. Furthermore, this restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness and Belmont Stakes. The Petitioner shall be permitted to have multiple fixed-wing landings and take-offs on those weekends, only.

4) There shall be no more than two helicopter events on any given day. A helicopter event consists of an arrival and a departure. Said landings and take-offs shall occur between the hours of 7:00 AM and 10:00 PM as stated heretofore. There shall be no helicopters permitted to land at this airport that exceed the decibel level generated by the Augusta A-109. This restriction is imposed upon the Petitioner in order to limit the size and type of helicopters which will be permitted to utilize this airport. The noise level of the Augusta A-109 helicopter was acceptable to this Deputy Zoning Commissioner; however, there are many other helicopters whose noise levels may not be acceptable. Therefore, it is necessary to restrict to the extent possible the type of helicopter permitted to land on the subject property. This restriction shall not apply to the weekends during which the Triple Crown races are held, that being the Kentucky Derby, Preakness, and Belmont Stakes. The Petitioner shall be permitted to have multiple helicopter landings during those weekends.

5) All helicopters shall be prohibited from landing and taking off in a direction that would carry the helicopter in a westerly direction over the lands owned by the Immelt or Carroll families. All landings and take-offs of helicopters shall proceed in the direction of Falls Road, thereby flying over the Meadowwood, Inc. property, currently owned by Baltimore County for use by its Department of Recreation and Parks.

6) There shall be no landing or taking off of aircraft from the subject property prior to 7:00 AM on any given day, or after 10:00 PM on any given evening.

7) There shall be no fueling of any type of aircraft on the subject property.

8) The storage of aircraft not owned by the Petitioner shall not be permitted on the subject property for any more than 14 consecutive days.

9) There shall be no aircraft repair of any kind taking place on the subject property, except for emergency repairs.

10) There shall be no sale of aircraft from the subject property.

11) The Petitioner shall be required to install a double row of white pine trees along the western boundary of his property from the northern boundary of the special exception area, south along the western property line and terminating at the existing tree line which buffers the Jones Falls waterway from the subject property. This double row of white pine trees is an attempt to further mitigate the noise levels generated by the aircraft that come and go from the subject site. Along these lines, the Petitioner shall submit for review and approval by Mr. Avery Harden, the Landscape Architect for Baltimore County, a landscape plan depicting this double row of pine trees along the western property line of the subject property in the area described above. The existing tree line in this area is mostly deciduous, wherein the ability of those trees to buffer the sound generated from this airport would be significantly reduced during the winter months Therefore, it is necessary to supplement this existing vegetation by way of these additional plantings.

12) When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

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Q. Approximately how many special exception plans have you drafted?
A. This year?
Q. This year.
A. This year, four or five, probably.
Q. And you testified before this Board and other similar boards in Maryland as an expert in the field of civil engineering and land planning?
A. Yes. And the Baltimore City Board of Appeals, Carroll County Board of Appeals, Howard County Board of Appeals, and before this Board and before the Zoning Commissioner.
MR. GILDEA: I'd like to offer Mr. Matis as an expert in the field of civil engineering and zoning.
THE CHAIRMAN: Voire dire?
MR. NELSON: I will reserve my cross-examination.
Q. Mr. Matis, I am directing your attention to Petitioner's Exhibit No. 1. Did you conduct any site visits prior to drafting this plan?
A. Yes. I visited the site on approximately five occasions, four times in the early part of last year and

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once this latter part of last year, and made some measurements and witnessed some aircraft landing and take off.
Q. Are you the project manager for the Helmore Farm project within Matis, Warfield?
A. That is correct.
Q. And was this plan prepared under your supervision?
A. Yes, it was.
Q. And is that your seal on the plan?
A. Yes, it is.
Q. Does this special exception plan marked as Petitioner's Exhibit No. 1 meet all the substantive requirements of the Baltimore County zoning regulations?
A. Yes, it does. And also it was prepared in accordance with the standards of the Baltimore County zoning checklist for submission of petitions.
Q. So it meets the procedural requirements?
A. That is correct.
MR. GILDEA: I'd like to now move Petitioner's Exhibit No. 1 into evidence.

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THE CHAIRMAN: Any objection?
MR. NELSON: No, sir.
THE CHAIRMAN: Admitted.
Q. Mr. Matis, using the vicinity map here -- and if you'd like to approach the plan -- describe the location of Helmore Farm.
A. Helmore Farm is approximately an eighty-seven acre parcel, sits west of Falls Road on the Greenspring Valley Road, approximately 1600 feet from the intersection of Greenspring Valley Road and Falls Road. It essentially runs from Greenspring Valley Road just shy of Hillside Valley Road.
Q. Are there any other major roads within the vicinity?
A. Yes. Falls Road, obviously a state road, Route 25. The Baltimore Beltway also runs in the area just beyond the hill on Hillside Road and I-83 to the south which leads to Baltimore.
Q. Could you describe the improvements on Helmore Farm to the Board?
A. Certainly. Basically, they consist of a

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thoroughbred horse facility, a number of outbuildings within the facility. The former house of Mr. Lucas, who has since passed away, and a home occupied by Mr. Dale Lucas.
Q. Can you describe to the Board the topography on the site and the surrounding area?
A. Sure. The site is the highest at the residence along Greenspring Valley Road and drops some fifty feet into a valley at the rear, approximately where the aircraft land and take off. Jones Falls stream valley runs to the back of the site.
Q. How about to the southern portion of the site, what's the topography like there?
A. To the south of the site is, once again to Hillside Road, that's a heavily wooded area. Beyond Hillside it does rise rather severely. Its elevation on the other side of Hillside is four --
COURT REPORTER: I can't hear.
MR. NELSON: I couldn't hear the numbers.
A. The high point on the south of Hillside is at elevation 440. The low point of Jones Falls Road valley

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is approximately 280.
Q. Are there any natural buffers on the Helmore property, buffered from the surrounding properties?
A. To the south, there's a heavily wooded area that's contiguous to Jones falls. There are treelines on either side, on both the east and the west side of the property.
And, obviously, the area where the aircraft land and take off occurs is much lower in elevation than the balance of the site.
Q. Describe to the Board the surrounding property use.
A. All the surrounding property saving the areas to the south side on Hillside Road are zoned R.C. 2. The area immediately to the east is known as Meadowwood Farm. That's currently a lease farming operation. I believe they plant that every year. To the immediate west –
Q. On the east portion, do you know how many acres that is?
A. I would approximate in the range of a hundred acres.

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Q. You were saying to the west of the property –
A. To the west is also an agriculture utilized area, two properties, one owned by Mrs. Immelt, another property owned by Dr. Carroll. Beyond that is also some agricultural land with some agricultural buildings on it as well.
Q. If you know, what sort of agricultural products are grown on the property?
A. I believe it's rowcrops.
Q. You can have a seat. Thank you, Mr. Matis, are you generally familiar with what was testified previously today regarding the proposed airport use?
A. Yes.
Q. And what notes are different on Petitioner's Exhibit No. 1 than on the Petitioner's Exhibit No. 2 before the Deputy Zoning Commissioner?
A. There was a note that was eliminated relative to the acoustical criteria.
Q. Were there any other changes on the special notes?
A. Yes. There was one note added. Sorry. One

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modification to a note with respect to the Zoning Commissioner's Policy Manual, and one word was added with respect to the requirements that relate to the helipad construction and safety standards, and that word was "substantive."
Q. That was clarified?
A. Clarified.
Q. Was there also a note that indicated the reduction from eight fixed-wing aircraft to five fixed-wing aircract events and a reduction from eight helicopter events per day to five?
A. The number of overall events was reduced from eight to five for both helicopter and fixed-wing aircraft.
Q. Was the relief requested box also modified?
A. Yes. The special hearing notation was removed from the plan.
Q. And then, finally, was the legal owner/petitioner box changed?
A. That was modified in that Mr. Edgar Lucas passed away earlier this year.
Q. Now the Estate of Edgard M. Lucas?

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A. That is correct.
Q. As an expert in the field of civil engineering and zoning, are you familiar with the Baltimore County zoning regulations?
A. I am.
Q. What is the side yard setback for residential uses in the R.C. 2 zone?
A. For a dwelling in R.C. 2 zone, the side yard setback is thirty-five feet.
Q. Are you familiar with the location of the R.C. 2 zones in Baltimore County?
A. Yes, generally.
Q. And you reviewed the zoning map of Baltimore County prior to testifying?
A. Yes.
Q. I am going to ask you the following questions. Let me back up. Are you also familiar with Section 5021 of the Baltimore County zoning regulations?
A. The special exception criteria, correct.
Q. I am going to ask you a series of questions which address the standards found in Section 502.1 –

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MR. NELSON: May I interrupt? I know this is going to sound crazy, but I am going to object, and you can overrule me.

I want to preserve the record. I know the practice from this Board that expert witnesses run through the litany of 502.1. I don't think it's proper for an expert, but I know that cuts against the grain of the Board's practice, but I think it's factual testimony from which lawyers argue, so I do object to this witness's testimony on the 502.1 criteria.

THE CHAIRMAN: We'll note the objection, but we'll still permit the witness to respond.

Q. Mr. Matis, as an expert in the field of civil engineering and zoning, do you have an opinion as to whether the proposed airport use will tend to create congestion in roads, streets, or alleys above and beyond what you normally would expect for an airport use in the R.C. 2 zone?

A. Yes, I do.

Q. What is your opinion?

A. I don't believe it will, based on the

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self-imposed restrictions on the plan; the fact the facility is a private facility as opposed to a commercial facility, and, as such, there are no ground support or hangers or aircraft control towers associated with this proposed use.

Q. Do you have an opinion as an expert in the field of civil engineering and zoning whether the proposed airport use will create a potential hazard from fire, panic or other dangers above and beyond what you normally expect in an airport use in an R.C. 2 zone?

A. Yes, I do.

Q. What's your opinion?

A. I believe it won't have an adverse impact on fire, health and safety. Once again, the limitations imposed on the plan, for example, with respect to fire, there are no fuel storage proposed on the site, no fueling of aircraft.

Q. Again, as an expert in the field of civil engineering and zoning, do you have an opinion whether the proposed airport use will tend to overcrowd the land or cause undue concentration of population above and beyond

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what you normally would expect near an airport use in the R.C. 2 zone?

A. Yes, I do.

Q. What's your opinion?

A. I don't believe it will overcrowd the land in that there will be a very limited number of flights, very few people embarking or arriving on flights, no ground support staff, that type thing that I normally associate with an airport.

Q. Again, as an expert in the field of civil engineering and zoning, do you have an opinion whether the proposed airport use will interfere with adequate provisions for water, sewerage, and transportation above and beyond what you would normally expect for an airport use in the R.C. 2 zone?

A. Yes, I do.

Q. What's your opinion?

A. I don't believe there are any adverse impacts on water or sewerage or transportation facilities as a result of this.

Q. Why is that? I know it's obvious, but for the

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record.

A. In that, once again, the intensity of this use, the limitations imposed on the plan are such, there's not -- once again -- there's very few passengers. Also, there's not ground support staff in terms of transportation. There are no failing intersections in the area. This is not going to exacerbate that situation.

Q. Not too many flushing toilets on the property?

A. No. The system on Helmore Farm is privately maintained. It's not a county public system where -- there are septic fields and water wells.

Q. Again, as an expert in the field of civil engineering and zoning, do you have an opinion whether the proposed airport use will interfere with adequate light and air above and beyond what you normally would expect with an airport use in the R.C. 2 zone?

A. I do.

Q. What's your opinion?

A. It will not have an adverse affect in that there are no buildings associated with this particular proposal and, therefore, there should not be any interference with

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the light and air.
Q. And, finally, would the proposed airport -- is the proposed airport use consistent with the impermeable surface and vegetation retention policy of the Baltimore County zoning regulations?
A. It is, but that particular criteria is really based on -- is really based on the R.C. 4 zoning regulations, not the R.C. 2 zoning regulations. It does, in fact, meet the criteria. If it wasn't an R.C. 4 zone -- it doesn't happen to be an R.C. 4 zone, so it doesn't have to meet that criteria.
MR. GILDEA: Thank you. That's all the questions I have.
THE CHAIRMAN: Your witness.
MR. NELSON: One moment, please.

CROSS EXAMINATION

BY MR. NELSON:
Q. Did you bring a file with you today, Mr. Matis?
A. Yes, I did.
Q. What documents do you have in it, sir?
A. I have various information. The transcript of

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the last Zoning Commissioner's case. I have a memorandum filed with the Zoning Commissioner. Various site plans.
Q. Do you have Mr. Miller's report?
A. No, I do not.
Q. Have you ever seen that report?
A. No, I have not. I did hear him testify before the Zoning Commissioner.
Q. Do you recall him testifying he tested the noise at two locations, I think, on Helmore Farm?
A. I believe that was the testimony.
Q. Well, you drew the plat for the Zoning Commissioner's hearing, didn't you?
A. Yes.
Q. And you recorded on the plat the noise assessment location?
A. I think also on there as well.
Q. Oh, I beg your pardon. I see noise assessment one. Where's noise assessment two?
A. (Indicating.)
Q. Would you be kind enough, please, to approach Exhibit -- I think it's Exhibit 1 -- and tell us the

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distance between -- the shortest distance between the Immelt property line and the edge of the helicopter fence.
A. This is Mrs. Susan Immelt's property as opposed to Mr. and Mrs. -- there are two properties.
Q. I think it's Susan Immelt, the person who owns the land down by the helicopter.
A. It's approximately twenty-five feet from the edge of the fence to the property line.
We did not perform a field survey of the property. In my estimation, it's approximately twenty-five feet.
Q. You can have a seat. I think you told us in the R.C. 2 zone, there's a setback requirement for a house?
A. For a dwelling.
Q. For a dwelling, thirty-five feet?
A. That is correct.
Q. Now, that's also true, is it not, for any structure?
A. There are certain setbacks, yes, there are certain setbacks required for any structure, building structure, correct.

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Q. Now, I asked you the dimension from the edge of the helicopter fence to the property line, did I not?
A. That is correct.
Q. Twenty-five feet?
A. Right.
Q. Are you saying, sir, there is no setback requirement for that fence of thirty-five feet?
A. Correct.
Q. There is none?
A. I know of no setback requirements for a fence of thirty-five feet.
Q. Let's assume I came into your office as a client and I said to you, Mr. Matis, I have engaged Mr. Miller from down in Richmond -- Mr. Lamb -- and he's crunched some numbers, and I could beat this noise contour deal and I can build a helistop, and in a zone which permits a helistop by itself. I said, I need help from an engineer who can tell me how close I can put that to the edge of my property. What would you tell me?
A. I would have to review the requirements for the zoning requirements for a helistop, and in Baltimore

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 4, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 4, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

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been recognized as an expert in those areas?
A. Yes. I have testified as a zoning and land planning expert in Harford County, Anne Aundel County Howard County, Town of Mannassas, City of Baltimore, City of Annapolis, and a variety of others in the region, in the mid-atlantic region.
MR. BARHIGHT: I would like to offer Mr. Madden as an expert in the field of landscape architecture, land planning and zoning.
MR. NELSON: I will hold off on my cross-examination.
THE CHAIRMAN: So noted.
Q. Are you familiar with Petitioner's Exhibit No. 1, the plat to accompany zoning petition?
A. Yes. I have reviewed it.
Q. Would you please step down for a moment and briefly describe the site. And if I could ask you to identify the property and talk about the zoning as well as the improvements on the farm.
A. Certainly. The property is located in the Greenspring Valley. It fronts on Greenspring Valley Road.

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It is just west of the fringe of the Greenspring valley RC 2 zoned property, that being the limitation of the urban rural demarcation lane that resides along Jones Falls Expressway, and then continues down along the Baltimore beltway.
The property is all RC 2 zoning. It is surrounded by RC 2 land and RC 5 zoned land to the south and DR property to the east, further to the east. The Jones Falls itself, the stream, runs through a portion of the property approximately one-third to the south of that, two thirds, between the creek and the Greenspring Valley Road.
And the improvements on the property are what you would find commensurate with a horse farm, rolling grass fields, pastures, outbuildings and stables, a principal residence, and several other dwellings on the property
Q. Have you had an opportunity to visit the site?
A. Yes, I have.
Q. While you're up there, could you please also describe the surrounding properties and uses in a little bit more detail?

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A. Sure. To the east of the property is the Meadowood property, which is currently leased for agriculture. I understand that there is a proposal by the county to develop an active recreation park here. I understand that's involved in a condemnation case. Currently, at this time right now, it's leased for agricultural row crops.
To the south, of course, is the flood plain associated with that, and residential uses along Hillside Road. Wooded hillsides are on the south side of Hillside, that portion of the valley. To the west, there are several properties that are used as a primarily residence and for agricultural use.
Specifically to the midwest of the property there are open agricultural fields that appear to me to be active agricultural use, and there are several residences.
On the north side of the Greenspring Valley Road there are pastures and residences along that side of Greenspring Valley Road.
Q. You mentioned previously a reference to the urban rural demarcation line. Could you briefly explain that to

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the Board? What's the URDL line?
A. Yes. The County Council has determined in the adoption of their Master Plan, so forth, many years ago, to define a limit of density growty within the county and the line of demarcation between urban development and rural development.
Commensurate with that urban zoning and rural zoning is what's known as the urban rural demarcation line, the URDL, as people like to refer to it as, and that is devised to depict and to define forever one's future planning use, a line that the county has determined should not be moved in determining where higher density development, water, sewer, should go, and where they should not go.
Q. I am showing you a document. Would you please identify that?
A. This is an excerpt from the most recent Master Plan proposal update, and it shows in fairly large scale the Baltimore County major corridors. And it does also include a delineation of the urban rural demaroation line on it.

MR. BARHIGHT: I'd like to offer this as the next petitioner's number.

THE CHAIRMAN: Any objection?

MR. NELSON: No, sir.

MR. MELVIN: That would be No. 7.

Q. Why don't you remain standing for a few more questions, Mr. Madden. Are you familiar with the distances identified on the plat to accompany the zoning petition, Petitioner's No. 1, as they relate to the distance of houses from the special exception area?

A. Yes, I am.

Q. Could you please point out those delineations to the Board?

A. Yes.

Q. You might want to -- I don't know if Mr. Melvin can see your back -- to turn.

MR. MELVIN: I'm fine.

Q. Please go ahead.

A. The special exception area, of course, being defined as the property lines, as been included on here, is measured distance dimensions from the property lines to

certain residences and structures. I am going to go around the clock and try to describe them.

Q. If I could direct your attention to the area of the special exception identified on the plan.

A. I'm sorry. Let me correct myself. The special exception area is on the property, but it is a subportion of the property. It does not include the front portion of the property. So the measurements are from the special exception line, which is about in the middle of the property. Excuse me.

The first dimension that's taken is from the intersection of Falls Road and Greenspring Valley Road. Again, this line here is measured from a location central to the intersection where urban zoning now exists, specifically, business local and business major exist at that location. The distance measured to the special exception line is 1,835 feet.

The next structure I am looking at is the residence of William J. Andy and M. Donohue. It's an existing building that fronts on Falls Road, on the access landing to Falls Road, and it measures 1,590 feet from the

special exception area.

Thirdly, we have a residence on Hillside Road, the Brewster property, which is an existing dwelling which is measured 1,517 feet from the special exception line. We have another dwelling on the north side of Hillside Road that measures 950 feet from the special exception line.

We have a third residence on Hillside Road known as the Schweizer property that measures 1,523 feet plus or minus from the special exception line.

Continuing on the west side of the property, there are two measurements made there, one is from a residence that is listed as Douglas Gordon Carroll's residence, existing residence, measures 1,736 feet from the special exception area.

We also have the Immelt residence which is measured 1,017 feet plus or minus from the limit of the special exception area.

Q. Have you had an opportunity to be here during Mr. Lucas's testimony and Mr. Lamb's testimony?

A. Yes, I was.

Q. Have you also had a chance to review the testimony of Mr. Matis?

A. Yes, I have.

Q. Are you familiar with the proposed airport use?

A. Yes, I am.

Q. Could you, please, again just briefly, describe the proposed airport yes?

A. Again, the propposed airport use is within the special exception area for a takeoff and landing area for fixed wing and for helicopter aircraft. Facilities have been constructed and are being used for that use. The air field is a grass field. The helicopter pad is a concrete pad. And the facilities for a light use of aircraft is in place right now.

Q. Are you familiar with the self-imposed restrictions that are identified on the special note on Petitioner's Exhibit 1?

A. Yes.

Q. I also want to lay some foundation with regard to your understanding of the RC 2 zones in Baltimore County.

Approximately how many years have you practiced

in the area of land planning and zoning, approximately, in Baltimore County?

A. Approximately twenty years.

Q. Are you familiar with the zoning maps in Baltimore County?

A. Yes. I practiceed in Baltimore County in most of those twenty years.

Q. Are you familiar with the Baltimore County zoning regulations?

A. Yes, I am.

Q. Mr. Madden, I have placed up on the board covering Petitioner's Exhibit No. 1, a document entitled Baltimore County Agricultural Land Preservation Program, Participating Properties, dated 1997, and the bottom left-hand corner bears the Baltimore County Seal and also indicates prepared by Information Systems, Baltimore County, DEPRM, April 16, 1997. Could you please identify this document?

A. Yes. This is a document that is used by the Baltimore County Agricultural Land preservation Program and other county agencies to depict where the RC 2 zoned

land is, where the agricultural districts, Maryland Environmental Trust easements, Baltimore County agricultural land preservation easements, are located within those areas, and also shows other features that enable you to identify where you're located.

Q. Could you just assist the Board a little bit and, real quickly, identify where I-83 and the beltway are.

A. This is the I-83 corridor. This is the 695 corridor. Baltimore City. And the reservoirs are shown in dark blue, Pretty Boy and Loch Raven.

Q. Could you generally identify the location of the RC 2 zoned land indicated as agricultural preservation areas on this map?

A. Yes. Again, this not being the official zoning map, these are shown from a compilation of information using the official zoning maps.

They show the majority of the RC 2 zoned land is in the north portion of the county, separated by the Interstate 83 corridor.

And then there are several smaller areas of RC 2 zoned land, that being the Long Green Valley to the east,

the Greenspring Valley just north of the beltway, the Caves Valley and the RC 2 zoned land that's adjoining the Patapsco Valley State Park. There are small areas separated from the larger north county agricultural areas.

Q. Could you try and identify the location of the subject property on this drawing, this map?

A. Yes. The easternmost agricultural easement property shown in the Greenspring Valley is the subject property. As you can see, it's along the fringe of this Greenspring Valley RC 2 area and it is the easternmost preservation area. This is where the property is.

Q. Is it also located where there's an agricultural easement on the property immediately west of the subject property?

A. Yes. It shows a reverse "L" shaped property here. That is also an agricultural easement that immediately adjoins the subject property.

THE CHAIRMAN: Can we have that area circled, Mr. Barhight, and initialed by the witness?

Q. Would you like to circle that?

THE CHAIRMAN: The area which the subject

property is located, primarily.

Q. If I could direct the witness to do his best to outline the entire boundary of the subject property.

THE WITNESS: Of the property?

THE CHAIRMAN: That's correct.

A. (Indicating.)

MR. BARHIGHT: I'd like to introduce this as the next petitioner's exhibit.

MR. NELSON: No objection.

THE CHAIRMAN: Admitted.

MR. BARHIGHT: No. 8?

MR. NELSON: No objection.

THE CHAIRMAN: Could you mark it on there, please.

Q. Mr. Madden, would you do that, please?

THE CHAIRMAN: Mark it as Petitioner's No. 8, please.

THE WITNESS: It's done.

Q. Why don't you go ahead and take your seat for the balance of the questions. Mr. Madden, are you familiar with the primary agriculture uses in the vicinity?

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A. Yes, I am.
Q. Could you please, briefly, identify the primary agricultural uses in the area surrounding the subject property?
A. Sure. The property, of course, is operated as a horse farm for the training and general care of horses involved in the thoroughbred racing industry.
The property to the east is in row crops, my understanding, it's leased for that purpose. The property to the west, while I observed it was in cover crops, appeared to be in cover crops for the planting of row crops, with the exception of the areas used for principle residences, which are mainly the portions of the property further north and adjacent to Greensping Valley Road. And the properties to the north of Greenspring Valley Road are again in pasture for the care of livestock.
Q. Are you familiar with Baltimore County zoning regulations, Section 1A01.2.C?
A. Yes, I am.
Q. Does Section 1A01 deal with the RC 2 zone?
A. Yes, it does.

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Q. What does Section 1A01.2.C deal with, just generally?
A. Generally, I believe it refers to the --
Q. Do you have it in front of you?
A. No, I do not.
MR. BARHIGHT: I'm sorry. With the Board's indulgance, I am going to provide him with my copy of the zoning regulations. And specifically, so everybody can follow along, page 1A-7, and direct his attention to Section 1A01.2.C which refers to ues permitted by special exception in the RC 2 zone land.
Q. If I could direct your attention to C.1, what does C.1 indicate?
A. It indicates airports are a use permitted in RC 2 zone by special exception.
Q. There is also a phrase in subsection C that relates to a finding provided the use would not be detrimental to the primary agricultural use in the the vicinity?
A. Yes, it does. It's included in that.
Q. Before I get to the question, I want to provide some additional information. Mr. Madden, could you please identify the document that I have just handed you?
A. Yes. You have given me the minutes of the October 6, 1998 meeting of the Baltimore County Agricultural Land Preservation Advisory Board.
Q. And if I could direct your attention to page four, five, and six of those minutes -- without going into the detail -- what do those pages discuss?
MR. NELSON: Objection. May I be heard?
THE CHAIRMAN: Yes.
MR. NELSON: This is the minutes from an ag board meeting, Baltimore County ag board meeting, where they were asked to make a preliminary ruling on whether or not Mr. Lucas could accept $600,000, not telling the ag board it's a helicopter, and then trying to fly a helicopter on land for which he received compensation.
This issue has not been resolved, and I object to its relevance, and it's not related to the zoning issues.
MR. BARHIGHT: What's interesting, Mr. Nelson has taken that position, because I recall him -- and perhaps I misunderstood his opening remarks with regard to the

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relevance of the ag easement that is overlaid on this particular property -- but if Mr. Nelson is willing to concede that the agricultural easesment on this property is wholly irrelevant to these proceedings, then I guess I have to respond in a different way. Maybe I am misunderstanding Mr. Nelson's perspective here.
MR. NELSON: Well, he did.
MR. BARHIGHT: That's fine. I have misunderstood.
MR. NELSON: It is relevant, but this group made a preliminary recommendation, a vote that did not carry on the issue Mr. Barhight wants to raise. It's before the state board now. It hasn't been resolved. That's my point.
If the Board wants to accept it for what it's worth, I'm not going to fight over it, but it doesn't control the issues in this case. It's a separate proceedings, different legal issues.
THE CHAIRMAN: I understand your objection. We are basically a fact-finding board. We'll take in, review it, give it the weight we deem necessary.

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the Baltimore-Washington International Airport.

Specifically in Anne Arundel County, I have dealt with the development of a condominium, how a condomonium development known as Cohansy Courts Condominium, which is in the 180 flight zone of the BWI airport, and, as such, by zoning and by Maryland aviation requirements, development is controlled due to its location in that zone.

I have also had an opportunity to work on two hotel projects that are within the flight zone and the LDN zone projected by the Baltimore County Airport, on the west side of the airport. Cohansy Courts is to the southeast. And in that case, I was dealing as a site planner with noise issues and with height, structural height issues, associated with airport.

So from those experiences I have knowledge of the constraints and how it affects land use.

Q. Have you had an opportunity to deal with land use constraints as a result of the Martin State Airport?

A. Yes. I have studied several properties in the adjoining residential areas to Martin State Airport based

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upon requests that I have gotten from property owners to determine if development of their property is, in fact, constrained by their adjacency to the airport. So I have done some land use investigations in regards to properties, or from properties near Martin State Airport.

Q. Are you familiar with and have you testified previously regarding the special exception standards of the Baltimore County zoning regulations found in Section 502.1?

MR. NELSON: Do I get to voir dire on his expertise, especially as an airport planner?

MR. BARHIGHT: I have not offered Mr. Madden as an airport planner. He's already been accepted as an expert in landscape architecture, land planning and zoning.

I am not, frankly, offering him for voir dire. I have laid the foundation.

MR. NELSON: I object.

MR. BARHIGHT: Because I have done as I have done previously.

THE CHAIRMAN: I think I permitted Mr. Nelson to

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have a slight voir dire at the beginning. He didn't accept him as an expert, as I recall. He said he hold on cross examination and question his ability.

MR. BARHIGHT: Then, fine.

THE CHAIRMAN: I think that's proper.

MR. NELSON: My point is now counsel is eliciting from this witness expert testimony about airports where he wasn't proferred as such at the moment when I said I will hold my cross.

So now we are moving into that area where I submit the man does not have adequate expertise to express opinions which we are about to hear.

THE CHAIRMAN: I am going to let him continue as to his methodology. You will have an opportunity to rebut anything he has to say.

Q. Mr. Madden, with regard to airport uses, what adverse impacts would you ordinarily expect to see from an airport?

A. The normal impact on land use that I expect to see from an airport includes visual impacts from lights, structures, and activities, water quality impacts from

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extensive paved runways and fueling operations and deseling operations, impacts from fueling activities, and facilities themselves, lights, impacts from lights specifically. Impacts from congestion of people and vehicles and impacts from traffic, people arriving and departing airports.

Q. Would there also be impacts from sound?

A. I mentioned sound impact, yes.

Q. The following questions are being asked of you as an expert in the field of land planning and zoning, and I am going to ask you the questions -- the Board is obviously familiar with them -- they are the 502.1 questions, and I will ask you to indicate your opinion as to indicate the reason for your opinion in each case.

A. Okay.

Q. The first question is whether the proposed airport use will tend to create congestion in roads, streets or alleys above and beyond what one would ordinarily expect for an airport use in the RC 2 zone?

A. No, it will not. It is my opinion that the use proposed here is a very lightly used and controlled

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facility, that it will generate well below what you normally find as an airport impact in the RC 2 zone.

And this operation will not affect the adjacent land uses negatively.

Q. Will the proposed airport use create potential hazard from fire, panic and other dangers above and beyond what you would ordinarily expert for an airport use in the RC 2 zoning?

A. I believe that this airport use will generate an impact well below what you would normally expect to find of airports, and specifically because there is no -- there will be no fueling operations on a normal basis done here. That greatly reduces those potential hazards. And the facility itself, the operation will be fairly limited. So that's my answer.

Q. Do you believe the proposed airport use will tend to overcrowd the land and cause undue concentration of population above and beyond what you would normally expect for an airport use in the RC 2 zone?

A. I believe the congestion and such that's associated with this airport use in the RC 2 zone will be

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greatly below that you could expect.

This is not an operation that is going to be run on a commercial basis, or will not be run by -- it will not generate a lot of traffic in or out because of its limited use and, therefore, I believe that those congestions and/or other impacts associated with an airport in the RC 2 zone will not be created at this facility.

Q. Will the proposed airport use interfere with adequate provisions for schools, parks, water, sewerage, and transportation above and beyond what you would normally expect for an airport use in the RC 2 zone?

A. I do not believe this facility will interfere with the provisions for those facilities, specifically since public water and sewer are not provided to the site, and these facilities are not utilizing those.

Specifically, this facility is not -- there will be no impact. There will be no impact on schools in the area since this generates no additional school children. It will not have any impact on recreation and parks. Any recreational use associated with the adjacent properties

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is compatible with the use, as Mr. Lamb stated, and so I find that it will not have a detrimental effect on any of those facilities.

Q. With regard to transportation and traffic, could you please explain your answer as well?

A. Yes. With regard to transportation, I believe this facility will have no negative impact. The additional traffic generated from this use, while it is very limited, should be of no major consequence to the adjacent roads, will not require any additional improvements, nor will it create congestion for traffic problems in the area, in my opinion.

Q. The next question is whether the proposed airport use will interfere with adequate light and air above and beyond what you would ordinarily expect for an airport use in the RC 2 zone?

A. I do not believe this facility will interfere with light and air that you normally find associated with an airport use in an RC 2 zone.

On the contrary, since this use will be very light and the activities of this facility will be very

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limited, I believe that it will have much less impact on the light and air in the area you would find associated with airports.

Q. Will the proposed airport use be consistent with the impervious surface and vegetation retention policy of the Baltimore County zoning regulations?

A. Well, it's in an RC 2 zone, and there are no coverage factors, limitations, if you will, in the RC 2 zone. I do find it is compatible with the regulations in that there aren't any specific coverage factors by the major portion of the airport. The landing strip is grass, and that certainly goes to prove that will not have not have any adverse impact.

Q. Will the proposed airport use be consistent with the RC 2 zoning classification and within the spirit and intent of the Baltimore County zoning regulations?

A. Yes. I find that this use is compatible and consistent with RC 2 zoning regulations which is allowed by special exception in the zone, and that it is in support of agricultural use. I find it to be compatible.

Q. Will the proposed airport use be detrimental to

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the health, safety or general welfare of the surrounding area above and beyond what you would ordinarily expect for an airport use in the RC 2 zone?

A. Yes. Again comparing this specific proposed airport to what I would expect to see of an airport in the RC 2 zone, I believe since the facilities, or activity, are so greatly reduced in this case, that I do not see any impact greater than what we would expect.

On the contrary, I would find the impact from this facility to be much lower than expected of that of an airport in an RC 2 zone.

Q. With regard to the location of this property relative to the areas of the RC 2 zones in Baltimore County, could you please comment on its general location in those RC 2 zoned areas?

A. Certainly. First of all, it is within the Long Green -- excuse me -- the Greenspring Valley RC 2 zone which is an isolated RC 2 area that is immediately adjacent to the urban rural demarcation line which is next to the higher density development associated with Baltimore City and Baltimore County.

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As such, it is on the fringe of that area. So it is not in the large expansive area of RC 2 zoned land. It is on the fringe, and it's aligned very close, residing adjacent to more heavily developed property, the Baltimore beltway, I-83, so forth. So I believe that it is -- I would characterize it as being on the fringe of the agriculturally zoned land.

Q. You indicated that certain visual impacts are adverse inherent impacts you would ordinarily expect from an airport. Do you recall that testimony?

A. Yes.

Q. Could you please discuss these visual impacts of the proposed airport relative to the visual impacts that you would ordinarily expect of an airport use located elsewhere in the RC 2 zone?

A. Okay. Well, let me start off by saying that what I would expect to find associated with an airport in an RC 2 zone would be a landing strip, a large expansive area, structures such as hangers, outbuildings, terminal buildings, parking, largely expansive parking areas, and other support facilities in buildings and in contained

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areas. That's really what I would expect to see associated with an airport use in an RC 2 zone.

In this case, you have an airport use that's very well integrated into the agricultural use that exists on the property now that's very limited in its facilities, very limited in the amount of paved area, and very, very limited in the extent of support facilities for such an airport use.

Q. You indicated that certain water quality impacts were adverse inherent impacts you would ordinarily expect from an airport. Do you recall that testimony?

A. Yes, I do.

Q. Could you please discuss the water quality impacts of the proposed airport relative to the water quality impacts that you would ordinarily expect of an airport located elsewhere in the RC 2 zone?

A. Yes. I would expect to find associated with an airport in an RC 2 zone water quality issues that would be eminating from a large expansive paved surface, runways and parking lots, and the runoff associated with them.

The issues would include thermal loading issues

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as well as particulate and pollultant matter that would have to be resolved before runoff is allowed to enter drainage places.

I also foresee associated with this use, with an airport use in an RC 2 zone, issues dealing with fueling activities, containment areas to control potential spills and to manage the quality of water, stormwater from such facilities.

In the case of this proposed use in this airport at Helmore Farm, I see no dramatic issues associated with the runoff from paved surfaces. There is only a very small paved surface associated with this airport.

I do not see any water quality issues related to any fueling factilities, since there are none on the site.

So those are the reasons why I see the water quality impact associated with this airport to be much, much less than what I would associate normally with an airport use in an RC 2 zone.

Q. You indicated that congestion was an adverse impact that you would ordinarily expect in an airport.

Could you please discuss the congestion impacts

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

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pendency of these proceedings, and give anyone an opportunity to object, the Letter of Administration requested by the Board.

THE CHAIRMAN: Thank you.

MR. BARHIGHT: I'd like to have marked for identification purposes a Plat to Accompany Zoning Petition that represents the plan that the petitioner would like to have introduced into these proceedings.

This is a de novo proceeding. And we have, as will be explained by Mr. Matis, the civil engineer who has sealed and planned this drawing, has made some modifications as relate to the notes under special note regarding airport use.

So at this point, I'd only to mark it for identification purposes, and when Mr. Matis takes the stand we'll have him authenticate the document and explain in further detail the minor changes to those notes.

As the Board is aware, we have also filed a cross-appeal, if you will, of the conditions that were imposed by the Zoning Commissioner. Obviously, the mere filing of the appeal by the protestants created a de novo

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proceeding, so even had we not done that, the entire matter is de novo before the Board.

The item that I put up on the board is a rendered version of what I would like to have marked for identification purposes as Petitioner's Exhibit No. 1, and we'll work off the rendered version on the board during these proceedings, with the Board's permission.

THE CHAIRMAN: Do you have any objection, Mr. Nelson?

MR. NELSON: I haven't seen the changes yet, but as of yet, no, sir.

THE CHAIRMAN Thank you.

Q. Mr. Lucas, could you please step down from the witness stand and approach what's been marked for identification purposes, a rendered version of Petitioner's Exhibit No. 1.

Why don't you come around on this side so you don't obstruct the view of the Board of what you're about to show. Could you please point out to the Board the basic location of what's known as Helmore Farm?

A. Yes. South side of Greenspring Valley Road,

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almost back to Hillside, that way.

THE CHAIRMAN: The part marked in dark green?

THE WITNESS: Yes, sir.

Q. What are the adjoining roads in the area?

A. Well, you have Greenspring Valley Road on the front. Falls Road, which goes into Interstate 83, down into Baltimore. And then you have the Baltimore Beltway, which is just on the other side of the hill.

Q. Could you please, briefly, using this exhibit, describe the improvements at Helmore Farm?

A. We have the main house, which was my father's house. There's a garage over here, three-bay garage. Back here, we have three employee houses. There's an office area here, a shop area, two barns, a couple turnout sheds. And my house back here.

Q. So the Board might be able to see it later as they look at this more carefully, is there a dwelling marked "existing dwelling" to the middle of the site?

A. This is my house.

Q. Is that the house where you and your family reside currently?

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A. Yes.

THE CHAIRMAN: Will you circle that in this color, please?

MR. BARHIGHT: Sure. For the record, I am circling it. It appears sort of a redish-brown color. I have circled the existing dwelling of Mr. Lucas where he and his family reside.

Q. Mr. Lucas, would you please describe, briefly, the use of the farm? What do you do with this location?

A. We breed, raise and race thoroughbred racehorses, and we lay up horses that have been injured there, or allow horses to mature that we have purchased at the sales for syndication.

Q. Could you point out where the operation generally take place on the farm?

A. Generally, the whole back of the farm up in through the middle of the farm around the barns, up into the front of the farm.

Q. You may go ahead and take your seat. Mr. Lucas, how long have you resided at Helmore Farm?

A. Basically, I was adopted when I was nineteen, and

have lived there off and on since.

Q. So approximately how long have you lived there?

A. Personally?

Q. Since that time. The Board doesn't know how old you are.

A. I'm forty-eight now.

Q. Could you please, briefly, describe the existing air traffic that you observe as a resident of Helmore Farm?

A. It's actually quite extensive. We have the traffic patterns, landing patterns for Baltimore Washington International Airport that goes over us on a daily basis. We have the traffic planes that circle the beltway every day, checking on traffic. We have local news stations, helicopters, on occasion. Just about every day the Maryland State Police helicopters, when they leave Martin State Airport, fly over us on their way to places like Westminster and other nearby areas.

Q. Could you please, briefly now, because we are really here on the petition for special exception, not the nonconforming use --

MR. BARHIGHT: So the Board is clear, we are here only on the petition for special exception. We have conceded the nonconforming use case. I would make that clear on the record now.

Q. But, briefly, because we are not trying the nonconforming use case, could you briefly describe the history of the aircraft operation at Helmore Farm?

MR. NELSOSN: Objection.

THE CHAIRMAN: Overruled. He can answer.

A. Back in 1956, my father had an employee that had a plane. He wanted to have a place to practice landings and stuff, so in the bottom field at the farm, my father put in an underground drainage pipe, took out some power lines that went down to an irrigation field, and allowed the field to be used in its full length. And since that time, when I was this college, I flew into the farm from College Park Airport with my instructor and myself. And then we have used it for landing fixed-wing and helicopters in the horse business, flying out to the races in New York and Monmouth Park, to Colonial Downs.

Q. Just briefly, to establish a couple historical

elements that aren't principally germane to the case, but I think it's important for the Board to understand, when did you first receive any complaints about the aircraft operation at Helmore Farm?

MR. NELSON: Objection.

THE CHAIRMAN: Overruled.

A. In October of 1997.

Q. Prior to that time, had you received any complaints regarding any of the airport or aircraft operations previously?

A. None.

Q. Until the Deputy Zoning Commissioner's ruling on the nonconforming use case, did you have a good faith belief that you did have a nonconforming use for an airport operation?

MR. NELSON: Objection.

THE CHAIRMAN: He can answer.

A. Yes, we did. Absolutely.

Q. Let's get to the sixty-four dollar question I am sure everybody wants to know. Why do you want to use an airport as a part of your operation for Helmore Farm?

A. Well, with the deteriorating condition of traffic in the area, a lot of times it's taking considerably longer to get between racetracks.

I train horses full-time as a trainer at Laurel Racetrack. I've got to be there in the morning. And we're trying to compete at the highest levels of the thoroughbred. The bottom ones, you can't make any money with, so we run at the tracks with the best purses, Delaware, Monmouth Park, New York. We even had one horse trained by John Kimmel, one of the top trainers in New York, competing at the very highest level.

And we need to be able to get to those tracks to watch these horses run, because that's part of managing their careers.

We also need to be able to get there to claim mares for our breeding program. We have to see them, how they look physically, and then we also offer as an incentive to our clients, to be able to operate out of there, flights they might need to take, because if they can see the operation, be involved in it, be involved around it, they would possibly want to invest it.

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

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Q. If you go in that entrance, what homes would you see?
A. You would see the Trimble's house and the Immelt's house.
Q. Now, you weren't here this morning, but John McGrain testified, a county historian. Do you know of him?
A. Yes.
Q. He mentioned an historic house in there which was Oak Dean?
A. Oak Dean.
Q. Is that the Trimble house?
A. That's the Trimble house.
Q. Who's in that house?
A. Nancy Trimble.
Q. How is she related to to you?
A. She my aunt.
Q. How much land does she have there, plus or minus?
A. She has twenty-five acres. That's kind of in the center of the original farm.
Q. Does her property border on Helmore Farm?

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A. No. The Immelt property does.
Q. So she's to the west of Immelt?
A. Right, and my property borders on it also.
Q. We'll get to your property, but if we take the first entrance to the south after Helmore, there are two houses there, Oak Dean and your sister's place?
A. Right.
Q. Now, the Immelt place, who lives at the Immelt place?
A. The Immelts.
Q. Who are they?
A. That's my sister, Susan Immelt, and her family.
Q. How many acres does her family own? Plus or minus.
A. I believe it's forty.
Q. Now, is that land that she owns, land she and her husband own?
A. Yes. I think she's owns it jointly with her husband.
Q. We don't have a tax map here, do we? There's a copy of an exhibit -- let me just put this on the board.

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MR. NELSON: Do you have a tax map?
MR. GILDEA: No.
Q. Dr. Carroll, this is not an ideal map, but you see the Helmore Farm property here?
A. Yes.
Q. As we drive past in a westerly direction, we pass Helmore Farm, come to the entrance of the Immelt and Trimble --
A. That would be here. This is the Trimble property. This triangle or square out here is the Immelt property here. And this is the Carroll property here and down to here. This part is my property.
Q. Now, would you be kind enough -- would you mark in yellow where the Immelts border on the --
A. On Helmore Farm? Yes, sir.
Q. Would you mark in red where your property or blue where your property borders the Helmore Farm?
Q. (Indicating.)
Q. Actually, this is a better one, Dr. Carroll. Here's a blue one. Try this one.
A. Indicating.

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Q. Now, you can have a seat. How much land do you own, sir?
A. Sixty-five acres.
Q. Is your land in the Maryland Environmental Trust?
A. No. It's in the ag preservation program. Actually, part is in the Maryland Environmental Trust along Hillside Road.
Q. How many houses are on your property?
A. Two.
Q. Do you have the right to build an additional house on your property?
A. Yes. According to the ag preservation program, two houses can be built either for the owners, meaning my wife or me. Or any two of our three children.
Q. Where, in your judgment, would you be able to build those houses if you, in fact, decided to build them?
A. You can build them just about, with the new sand mound sewer systems that are being built, you can build them just about anywhere on the property with a hundred foot setback from the stream. You have to be out of the floodplain.

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site has a substantial value, and that if the helicopter use is permitted, it will dramatically reduce the value of that house site in the order of magnitude of hundreds of thousands of dollars depreciation.

Q. Is that right?

A. Yes.

MR. NELSON: That's the proffer. And I think that in administrative proceedings, it's relevant, material, and admissible evidence, but I will move on.

Q. Now, Dr. Carroll, the Board has ruled that you can't testify about the effect on the Immelt house site, but would you draw in red, please, or pink, or an "x" where you could build a house as close to the Immelt site as can you put it on your property.

A. You can have a site here, but there's a better site here (indicating.)

Q. Marked in pink?

A. You can have both of of them.

Q. Now, could you estimate the distance from those two potential sites on your property from the Immelt site?

A. It's about 300 feet, if this is a thousand.

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Q. So, really, the second site here is almost equi-distance from the helicopter pad as Susan Immelt's site?

A. Right.

Q. What do you estimate the value of the house site to be, the one approximately 600 feet from the helicopter pad on your property, which happens to be the same distance as the helicopter pad to Susan Immelt's place, which is the prime property in Greenspring Valley to build a house that's not yet built, what's the value of your site?

A. Based on the purchase of this property adjacent to me --

THE REPORTER: Excuse me. I couldn't hear.

A. -- which he then tore the house down at tremendous expense, built a raised mound sewer system and built a two and a half million dollar house, I believe this site is worth $750,000.

Q. Where the --

A. That Matthews bought.

Q. Were the helicopter permitted, what impact, if

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any, based on your judgment and expertise and knowledge of your land, would it have on that site 600 from the helicopter pad?

A. I think it would significantly devalue the house. I think anyone buying a site for that kind of money would build a very fancy house, and I think they'd think twice about it with a helicopter landing.

Q. Six hundred feet away?

A. Yes.

Q. Let's step from the house site issue and ask you, you have roughly sixty-five acres at this site?

A. Yes.

Q. Is any of that land farmed now?

A. Yes. Thirty-nine acres of mine is farmed. I believe that's right. And seventy-five acres of the whole original farm including Immelt, Trimble and me, is farmed, is in till.

Q. Do you do that or do you lease the farm?

A. No. That's leased out.

Q. How does that work? You get paid per acre per year?

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A. Yes. The fee is $60 per acre per year.

Q. Now, over the last year or so, have you had occasion to evaluate -- of course, you've got to use that land for agricultural purpose? It's RC 2?

A. Right. It's in the ag program.

Q. Have you evaluated other agricultural uses that you could employ that might generate more than $60 per acre per year?

A. Yes. We have looked into that for a number of years, actually.

Q. What have you considered or looked into?

A. Well, we considered raising deer, which there seem to be a lot of. We considered just shooting deer, which would be a viable use. We considered intensive truck farming, but with the importation of the amount of labor you'd have to bring in, it makes it very difficult, although it would be very productive land for that, for like tomatos.

[redacted]

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horses, especially from Pimlico, because it's so close. I think it's four and a half miles a way. It's pretty close. Within five miles.

Q. How carefully have you looked at this idea?

A. Well, I have estimates on the cost of fencing, run-in sheds, and a central stable, modern stable facility, a well that has to be dug, and I have talked to a number of people about contracting to use the facility when it's built. I've talked to an expert, Malcolm Commer (phonetic), from the University of Maryland who sets up facilities, and his specialty is equine economics and he goes around helping people set these kinds of facilities up.

I've talked to David Hayden, who raises horses, and Dennis Potts, and Carol Fenwick, as well as St. Tim's School, Garrison Forest School, and John Bosley who runs a horse teaching, riding, teaching facility at St. John's place right now.

Q. Based on all of the work you have done, what, in your judgment, is the most to the best use for your land, agricultural land?

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A. Well, I think the income from the property would increase from around $3,000 a year to $40,000 a year, and the capital investment would be around a hundred thousand dollars, if it was done with some work on my part. It would be work, plus a hundred thousand dollars, but I think to build a facility that could create that kind of income.

Q. Now, based on the work you have done and the research you have done and based on your knowledge, do you have an opinion as to whether you could have this horse operation such as you have described with helicopters commuting day in and day out at this helicopter pad, five landings, five takeoffs per per day, and five Maule landings and five takeoffs per day?

Do you have an opinion as to whether you could use the land for the agricultural purposes you have described if that operation was going on next door or in close proximity?

A. No, I don't think it would work. I think that if you had the same horses there all the time and didn't rotate them and you had horses that were used to a

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helicopter landing, I think you could, and they were your own horse, I think you could do it.

I don't think you can rotate horses there, though, and train kids on their own horses they bring, which is often the case, or rotate high-string racehorses that are injured. And I don't think that anyone will put their horse there.

You might be able to put your own, but the perception is, throughout in the industry, that – even in the insurance industry – with insuring horses, that it's incompatible to have that kind of noise and activity.

MR. GILDEA: I am going to object to the insurance companies industry.

THE CHAIRMAN: I am going to sustain the objection.

A. I have been told --

MR. NELSON: There were two references.

THE CHAIRMAN: The perception and thereafter should be stricken.

Q. Well, when you crunch the numbers, what's that going to cost you, if you can't do that?

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A. Well, if the facility went for -- I guess to build that facility, it would be a forty-year life expectancy, probably a longer crunch than that, but $40,000 over forty years.

Q. That's your income estimate?

A. Yes. I mean, it's quite substantial.

MR. NELSON: One moment, Mr. Chairman. I have a very nice photograph I want to show the witness, but I didn't want to lose custody because it's not mine. Can we show it to the witness, have it marked, and present a smaller version? I don't have the authority to put it in evidence.

THE CHAIRMAN: Yes.

Q. Now, while these folks are looking at this photograph, let me just follow up with one loose end.

That is, you said you measured your house with a noise meter, the helicopter taking off and landing is about eighty decibels. Was that inside or outside?

A. That was outside.

Q. Can you describe for this Board, please, what it's like to be in your house in the morning and in the

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * June 23, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 9:45 o'clock a.m., June 23, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

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Q. You live where?
A. 1019 Greenspring Valley Road.
Q. We have in evidence here, or at least marked for identification, a plat which shows Helmore Farm and those lands just to the west of Helmore Farm. The plat says Susan C. Immelt, and there's another another smaller property, Steven Immelt and Susan Immelt. Is that you and your family?
A. Yes.
Q. With whom do you live there?
A. My husband, Steve Immelt, and my two children.
Q. Doug Carroll testified earlier. He's your brother?
A. That is correct.
Q. He lives with his family to the west of you?
A. Yes.
Q. Could you, just very briefly, tell this Board -- not going to go over the whole history of this area perhaps back to the forties and fifties -- but how long have you lived in the area?
A. I lived in the house -- I lived in this house

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here, growing up here where Doug lives. And then in 1985, I moved to this house, which is where my grandmother lived when I was growing up.
Q. Now, could you show just goes to the plat and trace with your finger where your property borders Helmore Farm?
A. All the way along here, down to Jones Falls.
Q. And then who borders Helmore Farm to the south of you, you brother, Doug?
A. That is correct.
Q. Let me direct your attention to this plat which shows the helicopter pad. You have seen that, have you not?
A. Yes.
Q. Can you describe for this Board approximately how many feet there are between the closest edge of the helicopter pad fence and your property line, how far away is that?
A. I haven't measured it. Maybe twenty feet.
Q. It's close?
A. What?

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Q. It's close?
A. It's close, yes.
Q. Can you describe to this Board what you and your immediate family use your property for? How do you use it to enjoy it? What do you do on it?
A. We both, my husband and I, work. And we have always gotten our recreation and exercise by walking, running on the property, going out -- going down particularly to the Jones Falls with our children since they were young children and kind of, you know, playing around in the water, stuff like that.
But we both walk and run on the property a lot. And it's planted in crops, other than where it has a path and things like that.
Q. Now, do you have or have you had occasion and have the other members of your family had occasion to use the land along the borderline of Helmore Farm going down to the Jones Falls and moving north?
A. Yes.
Q. Let's go back in time maybe three or four months, and let's talk about this area on your property now just

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west of Helmore Farm.
If you and I or the Board was there three, four, five, six months ago, what would we see there just on your side of the property line in terms of trees?
A. Well, I believe you're referring to an old large sycamore tree that was just along the property line of -- just mostly on my side of the property line that was cut down on the first day of this hearing.
Q. We'll come back to that. The question was, was that tree there several months ago, the sycamore tree?
A. Yes.
MR. GILDEA: I am going to object. I don't want to belabor the point, but if Mr. Nelson is trying to indicate there's a trespass, or some action, that's a Circuit Court matter, not a matter for this Board.
She hasn't done a survey, there's no surveyors here to indicate where the tree was. It may or may not be a dispute among the adjacent neighbors. If it is, I am sure Mr. Nelson will file suit in the Circuit Court, but it's not relevant.
THE CHAIRMAN: He may be heading in a different

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So that now, that's my understanding of it, and, certainly, yesterday morning when the helicopter was trying to land, I think if that helicopter comes in under foggy conditions, knowing there are large trees there, it's somwhat limiting the approach.

Q. Ms. Immelt, earlier in this proceeding your brother, Doug Carroll, testified he was contemplating setting up a horse operation, a riding stable or thoroughbred layup operation.

A. Yes.

Q. He was concerned about, he explained, both you and he were renting cropland or crop farming, x-dollars a year, and he was thinking about trying to switch over to the horse operation, and he had expressed an opinion this helicopter operation would make it impossible for him to achieve that goal, which was too bad, because it was more profitable than renting the land.

Dennis Potts came in as an expert and testified that there's a need for that, and it would be viable, and it's not viable in the space of this helicopter coming in on a daily basis.

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Do you have a view or anything you want to tell the Board about what you think about the potential granting of the special exception for the use of this helicopter and what effect it might have on your ability to move your land into a horse operation, should you decide to do so in the future? What are your thoughts on that?

A. Well, Doug and I have talked about that for a long time, and I -- we have thought about it. And I think that it would be very difficult to have horses enclosed in an area that really makes the best use of my property up to the property line if I had to tell people who owned these horses that a helicopter was going to be landing twenty-five feet away, if that's what you're asking me.

Q. My question is, do you believe that Mr. Grass's proposed use can limit your use of the land?

A. It is limiting. It is limiting in our ability to do that which may be the best use of our land over the next few years.

MR. NELSON: That's all I have of this witness. Thank you.

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CROSS EXAMINATION

BY MR. GILDEA:

Q. Ms. Immelt, I will be very brief. This breeding or boarding horse farm that your brother, Doug, and you have talked about, do you all have any assets set aside for this, or for the funding stage or planning stage?

A. It's not a breeding operation.

Q. It's a boarding operation?

A. Yes.

Q. I apologize.

A. He actually -- he boarded a few horses now, so it's a lot more simple than having a breeding operation. Well, I don't know anything about breeding operations, but, basically, yes, we have the wherewithal to do it.

And, as I said, it is something that we talked about for awhile. And there are -- we have had our land in cropland for a long time, and I am someone who doesn't like to jump into changes. So, yes, we have the wherewithal to do it, if this were the case. So the answer is yes.

Q. But it sounds like it's still in the planning

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stages?

A. Well, how can we do it if there's a helicopter landing there? We can't do -- we can't ask for a commitment from people when we don't feel like --

Q. How long have you all been talking about that?

A. Well, I have lived there for fourteen years, so -- do you want this whole history?

Q. Briefly.

A. The problem is this cropland is -- there are several big pressures under the agriculture use that we are using and one is, obviously, there's been a terrible draught.

Another one is that we have got a tremendous amount of deer damage. And we hired, this past year for the farm that rented it, we hired -- we have made a contract with a deer handling operation in hopes of limiting their damage.

And the third thing is they are located, it's called Trenton Mill Farm, and they are located way up in Upperco. And we had previously used a more local farmer, and he just did not really keep on top of things, so we

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were with him two or three years. But Trenton Mill Farms, we think, is a very good operation, but they have to bring all their machinery from Upperco and, you know, we don't have -- we have, particularly my land, maybe they are just telling me, but they say it's very productive. I know even in drought times, the corn grows well, so forth.

So between the deer and -- the deer is really the biggest problem we are trying to help them with, but I think that each year now they are weighing, Do we want to stay with the Immelt farm and Trimble farm, is it not worthwhile?

And I think they felt a pretty strong commitment to us, as we also do for them, and that would be a main factor. And I would say the deer began to be really a big problem -- well I think everybody knows -- I would say maybe six or seven years ago that it started really having an impact on the farmland where you can just see every day herds of thirty deer out there eating up all the crops.

So that would be the main reason, the main kind of impetus for why we started talking about that.

Q. I apologize for not be too terribly clear. My

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question was, when did you all first talk about having the boarding facility?

A. Well, actually, we -- the first time we talked about it was when I -- soon after I moved there.

Q. About what year was that?

A. 1985.

Q. That's when your discussions began talking about --

A. Yes, having horses there. Our first conversation was actually with Dale about enclosing our property, but we never pursued that.

Q. When did discussions become more serious?

A. I would say around the time that the deer -- five years ago. No, not five years ago. A little more than that, when we had gone to this other farmer, Hank -- well, never mind who he is. We went to this other farmer, wanted to try something different. That didn't work out. And instead of going back to Trenton Mill, we tried to -- we were thinking about other uses, so I would say that was six, seven years ago.

Q. Just so I am clear, you all, it sounds like, have

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the financial wherewithal to go forward with the plan? Not to inquire about your financial status.

A. Yes.

Q. And the reason why you haven't moved forward with the plan is you're cautious?

A. I am extremely cautious. I am very cautious. And I have a lot of the land and, you know, I am settled with how things are right now.

Q. So you have been discussing it for fourteen or fifteen years, and the last six or seven years more seriously?

A. Yes. I can see there's a problem with the use as we have it now, and we are required to keep it in agricultural use. So if we decided this cropland, they didn't want to do the crops anymore, we couldn't just say, fine, we'll let it grow up in woods or something. We are required to care for it as agricultural land.

MR. GILDEA: Thank you, Ms. Immelt. That's all the questions I have.

THE CHAIRMAN: Mr. Nelson?

MR. NELSON: I have no further witnesses for

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today.

THE CHAIRMAN: Two questions, if you don't mind. Did I understand you to say you're currently boarding horses?

THE WITNESS: Oh, my brother has a couple horses at his place, very low key operation. He has some horses there.

THE CHAIRMAN: On the day of our site visit, at least my observation, I had difficulty seeing your home from what I believe was on your property. This was in June. Is this pad visible from your property?

THE WITNESS: No, it's not.

THE CHAIRMAN: Is it 500 feet away?

THE WITNESS: No. I don't know distance. You can see it -- this is my house all the way up here, and this is where the helipad is.

But I can see -- there is a little hill. You can see there's a hill here, so it kind of goes down behind the hill.

MR. STAHL: I have a couple --

THE CHAIRMAN: I'm sorry. Could you step up

there again? Once again, your property is where? Your brother's property is where?

THE WITNESS: Okay. This is my property, here. And actually it only goes to the Jones Falls here. It comes up and goes here. Okay?

THE CHAIRMAN: And your brother's?

THE WITNESS: This is my aunt's property. My brother's property comes down here, around here, and then comes over to here. The Jones Falls doesn't -- it comes across here, so he is all the way down like this.

MR. STAHL: Where is your brother, Doug's, whatever, horse operation he's doing now?

THE WITNESS: Way up here. I am really hesitant to call it a horse operation. He does have some horses there.

MR. STAHL: If you were to go ahead and do this switch over to a horse facility of some description, just based on the discussions you and your brother have had to date, what would be the outline of the property that would be so utilized?

THE WITNESS: Okay. It would come -- this isn't

clear. Anyway, it would come down his property line, come along north of the Jones Falls, and come up to -- it would come up to about here. And my aunt lives here. And my aunt does not -- she's 87, and I might be cautious, but I don't want to -- I'm not really ready to present that to her.

So I am thinking we would bring it all the way up here, but only to this line, only this area here. And it would go around up here, or around -- this is his front pasture. He has a lower pasture here. And this is just all presently cropland. So it would go all the way around like that.

MR. STAHL: Your house, again, while standing there, is --

THE WITNESS: Right there.

MR. STAHL: How far is it from the helipad to your house, what would you guess?

THE WITNESS: I don't know.

MR. GILDEA: There's a dimension from the special exception area to her house.

MR. STAHL: How about to your brother's house, do

you have any idea? If you don't, that's okay.

MR. NELSON: It's on the plat.

MR. STAHL: Thank you.

THE CHAIRMAN: Is that all?

MR. NELSON: That's all I have. I feel bad I didn't develop more of the day, but I would have, had there been a long cross examination.

MR. GILDEA: I'm not apologizing.

THE CHAIRMAN: Did you want rebuttal at this time?

MR. GILDEA: We reserve until after protestants' case.

THE CHAIRMAN: We have another day scheduled for July 1st at 10 o'clock. We'll adjourn until that time.

By way of caution, we're probably going to require briefs on this case. You may want to start writing them. Off the record.

(Discussion held off the record.)

THE CHAIRMAN: We are adjourned.

(Hearin adjourned.).

* * * * *

I N D E X.

Witness	Direct	Cross	Redirect	Recross
James Fanjoy	5	13, 30	37	39
Paul Solomon	44	89, 97	120	121
Norman Gerber	130			
Susan Immelt	145	164		

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IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

A. There are any number of things that can cause a horse to run around.

Q. One of the things you want to do as a trainer is preserve your investment and keep the horses away from the helicopter that might cause them to aggravate a preexisting injury?

A. I can tell you we have horses in the stall, confined. We have High Speed Freak is in there now. He's a very good horse, and it doesn't bother him at all when the helicopter flies and and out.

Q. He's injured?

A. Yes. He had chips removed from his ankle.

MR. NELSON: That's all I have. Thank you.

THE CHAIRMAN: Redirect?

MR. BARHIGHT: Yes. Thank you.

REDIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Lucas, I am a little confused. Is it Military Mike?

A. Military Mike.

Q. Why -- for a moment, pretend there's no aircraft

operation at Helmore Farm at all. Would there be times you wouldn't want Military Mike running around in the fields?

A. What, in the condition he's in now?

Q. In the condition when he was being laid up, quote.

A. When he was still being laid up, it became a point after surgery and his recovery from the surgery where he was turned out in the paddock, and he was turned out. And, as a mater of fact, he was turned out in a paddock -- because he's a gelding -- right next to the field where the airstrip is, and he was fine. It didn't bother him.

We have a horse turned out in the field where the airstip is right now that we bring up into the catch pen if we are going to land a plane that's recovering from a broken sesmoid, and he's fine.

Q. Let me make sure I've got the jargon here. "Laid up" relates to when a horse has been injured?

A. Yes. Or you could have a layup where you're just giving him a breather, if he's been racing a lot and you

want to refresh him mentally, of if he's gone down in weight and you might want to turn him out in the spring pasture and have him pick up some weight.

Q. So the phrase "turning out," means to fields he'd be comfortable?

A. According to the doctor's orders.

Q. Would there be any reason to delay the turning out of a horse that's been laid up due to the proposed operation of the airport at Helmore Farm?

A. Absolutely not. Can I say one thing?

THE CHAIRMAN: No.

MR. BARHIGHT: No.

Q. Mr. Nelson has tried to characterize you as a custom homebuilder. Other than residences and structures on the Helmore Farm property, when was the last time you were the custom homebuilder of a home anywhere, other than the Helmore Farm?

A. I built a house that I used to live in down in Rockland where Jim Palmer lives now. It's a very large custom house. I was the general contractor and pounded nails, did a lot of carpentry work myself. That might be

the last one.

Q. About how long ago was that?

A. Probably fifteen years ago.

Q. Are you currently marketing yourself as a custom homebuilder?

A. No.

Q. Mr. Nelson also asked you some questions with regard to the special note regarding the airport use and the note that, I believe, was contained on previously a petitioner's exhibit before the Deputy Commissioner marked as Petitioner's Exhibit 2B.

I believe he asked you a question with regard to the footnote removed. The note was No. 6, stated the airport operation shall not exceed sixty-five Ldn, paren, acoustic criteria, end of paren. Do you recall those questions --

A. Yes.

Q. -- that Mr. Nelson asked?

A. Yes.

Q. Are you an expert in acoustics?

A. Absolutely not.

Q. Are you a registered professional engineer in Maryland?
A. Yes, I am registered in Maryland as a professional engineer, have been since 1981. I am also registered in thirteen other states.
Q. Can you give the Board a sense of some of the airport projects that you have or your firm has acted as a consultant on in Maryland?
A. We are currently doing work in Easton, Maryland, doing work at Salisbury, a runway reconstruction, have been working there for a number of years. We have worked at Carroll County, worked at Frederick, Hagerstown, Cumberland, Maryland.
Q. What sort of issues do you analyze when you are brought on board as a consultant?
A. Everything from soup to nuts, everything from planning issues in accordance with FAA guidelines, environmental issues, noise issues, through construction of aprons, runway extensions, pavements, rehab lighting of navigational facilities, airplane issues, instrument approach procedures through construction.

MR. GILDEA: I would like to offer Mr. Lamb as an expert in the field of airport engineering design which would include such issues as safety planning, design, construction and noise impacts.
THE CHAIRMAN: Voire dire?
MR. NELSON: I will hold my examination, sir.
MR. GILDEA: Thank you.
Q. Mr. Lamb, are you familiar with this site, Helmore Farm?
A. Yes, I am.
Q. Mr. Lamb, how are you familiar with the place?
A. I visited the site in March of last year a couple times. I visited again last week. I have visitied it on the grounds and also have flown in and out of the facility.
Q. What materials have you reviewed regarding Helmore Farm, specifically?
A. I have reviewed the site plan. I have also looked at the seven and a half minute quadrangle topographic information for that. I have also looked at some other maps and data.

Q. You indicated that you are familiar with what has been marked for identification purposes as Petitioner's Exhibit No. 1?
A. Yes, I am.
Q. Could you describe the proposed airport use at Helmore Farm?
A. It's a privately-owned, private-use facility. We anticipate a mix of fixed-wing and helicopter operations into and out of the facility, as has been historically the case.
Q. Could you describe -- you stated you are familiar with the site -- some of the topographical features as you, as an expert in airport design, looked at on Helmore Farm?
A. Okay. The site is roughly 1200 feet long for runway length. There's a helipad located on one end of the facility.
MR. NELSON: I'm sorry, I missed the length.
THE WITNESS: The runway length is roughly 1200 feet.
Q. What type of landing area is recommended for a

fixed-wing aircraft?
A. The recommended width of the fixed-wing aircraft is 120 feet in accordance with FAA guidelines. The actual width is something larger than that. I would estimate 200 feet in width.
Q. I ask you to describe to the Board the flight path as indicated on Petitioner's Exhibit No. 1.
A. We would anticipate the fixed-wing aircraft would come in and out on runway 826; the magnetic bearing of the runway would be approximately eighty degrees and 260 degrees.
Q. If you'd like for ease of clarifiction to come forward and use the site plan to show the typical flight path of a fixed-wing aircraft?
A. Typically, the fixed-wing aircraft would enter, if landing, in this direction (indicating) -- could flip it for the other side -- would normally make a left-handed pattern and enter on a 45 degree angle onto a downwind, turn, and then a final approach. Down-wing would typically be a thousand feet above the ground. Once you're beamed in, you have a gradual descent down to the

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facility. Coming from this direction (indicating), you typically gear downwing, face a final approach with landing on the facility.

Q. How about for a helicopter operation, what would the flight path be?

A. Based on my observations and talking with the chief pilots, the helicopter operation comes in generally like that (indicating.)

Q. You were a consultant in this case at the Deputy Zoning Commissioner's level, is that correct?

A. That is correct.

Q. At that time, did you make any recommendations regarding helicopter and fixed-wing aircraft operations at this property?

A. I made a couple of recommendations concerning improvements to enhance the facility that, based on my site visit last week, have been completed.

Q. What are some of those improvements that have been completed?

A. They paved an area for the aircraft to touch down on or lift off from. Although not a requirement, an FAA

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requirement, it is recommended to have a paved area for that. They put in a lighted wind cone, or wind sock, sometimes it's called that.

They also put in a weather station for the facility, and they have added some lighting of the helicopter operational area.

Q. What is the weather station? What does that do exactly?

A. It's an automated weather observation station, basically will collect information such as wind direction, speed, collect things like ceiling height, visibility, and it relays that information up to the pilot.

It's not a typical piece of equipment for this type of facility, although it's a significant enhancement.

Q. How would the pilot have access, say, for example, if you flew up from Richmond, had permission to land, how would you access that weather information?

A. It's not published since it's a privately-owned, private-use facility, so the way I would get that, one, get permission to land here, or to have access to that information would be to call Mr. Lucas, get permission,

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and get those particulars of the information from him on the frequency that that information is transmitted on.

Q. Take a seat.

A. Yes.

Q. Have you had occasion to observe the flight operation at Helmore Farm?

A. Yes.

Q. Do you recall when that was?

A. March 16, last year.

Q. What aircraft flew in and out of Helmore Farm on that date?

A. It was Augusta A-109 helicopter.

Q. Did you observe any fixed-wing aircraft fly in and out?

A. Not on the day I was there, no.

Q. Now, the helipad is constructed at the facility?

A. Yes, it is.

Q. Is the airport, the landing area for the fixed-wing aircraft as constructed, a safe facility, in your opinion?

A. For many families of aircraft going from in and

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out of the facility, yes.

Q. Could you fly a 747 in and out of here?

A. No, indeed.

Q. F-14s?

A. Not even -- the aircraft I flew up in is a Beach Baron. It would not be able to operate in and out of this facility in accordance with the Pilots Operating Handbook. Some aircraft can, and the significant number that cannot.

Q. And how would a pilot know whether he could land at Helmore or not in the type aircraft he had?

A. FAA requires the aircraft manufacturer provide a Pilots Operating Handbook. It will have performance codes the pilots have been trained to use which are based on temperature, aircraft weight, runway radient, height of construction, will tell the pilots what limit is required for takeoff and what length is required for landing.

Q. Is Helmore Farm shown on FAA charts with its length of runway?

A. I haven't looked at the latest chart to see if it is shown but, yes, it is a published airport, has received its federal identification number. If it isn't on the

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chart, it will be. It probably is on the chart.
Q. Getting to the federal standards, could you describe generally FAA requirements for this type of airport?
A. For a private-use, privately-owned airport, the FAA doesn't mandate but a few requirements. This airport, in fact, for example, the runway width would be in excess of 120 feet. The length is going to have to meet the Pilots Operating Handbook for the family of aircraft operating into and out of the airport. Runway gradient is a consideration, approaches, and what the approaches are.
Q. Does this airport meet all the FAA guidelines?
A. Yes.
Q. Has it been approved by the FAA?
A. Yes.
Q. Are there also requirements by the Maryland Aviation Administration? The MAA.
A. Right. For a privately-owned, private-use airport, they are to be registered with the state, and it does meet those requirements and has been registered with the state.

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Q. Does the the helicopter operation meet both FAA and MAA requirements?
A. Yes. I would state that it exceeds them.
Q. There has been some issues raised in opening argument and there hasn't been any evidence regarding the distinction between airport and airfield and helicopter operations.
How would you characterize this issue as an expert who spends day-to-day designing these types of uses?
MR. NELSON: Objection.
THE CHAIRMAN: Overruled. The witness can answer.
A. Typically, airport operations are a mix of fixed-wing and helicopter operations.
Q. Do airports typically have both fixed-wing and helicopter operations?
A. Yes. That's common.
Q. As a percentage, how many percent of airports would you say have a combination of those?
A. Over ninety-five percent. It would be atypical

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for an airport not to.
Q. Does the FAA define an airport in any of its guildelines?
MR. NELSON: Objection. Relevance.
A. Yes, they do.
MR. NELSON: This is a zoning case.
THE CHAIRMAN: Overruled. He can answer.
A. In the FAA published definitions of airports and the Pilots-Controllers Glossery -- you don't mind if I use my cheater glasses? -- an area on land or water that is used or intended to be used for the landing and takeoff of aircraft, and includes its building and facilities, if any.
Q. Does the FAA define "aircraft"?
A. Yes, they do.
Q. What's that definition?
A. The International --
MR. NELSON: Objection.
A. The International IKO standard definition for aircraft, any machine that can derive support in the atmosphere from the reaction of the air other than

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reaction of the air against the earth's surface.
Q. Does the FAA make any, or MAA, make any distinction between an airport and a helipad?
A. There can be -- the subset of airport is helipads, and a helipad can be built to a reduced standard.
Q. There was also some discussion about the removal of a note on the previous plan submitted, I believe it was Petitioner's Exhibit 2B at the Deputy Zoning Commissioner's hearing. Was it your recommendation to remove that note?
A. Yes, it was.
Q. Why did you make that recommendation?
A. When I was asked to review the notes, or that component of it, I felt the note was difficult to interpret, it was poorly crafted. I didn't know how to interpret it.
Q. Did you recommend at the Deputy Zoning Commissioner's hearing that the note be placed on the plan?
A. No, I did not. It had been placed on the plan

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previously to that. I also felt that the intent of the note was met. I think the intent of the note was it be a limited use facility with some restrictins on the number of aircraft that came into and out of the facility.

And it's my understanding the owner had proffered to a restricted number of average daily takeoffs and landings for each family of aircraft, that being the helicopter and the fixed-wing.

Q. Just so the Board is clear, the record is clear, you weren't asked to offer any opinions at the Deputy Zoning Commissioner's hearing regarding noise or sound issues?

A. That is correct.

Q. You were simply an airport expert on safety issues?

A. That is correct.

Q. And in this case, we're now offering you as an expert in both the design safety as well as the sound impact?

A. That is correct.

Q. And then when you reviewed the site plan, it was

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your recommendation to remove the note because, I think you indicated, it didn't make any sense to you?

A. Correct.

Q. Did there come a time in which you did draft a sound exposure analysis plan?

A. In accordance with FAA standard guidelines, we did prepare, based on a twenty-year forecast --

MR. NELSON: Objection. He's about to examine the witness on a very sophisticated subject. There is only one sound map. I need five minutes to look at the map.

THE CHAIRMAN: Fine. We'll take five minutes so Mr. Nelson can look at it.

(A recess was taken.)

MR. NELSON: I am ready, Mr. Chairman.

THE CHAIRMAN: We can proceed.

MR. GILDEA: I'd like to offer for identification purposes at this time the sound exposure analysis plan as Petitioner's No. 2, I believe.

THE CHAIRMAN: Any objection, Mr. Nelson?

MR. NELSON: To the accuracy of the document,

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yes; but as to the admissibility, no, sir. But we do contest it.

THE CHAIRMAN: I understand.

Q. Mr. Lamb, would you describe to the Board what a sound exposure analysis is?

A. We were asked to prepare a sound exposure analysis for Helmore Farm based on a specific number of aircraft at twenty aircraft operations into and out of the facility on an average per day.

The contours were completed in accordance with the integrated noise model that was developed by the FAA and in concurrence with HUD and EPA.

The model prints out noise contours of equal average background expose in a matrix called Ldn, level day-night average. The input into the model includes such things as aircraft flight, track the number of aircraft operations, elevation of the field, family of aircraft going into and out of the airport, and also approach and takeoff profiles.

MR. NELSON: I missed the last part.

A. Takeoff and arrival profiles.

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Q. How many of these sound exposure analyses have you personally performed?

A. In excess of thirty. Probably fifty.

Q. Did you prepare this one?

A. Yes, I did.

Q. The word "Ldn" has been used here frequently. Could you describe to the Board what exactly "Ldn" means?

A. Level day night. It's a matrix that has been picked by the FAA, EPA and HUD that they feel best quantifies human reactions to transportation type noises for that.

It is an average background noise generated by the transportation facility, in this case, the airport, with one big exception. Nighttime operations are penalized by ten db, so one nightime operation would count the same at ten daytime operations.

Q. You are familiar with what's been marked for identification purposes as Petitioner's Exhibit No. 1 wherein Note No. 5 states the hours of taking off and landing of the aircraft will be between 7 a.m. and10 p.m., is that correct?

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A. Yes, I am.
Q. That means there will be no nighttime operations?
A. Correct.
Q. If you would, could you please come down to the plan? Describe for the Board what is shown on the sound exposure analysis plan.
A. We plotted the twenty operations at the airport, an average of the twenty operations per day into and out of the facility for that. The helicopter flight path we brought in this way based on our own observations and discussion with the chief pilots. The fixed-wing, the majority of the aircraft, that way. We split the traffic for runway orientation based on the Baltimore wind flows (sic) for that.
Q. What is shown in the blue line?
A. The blue line is the sixty-five Ldn, which is the national standard for which any land use is compatible outside of that. The seventy db is the next. They will go in five Ldn steps for that. Normally speaking, even noise sensitive land uses are compatible outside of the sixty-five Ldn noise control.

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Q. Has the FAA produced a regulation regarding noise compatibility planning?
A. Yes.
Q. Could you describe to the Board what that is and what the purpose of that regulation is?
A. The FAA did publish Part 150 of the Federal Air Regulations which goes into details as to how noise exposure maps are prepared.
Q. I ask you to identify this, for the record.
A. This is the copy of the Federal Aviation Regulations Part 150 Airport Noise Compatibility Plan.
Q. Did you rely upon this in preparing for your testimony today?
A. Yes, I did.
MR. GILDEA: I would like to submit this as Petitioner's No. 3.
MR. NELSON: No. 3? No objection.
THE CHAIRMAN: Admitted.
Q. Pursuant to Part 150, what sort of land uses are compatible outside of the sixty five Ldn? In other words, what's this area here?

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A. The low sixty-five Ldn, items such as residential, mobile home parks, transient lodging, schools, hospitals, churches, transportation, parking, offices, business, manufacturing, and recreational, such as outdoor sports arenas, spectator sports, those type things.
Q. Are there any uses which FAA deemed not compatible under the sixty-five Ldn?
A. No.
Q. Between the sixty-five Ldn level and the seventy Ldn level, what uses has the FAA found compatible, HUD and EPA, found compatible?
A. Based upon the recommendations listed in Part 150 of the Federal Air Regulations, things like government services, transportation, parking, commercial uses, manufacturing, and you can have production and recreational items.
Q. Specifically, what types of recreational items are compatible between sixty-five and seventy Ldn?
A. For example, one that would not be would be outdoor music shells or ampitheaters. National exhibits

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or zoos are compatible. Amusements, parks, resorts, and camps, golf courses, riding stables and water recreation are some exhibits of compatible uses between sixty-five and seventy Ldn.
Q. Would livestock farming and breeding and riding stables also be compatible between the sixty-five and seventy Ldn?
A. Yes, it is.
Q. Would agricultural use be compatible -- at what level is agricultural use compatible?
A. Agricultural uses are, in fact, compatible, and except for livestock, for example, it's compataible all the way up to over eighty-five Ldn. Livestock farming and breeding is compatible, with some footnotes, up through seventy-five Ldn.
Q. Are recreational uses compatible between sixty-five and seventy Ldn?
A. You can build a house between sixty-five and seventy Ldn. The basic recommendation is it being recognized that you don't prefer that.
Q. Would you have to use materials, specific

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materials, if you chose to build a house between sixty-five and seventy Ldn?

A. It is, in fact, fairly easy to obtain the noise level reduction required to build between the sixty-five and seventy Ldn with modern construction techniques, even for residential dwellings, between the sixty-five and seventy Ldn.

Q. Based on your experience, are there residential communities built in the sixty-five to seventy Ldn?

A. Yes.

Q. Are the Maryland standards, does Maryland have similar standards as to the Part 150 land use compatibility?

A. The Maryland Department of Transportation also uses the sixty-five Ldn as the threshhold for starting and looking at land use restrictions.

Q. Let me go back briefly and talk about, you indicated the FAA, EPA and HUD had all approved Part 150. What was the goal of creating Part 150?

A. The goal of coming up with a common matrix for describing transportation sound or noise impacts was so

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that you had a common paramater that you could accurately predict human reaction to the noise generated by the highways, airports, or other transportation facilities.

A lot of studies have been completed that correlate human reaction to these different Ldn values.

Q. So assuming, since HUD was involved, they are interested in the impact in the surrounding community as well?

A. Yes.

Q. Now, did you also conduct a point grid analysis as part of your sound exposure analysis?

A. We did a detailed point analysis at some, I think, eight or nine points of interest around the airport.

Q. What is a point grid analysis?

A. If you have the distance from the airport in the direction from the airport, you can go in and ask the computer model specifically Ldn values at that specific point, instead of having to interpolate between different contours.

Q. I'd again ask you to come down to the plan. Now,

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looking on the plan, there appears to be a small circle with a cross through it. Is that where you indicated where the points are?

A. We did do a grid analysis here at a thirty-five foot setback line from the property line.

Q. Do you need any materials to refresh your recollection as to what --

A. The values were?

Q. Yes. What was the value at this point which you indicated was thirty-five feet off the property line?

A. That had an Ldn value of 61.3.

Q. Did you do a point grid analysis from the Brewster property?

A. Brewster's, the value was 43.6.

Q. And from Douglas Carroll's property, the Ldn?

A. Thirty-six.

Q. From the Donahugh's property located here?

A. 54.3.

Q. From the Immelts property located here?

A. 41.8.

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Q. Edgar Lucas is house which is now shown here?

A. Forty-four.

Q. Dale Lucas's house, I believe he testified, is 500 feet from the fence. How many Ldn?

A. Forty-four. 55.6 for this one. Forty-four for that one. Excuse me.

Q. Okay. The Reynold's residence, which is located on Hillside Road?

A. Just under 50 Ldn.

Q. And the two Trimble residences here and here?

A. Were under 40. 39.6 and 39.

Q. And they are all under the sixty-five Ldn level?

A. Yes. Most of them by a lot, and that would be the average background noise generated by the airport.

Q. So, for example, what does it mean that the Ldn level at the Carroll residence is 36? As an expert, what does that tell you?

A. Negligible. Thirty-six is a very, very low background noise generated by the airfield.

We did not do any on-site studies as far as what the background from another source such as the highways

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and other things like that, but based on previous studies that have been done at the airport, the average background noise was in the fifty, sixty, seventy Ldn range.

Q. What does that tell you, as an expert?

A. Not an impact, that most people would perceive as not an impact.

Q. Is the background noise at this site typical to what you would find in a quote, unquote, quiet country setting?

A. It's actually a little bit higher than I was anticipating, but, yes it's still a rural setting. I think some of the highway noise, distant highway noise is also picked up in that.

Q. Have you ever conducted a study on an airport where the impact on the surroundig properties were less than this airport?

MR. NELSON: Objection.

THE CHAIRMAN: Overruled. He can answer.

A. In the twenty-seven years I have been working with it, no, I have not done a project where the impact of the airport were less than this on adjacent residential

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structures.

Q. I want to clear an item up. You indicated that the sound exposure analysis plan was based on twenty operations, I believe --

A. Correct.

Q. -- a day. How do you define an "operation"?

A. The FAA standard definition for aircraft operation is a takeoff or a landing, so if an aircraft were to come in, pick up a passenger and then leave, that would be two operations.

Q. Did you break it into ten operations for the helicopter operation and ten operations for fixed-wing?

A. Yes.

Q. What's the difference between an "operation" and a "event"? On Petitioner's Exhibit No. 1, they speak of events, and you were speaking in terms of operation. What's the distinction?

A. An event would be a cycle in and out, is the way I interpret that. So that would be -- each event is two operations. So if the aircraft went in and departed, that would be one event.

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Q. So five events for fixed-wing and five events for helicopter is equivalent to --

A. The FAA definition of ten operations of helicopter and ten operations of fixed-wing.

Q. Which is a total of twenty operations?

A. Correct.

MR. GILDEA: I'd like to submit into evidence as Petitioner's No. 2 the sound exposure analysis.

THE CHAIRMAN: Any objection, Mr. Nelson?

MR. NELSON: No, sir.

THE CHAIRMAN: Admitted.

Q. Mr. Lamb, as an expert in the field of airport engineering and design, do you have an opinion as to whether the proposed airport use here at Helmore Farm would have a detrimental impact above and beyond what you would normally expect on the surrounding area?

A. By an airport?

Q. Yes.

A. No. I think the airport would not have an adverse impact on the adjacent community.

Q. Why is that?

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A. Based upon the flight characteristics into and out of the facility, and also based upon the requirements of the sound exposure analysis that was completed.

Q. Is this a safe airport?

A. Yes.

Q. And does it have a minimum sound impact on the surrounding community?

A. It's the least I have ever seen.

MR. GILDEA: That's all the questions I have at this time.

THE CHAIRMAN: Your witness, Mr. Nelson.

MR. STAHL: I have a question, and let's do it now before cross examination.

Have you ever, in the course of the different projects that you have worked on, had to deal with conflicting regulations or conflicting rules between a local authority and a federal aviation agency?

THE WITNESS: Yes. In fact, I have had to deal with conflicting regulations within the Federal Aviation Administration, or within the state.

MR. STAHL: That being the case, would you, as an

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A. I'd have to go back and look at the input files.
Q. So I am right in saying, am I not, you used no field data to crunch these numbers?
A. Correct, which is typical for use of the integrated noise model.
Q. Who actually drew the contours on that plat?
A. Our plotter.
Q. Is that straight from a computer plan, a computer program?
A. Yes. The FAA model prints out a profile that is then sent to the plotter.
Q. Does this noise contour of sixty-five decibels, even using all the assumptions you used, even though you don't have the data here, does it cross the property line or not?
A. Yes, it does.
Q. How far over the property line does it cross?
A. Less than thirty-five feet. I'd estimate fifteen feet.
Q. Now, I know you may not pick thirty-five feet as much, but that's incompatible with residential use, isn't

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it?
A. Residential use is not recommended inside the sixty-five Ldn. Certainly, there are residential structures inside the sixty-five.
Q. So that's okay so long as my clients don't want to build a house within thirty-five feet of the property line?
Under that theory, it's okay?
MR. GILDEA: Objection. He said fifteen feet, not thirty-five.
Q. I'm sorry.
A. I estimated at fifteen.
Q. I beg your pardon. Is it your testimony or your opinion that it's okay to encroach, you can have this plume of noise pollution go onto someone else's property even if only fifteen feet because you're pretty sure they are not going to build a house there?
A. As I indicated, this airport has the least amount of noise impact on the adjacent residence that I have seen for any airport we have studied.
Q. Does that make it legal?

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A. Yes. The sixty-five Ldn noise contour typically does not stay on airport property.
Q. Right, but let's take BWI. If you own property within sixty-five Ldn at BWI, are you eligible for grants to insinuate your house?
A. Could be.
Q. Could be. You have got to disclose it when you sell the property to a prospective buyer, isn't that right?
A. I have -- I am not familiar with what requirements BWI has.
Q. Your ability to borrow money from the bank to improve your home is restricted, is it not?
A. Talking about BWI?
Q. Or any airport you choose.
A. Not necessarily.
Q. But may be?
A. May be.
Q. Are my clients eligible for funding from Mr. Lucas because of this encroachment of this noise plume?
A. The land use that is there is compatible well

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within the sixty-five Ldn.
Q. I see, because it's agricultural land?
A. Yes.
Q. It's irrelevant that my clients live there?
A. They don't live in this area.
Q. What about the Immelts, where do they live? Who owns that land there? They have the right to be there, do they not?
A. Yes, indeed.
Q. They could pitch a tent there, could they not?
A. Yes.
Q. Now, you said a noise contour of sixty-five that encroaches on someone else's property does not necessarily mean they are eligible for funding, but it triggers certain requirements, does it not, on the operator of the airport?
A. I'm not aware of any for this situation.
Q. How about a noise fund?
A. No. Not required.
Q. Why not?
A. It's not required. There is nothing that

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required one.
Q. I thought if a noise contour goes off site, you do a noise plan?
A. You may. You don't have to. A lot of airports haven't.
Q. Do you know Bruce Monday from the Maryland Aviation Administration?
A. Yes.
Q. If he were to come into this proceeding and testify if someone does a noise contour the way you have done it and if the noise countour goes off site, they have got to do a noise plan, you'd say he was full of it? Because, I am telling you, he's told me that.
MR. GILDEA: Objection.
THE CHAIRMAN: Sustained.
Q. Is he right or is he wrong?
A. Once again, you're not getting enough information for me to answer the question.
Q. What information do you need?
A. There are a multitude of airports both in and out of Maryland that have their noise countour, have the

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airport boundary.
It is atypical for a privately-owned, private-use facility to have gone to the expense and trouble to have developed noise contours. Noise exposures go outside of the boundaries of the property, yes.
Q. My question was not whether it's atypical, they were done, but whether the law requires that it be done. Not whether the law was enforced, but the law required it?
A. I'd have to review the statute.
Q. So let's go back now and review your testimony. You told us a moment ago that if your noise contour goes off site, you don't have to do a noise plan.
You have now modified that. What you are telling us now, you have to review the statute. What you do know, it's atypical to do a noise plan if your noise contour goes off site, is that a fair summary?
A. No.
Q. Tell me how I am wrong.
A. Okay. It is atypical for a noise analysis or sound analysis to be done for a privately-owned, private-used airport.

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Q. I am talking law now. Can you tell whether or not -- not whether the law is in force, but whether the law says if your noise contours go off site, you do a noise plan? Do you know?
A. I do not know for a privately-owned, private-use facility.
Q. Mr. Lamb, you have spent a lot of time now talking about Ldn, noise contours, HUD rules and regulations, EPA rules and regulations, FAA rules and regulations, MAA rules and regulations.
You have told us about what you think the rules are with respect to noise contours. You have told us how you calculate an MdB. You have told us the compatible uses with sixty-five Ldn, seventy, eight-five Ldn.
Now, I want to ask you, sir, what is so confusing about the note that was in the original plan which says the airport operation shall not exceed sixty-five Ldn? Why is that so hard to understand?
A. Two factors. The first is where. The second is at what time, i.e., is that something you would want analyzed every day, or is that something you want to

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analyze every month, every year, or every five years, or every twenty years. Is it for existing traffic or forecast traffic?
The intent, the owner's intent there was to limit operations at the airport in noise exposure. We feel the note that has been added limiting it to the twenty operations accomplishes that with the family of aircraft that can come into and out of this limited facility.
Q. But you'd be unable to add this note, based on your testimony -- tell me if I'm right. Assume the operation, you would assume, assuming those operations, you would not tell this client to add a note that says we will not exceed sixty-five Ldn off site anywhere, anytime, you couldn't add that note, could you?
A. You'd have to be more specific than that.
Q. In what way?
A. What year? What time?
Q. In the next six months, assuming twenty operations as you have assumed.
A. We showed the sixty-five Ldn does, in fact, go off the airport property by about fifteen feet.

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Q. So you can't make that representation, and you won't?
A. Correct. Because it does.
Q. Does the FAA have a definition for helipads?
A. Yes, they do.
Q. What is it?
A. I brought that with me. No, I didn't bring that.
Q. Can you remember it?
A. Exactly vrbatim?
Q. Can you remember it, sir?
A. Verbatim, no.
MR. NELSON: One moment. I may be done, Mr. Chairman. Just one moment, please.
THE CHAIRMAN: Surely.
Q. Mr. Lamb, I asked this, but I wasn't taking notes. I hope you will indulge me. I am going to to ask for a subpoena for your data. How do I find it, please?
A. For the input and output files, for the use to copy the sound exposure analysis for Helmore Farm, ask for –
Q. The last time I did this, my adversary said,

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We'll give you the raw data but not the software to interpret the data. Will this come with that software or not?
A. Software costs about $50. It's almost a share ware, but those are normal handling charges.
Q. Where do I get that, sir?
A. I can give you the address with the input and output facility.
Q. So if I get the share ware for $50 and your input and output data, I can review and understand the assumptions you have made and the conclusions you recommend?
A. That is correct.
Q. There's no hard data, is there, that you generated in your office, a report of any sort?
A. We could give you in written form the input-output files in the written form that comes out.
Q. Do you have those?
A. Yes.
Q. Do you have Mr. Miller's report?
A. Yes.

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Q. You don't have it here?
A. No. It's about a three-page report?
Q. I think. I'm not sure.
A. Okay.
Q. Do you have in your file in your office any other raw data about noise levels at the site, other than what we have just mentioned?
A. The only other thing would be the transcript that you have access to. Otherwise, no.
Q. It's not a burden for you to produce those materials?
A. Would not be a burden.
MR. NELSON: That will be all I have. Thank you, sir.
THE CHAIRMAN: Mr. Gildea?
REDIRECT EXAMINAION
BY MR. GILDEA:
Q. Mr. Lamb, I am a little bit confused from some of the questions Mr. Nelson was asking you.
Has or has not the FAA, EPA and HUD adopted a point source standard based on decibel level, is that the

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standard EPA, HUD and FAA adoptd, or was it the Ldn?
A. It's an Ldn standard.
Q. What's the distinction between the two?
A. Ldn is an average background noise generated by the airport with a ten decibel penalty applied for any nighttime operations. If you want to go to straight decibels, then that's an actual sound measurement, would not have the night penalty, and it would not average.
You need to have, in essence, a curve, a peak. With the sixty-five Ldn average, sometimes it has to be above, sometimes it has to be below that, to get an average of sixty-five.
Q. I am assuming there was some discussion between the FAA, EPA and HUD when they were coming up with a standard whether to use the point source decibel versus the Ldn, is that correct? Or are you familiar with any of those?
MR. NELSON: Objection. Leading. Beyond the scope.
THE CHAIRMAN: He can answer.
A. Does that mean answer?

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * July 1, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., July 1, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

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airstrip --

MR. NELSON: I objection. That wasn't the ruling.

THE CHAIRMAN: FAA only.

MR. GILDEA: I'm sorry, the FAA.

Q. What is your understanding of the difference between an airport and airstrip?

MR. NELSON: I object. Relevance.

THE CHAIRMAN: We'll let him answer.

A. If I could, I'd like to read out of the FAA definition of terms of the pilots and controllers definition of airport. An area on land or water used or intended to be used for the landings and take-offs of aircraft, including its buildings and facilities, if any.

The term "airport" is, in fact, registered with the FAA as an airport. The airport is, in fact, registered with the state as an airport. The facility does, in fact, have aviation facilities, including such things as wind cones, cemented circle, obstruction lighting, weather reporting station, paved services, taxi landing, et cetera. By any definition that I have ever

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read, this facility would meet the definition of an airport.

MR. STAHL: You mean at the site?

THE WITNESS: Yes. Helmore Farms.

Q. What is your typical understanding of what an airstrip is?

MR. NELSON: Objection.

THE CHAIRMAN: It's landing strip, if I am correct.

MR. NELSON: My objection is different. The question posed, what's your understanding, and the rule was he's permitted to testify based on FAA --

Q. What's your understanding of airstrip?

MR. NELSOSN: Object to the relevance.

THE CHAIRMAN: Overruled. He may answer.

A. An airstrip typically would not have facilities, would not have air space from the FAA, would not be registered with the FAA, would not be registered with the state.

Give you a point on case. It's perfectly acceptable to have an official emergency landing strip or

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air facility airstrip that doesn't require air space, doesn't require coordination with the FAA, but yet it is there, it is available, can be published, can be disseminated from an airstrip. Typically, an airport that does not have aviation facilities and is not used on a regular basis by aircraft doesn't have a defined runway.

Q. What do you mean by "defined runway"?

A. In the olden days, they used to have air fields and, basically, it would be an open field, a farmer's field. The aircraft would occasionally come in, take off, and land. They did not have a defined runway, did not have any support facilities, et cetera.

Q. When you mean defined runway, do you mean lattitude and longitude, like when you say --

MR. NELSON: I object. Leading.

THE CHAIRMAN: Just rephrase.

Q. Could you speak in laymen's terms regarding what it means to have a defined runway versus an undefined runway?

A. Registered both with the state and FAA, has a designated runway, 8826 (phonetic) Helmore, which is

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established by magnetic bearings.

MR. GILDEA: That's all the questions.

CROSS EXAMINATION

BY MR. NELSON:

Q. Let me ask you about the Integrated Noise Model. As I understand it, when you began your analysis in this case, you had a question in your mind as to should I use the Helicopter Noise Model or Integrated Noise Model, is that right?

A. That is correct.

Q. You didn't know which one to use?

A. I wanted to confirm which one would be most appropriate. Either one could be used.

Q. Either one could be used?

A. You can use Version 4 of the Integrated Noise Model.

Q. And you would agree, would you not, if you read the preface to the Helicopter Noise Model, it says it's better suited to the analysis of helicopters?

A. Yes, it does.

Q. But your point is that, if it's a mixed use, say,

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * June 23, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 9:45 o'clock a.m., June 23, 1999.

* * * * *

COPY

Reported by:

C.E. Peatt

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nonagricultural/commercial use which, in my opinion, is not consistent with the RC 2 zoning classification.

Q. And on what do you base that opinion?

A. Well, I base that opinion on the fact that the purpose of the zone is to protect it and foster it and otherwise enhance the agricultural uses in that zone.

And this has nothing to do -- the overriding, overwelming use of the helicopter as it now exists is a commercial/nonagriculture use.

Q. Let me turn to another element of the special exception case. Do you have an opinion, sir, based on your training and experience and based on your twenty-two years experience in Baltimore County, working as a zoning expert, do you have an opinion as to whether the use as described by Mr. Fanjoy at this particular location at Helmore Farm --

MR. GILDEA: Just so the record is clear, Mr. Fanjoy is the operator of the helicopter, so the record is clear.

Q. -- is now an airport with a helicopter use?

MR. GILDEA: I will also object to Mr. Nelson

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repeating what Mr. Fanjoy said. The witness said what he said. He was here. The witness has his own ears. Mr. Nelson doesn't need to repeat what the witness said.

Q. Let me start asking my question, Mr. Solomon, because I happen to think Mr. Fanjoy's testimony is important.

Based on your training and experience, based on your knowledge of what Mr. Fanjoy described about the use of the helicopter at this particular location at Helmore Farm, located where it is in the Greenspring Valley, do you have an opinion as to whether the proposed use at this site has an effect, adverse effect, on the adjoining and surrounding properties that is above and beyond those inherently associated with the same use elsewhere in the 129,000 acres of RC 2 land of Baltimore County, do you have an opinion?

A. I do.

Q. What, sir, is your opinion?

Q. Well, my opinion is that this use can more consistently be accommodated in other parts of the RC 2 zone, that there are better -- more site locations where

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it would be more consistent with the agricultural use, more consistent with the purpose and intent of the agricultural zone.

Q. Let me rephrase my question. My question is whether -- do you have an opinion as to whether the adverse effect with respect to this site is the same as or greater than the adverse effect at another site elsewhere in the RC 2 zone?

A. The adverse impact would be less in other areas of the RC 2 zones.

Q. Now, if we have 129,000 acres of RC 2 land in Baltimore County, and if there are nineteen or 20,000 acres in the thoroughbred portion of that land, or the land that's used for the thoroughbred industry, how many thousand acres in the RC2 land would the impact be less than it would be here?

A. It would be about -- well, over a hundred thousand acres. You'd have less of an impact because of the fact that you don't have a concentration of horse farms, or the potential for concentration of horse farms.

I admit same of the farms in Greenspring Valley

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are not presently used as horse farms, but the point is we have to maintain their potential for that use which, in fact, does exist.

So in the northern part of the county, you have -- you may have a few scattered horse farms, but that's it. And you have mostly farms that produce field crops, corn, soy beans, and you have some very large farms.

Q. And, in addition, you have a list of impacts on the historical aspects?

A. Greenspring Valley, as indicated, is on the National Register as an historical district and, certainly, a helicopter flying up and down this 3000 acre valley does not enhance the image of an historic district, which is historical in an agricultural sense.

Q. Let's just go over the numbers. How many thousand acres of land are available where you could put this use where the impact would be less severe than it is here, approximately?

A. It would be approximately 110,000 acres.

Q. Why would -- if we look at that 110,000 acres in

point that I was making.

This use would be less intrusive to the agricultural use in other areas of RC 2, given the nature of this area and the valley in general.

Q. I understand your opinion, but what did you mean when you said "this use"? Is it a term of art? And it's important we have it clarified.

A. This use --

Q. Is this use -- maybe I can help you out. Is this use, this generalized airport use, or is it this use, this particularized use that's been proposed in this case?

MR. NELSON: Objection. Mr. Solomon never said it was an airport use. In fact, he doesn't believe it's an airport use. So I think it's unfair for Mr. Gildea to use that term in his question.

THE CHAIRMAN: Well, I am going to overrule the objection because I would like to know precisely what we are talking about.

Is it the use of the facility as an airport in the special exception use, or is it the use of the helicopter pad, or whatever we have? Is the use as an

airport in the zone for special exception purposes the use we are talking about?

A. The use that's been proposed here involves a helicopter. And the point that I think I was making was that, given the nature of the area, that this use could be better placed, more appropriately placed, in other areas of the RC 2, have less impact in other areas of RC 2.

Q. So I am clear, you never expressed an opinion as to the airport use? Just the helicopter?

A. You're tying the two uses together. That's why it's difficult to answer your question.

Basically, the primary focus is on what specifically is being proposed here. Now, whether that's part of an airport use, like you claim it is, then the two are tied together.

Our testimony has been that they are separate and distinct uses, and airport does not include the use of helicopters. So we have a whole hybrid here of a situation.

MR. NELSON: Mr. Chairman, I can clarify this, if you want.

THE CHAIRMAN: You can do it on redirect, if you want.

MR. NELSON: I am just trying to move this along.

MR. GILDEA: I need a little clarification.

THE CHAIRMAN: I think the Board needs a clarification. What I would like to do is have Mr. Solomon answer basically, in his opinion, is this a proper place for an airport as a special exception in the RC 2 zone, forgetting about the helicopter and helipad.

Q. Do you have any particular objection to the use of this property as a fixed-wing airport in the RC 2 zone as a special exception?

MR. NELSON: May I ask the question, Mr. Chairman?

MR. GILDEA: I'm not done. I am going to object.

THE CHAIRMAN: His question takes precedence.

MR. GILDEA: I am going to object.

MR. STAHL: Neither one of you two are involved at this point. The Chairman asked a question.

THE WITNESS: Your question indicates do I -- whether or not I feel an airport is more appropriate

placed someplace else other than this site?

MR. STAHL: Well, what's your opinion as to an airport?

THE WITNESS: At this location, I think an airport would be inappropriate, and better placed someplace else where there would be less intrusion with the particular type agriculture on those farms and other farms in this area. The question too is, is the airport for farm use or is it for commercial use, and that was defined.

Q. (MR. GILDEA) Will you agree with me there are different types of airports?

A. Yes.

Q. What would you typically characterize an airport use, as a planner? What are some of the characteristics you typically find in an airport use?

A. You find a strip to land an airplane, or series of strips and support facilities, including hangers, gas tanks, desel tanks. So it would include the facilities to land a plane and to service a plane, and service the passengers that are involved with that airport, so it

could be a very large airport, it could be a small airport, it could be simply fixed-wing.

Q. Do you normally expect a parking lot to park the cars, would thata be a typical aspect?

A. Consistent with an airport, yes.

Q. You could typically expect some infrastructure by way of roads to access?

A. Yes. Most likely.

Q. And there are usually at least two-lane roads you typically would expect for an airport?

A. Depends on the size of the airport. Could be a gravel lane.

Q. And, as an expert, what sort of aircraft would you typically expect at an airport?

A. Well, I'm not an expert on airports, but I would think anything from Baltimore International is an airport, so that's one end of the extreme. The other end, just a small, private airport.

Q. So you would agree with me there are different intensifications of uses associated with an airport?

A. Yes. There are extremes.

Q. You would agree this is a much less intensive use of an airport than what you typically expect for an airport?

A. Well, I don't think a helicopter use is allowed in the RC 2 as part of an airport.

Q. But listen --

A. I want to make sure you understand.

Q. I understand.

A. On the scale of things, it is a relatively small airport facility.

Q. The question was, is this a less intensive use of an airport than what you typically would expect for an airport?

MR. NELSON: Object. Relevance.

THE CHAIRMAN: I will let him answer.

A. On the scale of things, yes, this is less intensive. Given the whole range of airport sizes, this is on the lower side, yes, that's correct. I agree with you on that.

MR. GILDEA: I have no further questions.

THE CHAIRMAN: Mr. Nelson?

MR. NELSON: Follow up, very briefly.

THE CHAIRMAN: Sure.

REDIRECT EXAMINATION

BY MR. NELSON:

Q. Mr. Solomon, let me follow up the whole notion the Chairman was driving at, which is -- and I covered this issue with Mr. Dillon. Perhaps I should have covered it with you.

Let's assume, let's indicate there's no helicopter flights at all at Helmore. Just take that out of the equation.

We have a fixed-wing aircraft coming in, landing on the field there. All right? And at the beginning of my examination we went through the preamble to the list of special exceptions, we went through 502.1(g), and went to what we all know as the Schultz v. Pritz test.

Right now, let's assume, hypothetically, as the Chairman asked, no helicopter, only fixed-wing aircraft, and let me talk about the Schultz v. Pritz test.

In your experience, do you have an opinion as to whether the use of a fixed-wing aircraft at this site in

the heart of the thoroughbred industry in Baltimore County, which is the heart of the thoroughbred industry in Maryland, whether the use of the fixed-wing aircraft at this site would have a greater impact on the surrounding primary agricultural uses than it would elsewhere in roughly 110,000 acres of RC 2 land which are in crop, not thoroughbred horseracing, do you have an opinion?

A. I have an opinion.

Q. What, sir, is your opinion?

A. The impact both real and potential is greater at this site than it would be at a number of sites particularly further north in the RC 2.

Q. The acreage of the other sites that would be less, is roughly how many thousand acres?

A. 110,000 acres.

MR. NELSON: That's all I have.

MR. ZIMMERMAN: Let me follow up.

FURTHER CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. I think you also pointed out in the northern reaches of the agricultural zone, the farms tend to be

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * July 1, 1999

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, 401 Washington Avenue, Baltimore,

Maryland 21204 at 10 o'clock a.m., July 1, 1999.

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C.E. Peatt

Q. What are the names -- let me direct your attention to the articles on acoustics.
A. Yes, sir.
Q. What are the names of the refereed journals in which some of those articles appear?
A. I can go through the bottom of the list one by one. Journal of Computation and Physics. Journal of Applied Mathematics. Journal of Acoustical Society of America.
Q. How many articles have been published in the Journal of Acoustical Society of Amrica?
A. One so far.
Q. At this time, I'd like to move into evidence Dr. Knio's curriculum vita as Protestant's Exhibit 10.
MR. GILDEA: No objection.
MR. MELVIN: Exhibit No. 10.
A. May I correct something?
Q. Sure.
A. This is a recent up-to-date version. That's two months old. I published several papers. The numbers are the numbers that are listed on this copy, not that one.

MR. GILDEA: I figured that out.
Q. In laymen's terms, would you please describe for my benefit why and how acoustics are part of mechanical engineering? Why that's part of your field?
A. Because acoustics is really some discipline of fluid mechanics, okay? You have acoustics in basically elastic (phonetic) median as well as a plastic median structure. Acoustics, noise falls under --
COURT REPORTER: I'm sorry. I couldn't understand you.
THE WITNESS: There are fluids, and this is part of fluid mechanics.
Q. Do you have expertise in mechanical engineering?
A. Yes, I do. In those fields I listed.
Q. Do you have expertise in computing noise?
A. Yes, I do. And some of these are original publications specifically dealing with noise computation.
MR. NELSON: If it would please the Board, on behalf of my clients, I would offer Dr. Knio as an expert in mechanical engineering with particular reference to fluid dynamics, and even with more reference to acoustics,

the computation of noise in this case.
THE CHAIRMAN: Mr. Zimmerman, any questions?
MR. ZIMMERMAN: No questions.
THE CHAIRMAN: Mr. Gildea?
MR. GILDEA: Would you go over again what you're offering him as?
MR. NELSON: Fluid dynamics, acoustics, and computation of noise in a case such at this.
MR. GILDEA: I just may have a couple questions.

VOIR DIRE

BY MR. GILDEA:
Q. Have you ever been a consultant to the EPA or HUD or the FAA?
A. No.
Q. In any of these studies, meetings, proceedings, conferences, was the issue of transportation noise addressed?
A. Yes. I will give you a detailed answer, if you wish.
Q. Sure.
A. The Acoustical Society meetings, the American

Science Institute of Aeronautics and Astronauitic meetings are huge meetings, and it's obvious that transportation is specifically a big part.
Q. Have you ever been a speaker or lecturer at any of those meetings on transportation?
A. Transportation noise specifically, not directly. As far as the same principles go, yes.
MR. GILDEA: I have no objection to his qualifications.
THE CHAIRMAN: Fine. The doctor will be so accepted. Thank you.

CONTINUED DIRECT EXAMINATION

BY MR. NELSON:
Q. Dr. Knio, did you, at my request, review certain materials related to the use of the helicopter at Helmore Farm?
A. Yes, I have.
Q. Would you be kind enough to summarize for the Board what documents you reviewed that are relevant to the opinions you intend to give here this morning?
A. I reviewed Mr. Miller's deposition. I reviewed a

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short document that I believe was provided by Mr. Lamb, his calculations.

And I was present at the demonstration, at the last demonstration. I believe I met you there, and I did some calculations of my own.

Q. What, if any, specifications from the manufactuerer of the helicopter at issue did you review?

A. I reviewed documents that the manufacturer themselves have provided on the web at well as safety data sheets that they have filed on this specific helicopter with the FAA.

Q. And you mentioned you were present at the demonstration in June?

A. Yes, I was. I believe we met there.

Q. Now, in this case, of course, one of the issues in this case -- there are many -- is noise, and I asked you to consider the noise issue, is that right?

A. Yes, you did.

Q. Now, without getting into the details of the case quite yet -- we'll go there -- but from an engineering point of view, how does one analyze noise?

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What I am really driving at is, to look at the peak, the average, what are the different ways of doing that?

A. One can look at peak and one can look at average.

Q. From an engineering point of view, what do you mean when you say "peak," or you look at "average"? What do those concepts mean to you?

A. Well, we all know, but let's work through it. Average is basically an average representation of all the data points in a given structure or event or scenario that's been analyzed; while a peak is a more direct measure of a single event, rather than the collection of the whole.

Now, there are situations where peak is more appropriate and other situations where average is more appropriate.

Q. We are not get to this case, but from an engineering point of view, from the point of view of someone who's been in the field for a long time, been on the faculty at Hopkins for eight or nine years --

A. Yes.

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Q. -- published in the field of collaborators across the country, and with your experience, when would you want to look at the peak and when would you want to look at the average, from the prospective of an engineer?

A. I can give you a simple example. This is a structure, right, (holding up a pen), subjected to a time dependent clause. If the load varies within a narrow band of value, then looking at the average would be a reasonable thing to do.

If, on the other hand, it's subjected to twenty loads, something so high this will break, then looking at the average is meaningless in this case.

In this situation, a peak would be a more representative measure of an event.

Q. Let's turn to this case, the evidence. You witnessed a demonstration?

A. Yes.

Q. The evidence in this case is that the petitioner is seeking permission from this zoning board to land a helicopter five times during a given day and leave, take off, five times during a given day.

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A. Yes.

Q. And let's use that as our point of reference.

A. Yes.

MR. NELSON: Am I correct on the numbers?

THE CHAIRMAN: I have five times a day.

MR. NELSON: Ten operations, total.

MR. STAHL: A day.

MR. GILDEA: It's on the exhibit.

MR. NELSON: I don't want to make a mistake here.

THE CHAIRMAN: We have been doing this for so many days.

MR. NELSON: May I read it, sir? The use shall be limited to no more than five fixed-wing aircraft events and five helicopter events per day. And an event consists of landing, idling, take-off, and fly-by.

THE CHAIRMAN: So we agree an event is either coming or going.

Q. Now, in the context of this case, Dr. Knio, do you [redacted] appropriate to look [redacted] peak or the average?

A. [redacted]

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1 appropriate measure since there are, as you mentioned on
2 the exhibit just now, the events consisting of take-off
3 and landing.
4 And there's also another factor which makes this
5 case quite different, which is the proximity of the
6 helipad to the residence, to the adjacent residence, which
7 makes this case quite different from a scenario like BWI
8 Airport where the closest resident is really on the order
9 of miles away, and there are many more number of events
10 there.
11 Q. Let's talk about the peak analysis.
12 A. Yes.
13 Q. Did you calculate or did you compute what the
14 peak noise would be at a given distance from the center of
15 the helicopter pad?
16 A. Yes, I did.
17 Q. How did you do that?
18 A. I used a simplified calculation based on an
19 engineering correlation that falls under SAES, Society of
20 Automotive Engineering Standards. Just one second.
21 Q. Take your time.

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1 A. The standard is called ARR-1989.
2 Q. Where did you get that standard?
3 A. From the Society of Automotive Engineers.
4 Q. Is that an appropriate standard or correlation to
5 use if your intent is to calculate the peak noise
6 generated by a source?
7 A. Yes, it is. And it specifically provides --it
8 says this is a simplified engineering correlation that's
9 specifically designed to estimate peak noise from various
10 types of helicopters.
11 Q. It's calculated helicopter noise?
12 A. Yes.
13 Q. So this is a correlation that's designed to
14 calculate peak noise from a helicopter?
15 A. Yes, it is. And it provides the peak noise
16 estimates and dBa, and I believe, based on the several
17 testimonys before, this is a concept that's been
18 clarified.
19 MR. NELSON: Off the record for a moment.
20 (Discussion held off the record.)
21 THE CHAIRMAN: Back on the record.

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1 MR. NELSON: Let me do a quick sketch here, if
2 this will accelerate the process.
3 Q. Now, I have down a schematic sketch, not to scale
4 here. North is the top of the page. The vertical black
5 line is the property line between Helmore Farm and the
6 Susan Immelt place. And the rectangle is intended to be a
7 square representing the helicopter pad.
8 THE WITNESS: That is more conservative.
9 Q. I'll put the "X" in the center, what's intended
10 to be the center. And the distance from the "X" to the
11 property line we can calculate by looking at the map that
12 is to scale. You may actually do that shortly?
13 A. Yes.
14 Q. Now, I also have here a different colored magic
15 marker which you can use, if you want to.
16 A. Okay.
17 Q. My question, Dr. Knio, did you calculate, or what
18 calculations did you perform for the helicopter in
19 question in this case to determine the peak noise and at
20 what distances? Just work with us, please.
21 A. I placed two calculations to determine peak

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1 noise. One calculation was for hover and the second
2 calculation was for approach.
3 MR. GILDEA: Say that again?
4 A. Hover. And I computed for each of these
5 scenarios, I computed the noise at 152 meters and thirty
6 meters -- thirty meters is roughly a hundred feet --
7 I calculated for these two.
8 Q. What were the results at thirty meters?
9 A. At thirty meters in hover, I computed a peak of
10 91.5 dBa. And thirty meters on approach, I computed a
11 figure of 97 dBa.
12 Q. "Hover" means?
13 A. Means the helicopter is hovering at a thirty
14 meter height over the farm.
15 Q. Coming or going?
16 A. It's not moving with respect to the ground.
17 Q. Now, let me show you the Petitioner's Exhibit 1,
18 which is the map to scale. Can you tell us, have you had
19 a chance to put a ruler to calculate the distance from the
20 center of the helicopter pad to the property line?
21 A. Yes, I have.

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(A short recess was taken.)
THE CHAIRMAN: Mr. Nelson?
MR. NELSON: I did cover it with him. I had forgotten.
THE CHAIRMAN: Okay. Ready?
MR. NELSON: Yes, sir. Mr. Chairman, I'm going to do it in ten seconds, what you asked me to do, but let me move on.
Q. We have covered your opinion, have we not, about the peak noise calculation?
A. Yes.
Q. Let me just explore that for a moment. What input data did you use with respect to the helicopter at issue in this case, and where did you get it?
A. Let me take a second to explain that in detail. The calculation in the SAE standard, okay, as the number of curves and evaluations that it chooses. Right? These curves and evaluations require certain input. Right? Including the size of the rotor, the weight of the tail of the helicopter, the speed of the helicopter, the rpm's of the rotar.

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And these are what Mr. Nelson referred to as input data, the parameters of the helicopter I got, as I explained earlier, from the manufacturer itself, what they passed on the web site and what they file with the FAA under a type certificate data sheet, and that type number is H-70EU.
Q. So you accepted the manufacturer's data?
A. Yes.
Q. Let me move on to the concept of average noise.
A. Yes.
Q. And we'll get into the details in a moment, but did I ask you to calculate the average noise at this site?
A. Yes, you did.
Q. And did I stand up, on the record, and make a confession I hope I will never have to make again and ask for a break, to go out into the hall and ask you a question?
A. Yes, you did.
Q. And did I ask you -- although there's no discovery in this proceedings -- did I ask you, How many events per day did you use? And did you tell me, "Nelson, we have been over this. You have just forgotten"?

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A. Yes.
Q. Did we discuss anything else out in the hall, other than how many events a day you used when you calculated the LDN?
A. We did not.
Q. Let's talk about average. In the context of this case, do you have an opinion as to whether the average analysis is an appropriate analysis?
A. Though I performed the average analysis, I performed it with a great deal of resentment, if you wish, because one has to take a step back and see where that average analysis came from.
And it came from a long series of hearings, regulators, energy and noise experts, psychologists, which were in the neighborhood of very large airports, such as BWI, and that's where these guidelines came from.
Q. Do you have an opinion as to whether these are the appropriate guidelines for analysis of noise at this site?
A. Stretching them quite a bit, maybe. But there

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isn't a single data point in all the background of these guidelines that fit Helmore Farm.
I haven't seen anything, any single data points in all these hearings where a helipad came a hundred feet from a neighboring or an adjacent property. At least, I'm not aware of that.
Q. You told me that in our discussion, and I said I want to present the information anyway, didn't I?
A. Yes.
MR. NELSON: So we're doing this over objection. This is our backup argument, Mr. Chairman.
Q. What tools are there out there to help somebody such as yourself analyze average noise generated by either an airplane or helicopter?
A. There are two well-known tools to analyze generally aircraft noise. One is called the Integretated Noise Model -- INM, for short -- and the other is called Heliport Noise Model. HNM, for short.
Q. Who created those models?
A. Most of the control tests were created by the FAA, and their consultants, obviously. They were

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Q. How many other airports have you been a consultant for for noise contours?

A. For airports specifically done?

Q. Out of your, obviously, very impressive CV in the academic world, how often do you find yourself thumbing through the FAA regulations?

A. Fairly.

Q. What range or percentage of your typical day would you be looking at this FAA regulation?

A. I guess peak would be more appropriate than average, if that answers your question.

Q. Once a month?

A. When I am teaching a course on acoustics, it comes up very frequently. If I am off that course for a few years, zero in a month.

Q. So about a year?

A. It could be where I haven't talked about any FAA document, and it could be -- last semester, I happened to teach an acoustic course, and guidelines came up even in standard textbooks.

You'd be surprised how many of these, their

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correlations, are in those textbooks. You do not see a document that says "FAA," but you see many same correlations in acoustic courses, mechanical courses there are.

Q. Has there ever been an occasion where you had to apply practically the FAA regulations?

A. Practical situation?

Q. Yes.

A. No. Depends on what you mean, "practical."

Q. To build an airport.

A. No.

Q. A few questions about the assumptions that you made.

A. Yes.

Q. I assume when you were retained by the protestants, that they gave you some information about the surrounding area, is that correct?

A. Very little. But I went to the site and observed things, and everything I asked for, I got, except the blank sheet this morning.

Q. There's a joke in there, but I don't -- you have

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been to the site?

A. Yes.

Q. Have you had occasion to observe what you have referred to as the Immelt property?

A. Have I observed the Immelt property? Yes, I have.

Q. How would you characterize the use of that property?

A. In which sense?

Q. Is it industrial? Is it commercial? Is it agricultural?

A. There's a house there and there's a field behind the house.

Q. So you weren't told by the Immelts that the property is in the agricultural preservation easement and can only be used for agriculture?

A. If anybody mentioned anything about easement, it would be Mr. Nelson. But not the Immelts. So we met very briefly and, to tell you the truth, I don't know what that means.

Q. So it's safe to assume that you weren't

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interested in looking at the compatability of land uses when you were doing your analysis?

A. No. And I objected to the analysis.

Q. But the question was, when you did your analysis, you weren't looking at compatibility of land uses?

A. No.

Q. That wasn't part of any of your opinion?

A. No. I was just provided the --

Q. That's not part of any of your opinion you're rendering today?

A. I'm not here to render any legal effect today.

Q. You're not here today to render any opinions on the compatibility of land uses, is that correct?

A. That's correct.

Q. Now, you indicated in your most realistic scenario, using your words, scenario two --

A. Most likely.

Q. -- that there would be -- the 65 dBA/LDN line would be 136 feet into the property line?

A. I think I did.

Q. Can you show the Board the closest residential

use to the property line?
A. If it's marked there, I would be happy. Is it?
MR. NELSON: For the record, the attorney has pointed -- the witness doesn't know where the houses are. We'll stipulate the houses are where they are on the plat.
THE CHAIRMAN: The Board is aware of where the houses are.
A. It says here -- I'm just reading off -- Stephen and Susan Immelt, and this one --
Q. What's the dimension shown?
A. Dimension of what?
Q. From the house to the edge of the property line by the special exception? Not to the helipad, but the special exception area.
A. I don't know what "special exception area" is, but the distance from this house to this point is marked 1,017 feet plus slash minus.
Q. Thank you. I didn't mean to make it that complicated. Based on scenario two, where's the 70 dBA/LDN line from?
A. I can only approximate it because I did not

specifically ask for the seventy line in the output. But this is a scenario two you want. It would be approximately 150 feet from the center of the helipad.
Q. Which would make it?
A. Roughly fifty feet into the property.
Q. How about to the 75 LDN?
A. That I have. It's fifty-three feet from the center of the helipad, so it would not go into the -- I'm sorry. Take that back. That was seventy-six feet from the center of the helipad, which would not put it any point inside.
Q. The document you reviewed -- let me be clear here -- was Mr. Miller's testimony?
A. Yes.
Q. Mr. Lamb's calculations?
A. No. There was a sketch also provided, but I did not have the occasion of reading it.
Q. You also looked at the specs of the helicopter, specifications of a helicopter?
A. Yes, I did.
Q. Anything else you looked at as far as documention

that you didn't generate yourself, but you looked at?
A. I didn't get the question.
Q. I just want to make sure --
A. You're asking me if I looked at documents and --
Q. Did you look at the file in this case, in the zoning case?
A. No.
Q. Did you --
A. Which file?
Q. There's been a file generated.
A. No.
Q. Also, there's also, as you know, it's an airport license. Have you ever looked at the license or registration of this airport?
A. No.
Q. You never had occasion to do that? Why didn't you think about looking at the license or the registration?
A. I wasn't asked to look at the license or registration. If you'd like, if that's appropriate -- I'm not sure you can direct me to do that, but I haven't

been asked to do that.
Q. Did you look at Federal Aviation Regulation Part 150?
A. Yes, I did.
Q. You did look at the airport noise compatibility planning?
A. Yes. I also looked at another FAA document which has to do with heliport design.
Q. Now, you indicated, I believe twice, [redacted] having to comply with the Part 150 analysis?
A. Not comply. [redacted] --
Q. Apply?
A. -- the guidelines to this specific case, as they are.
Q. Okay. So your expert opinion, you do not think that part 150 --
A. This is not what I said.
Q. Okay. Let me try to complete the question, and you tell me where I am mistaken.
[redacted] Part 150 of the Federal Aviation Regulations [redacted] ve

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * April 27, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., April 27, 1999.

* * * * *

Reported by:

C.E. Peatt

made an argument on that point. I am going to see how the case unfolds, but that issue is out there.

Of course, we are confronted with the classical Schultz v. Pritts analysis. The petitioner will argue there's no greater impact at this site than any other site anywhere in the R.C. zone in Baltimore County.

We will present evidence to refute that asssertion, even though we don't have the burden of proof, but the uncontradicted evidence in this case is that the Helmore Farm is around a range of eighty-nine acres, a long, rectangular piece of property, long and narrow. And the petitioner has elected to pave this helistop.

Of course, this is an agriculture land for which they received an argricultural payment. They paved it, put a fence around it, and they selected that spot twenty feet from my client's property line.

This is not in the middle of a 900-acre farm. This is twenty feet from my client's property line. We will argue as this case unfolds that there are many, many, many, many places in this county in R.C. zones where the impact would be less.

There are many places where there are larger farms to put the helicopter pad or strip in the middle of a farm so the noise contour of sixty-five decibels will reduce to a level less than sixty-five before it reaches the property line.

In sum, we will ask you at the conclusion of the case to deny the special exception on all the legal issues that I outlined. Also, I have a packet here from the Long Green Valley Association. They are here in opposition to the proposed use. At the appropriate time, a representative of that association will testify in opposition, to oppose this.

So, in sum, this is not your garden variety special exception case. It's a special exception case that has in it many, many, many legal issues that need to be confronted, and we look forward to doing that. Thank you.

THE CHAIRMAN: Thank you, Mr. Nelson. Mr. Zimmerman.

MR. ZIMMERMAN: Good morning, Chairman Marks, members of the panel. I'd like to put in prospective

People's Counsel's view of this case.

First, following up on the comments on the presence of the Long Green Valley Association, Charlotte Pine is here as well as Carol Trela, both on the Board of Directors of the association, and they've provided me with the Rule 8 papers. I thought it might be convenient to provide those to the Board at this time, and copies to all the attorneys.

THE CHAIRMAN: Any objection?

MR. BARHIGHT: I've not yet reviewed the Rule 8 papers, but even before I review them, I need to object, because I don't think the Long Green Valley Association, if they are located where I believe they are, have standing in this case.

They certainly are not affected in a way different than any other association that might be in Harford or Essex or Dundalk, and I would assert they do not have standing at this point in time, notwithstanding whether they meet the requirements of Rule 8, and I haven't had a chance to review the documents, and I'd like to reserve the opportunity to review them and make further

comment to whether they comply with Rule 8.

THE CHAIRMAN: That's fine.

MR. ZIMMERMAN: May I simply suggest, as an officer of the board, so to speak, in an administrative hearing, anyone who shows an interest may appear in an administrative proceedings.

Other cases such as Sugarloaf v. Maryland Department of Environment at 344 Md., so there's not the same quote, unquote, agrievement standard that one has in the Circuit Court, so I think the Board is going to find the fact the Long Green Valley Association is a good distance away from the Greenspring area is not an obstacle and, therefore, has participation.

Our office did file a memorandum, and we filed it yesterday, partly to give all the parties as well as the Board a fair notice of our views on the case and, in effect, give them more time to review it and reply to this, rather than filing it after the hearing at the last moment without giving everyone an opportunity to review the information we assembled in depth, so that's the reason we filed it yesterday.

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

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unless someone asks me to help them find a place.

Q. Out of a year, out of twelve months, how many days in a twelve-month period do you devote to actively going out and looking for property?

A. The last twelve months, none.

Q. Out of the twelve hours a day that you spend, how much of that time did you assess the business aspects of the thoroughbred horse racing business?

A. Constantly.

Q. What sort of things do you do to do that?

A. Business aspects? Well, you know, we are on a family farm. We rent from the family, so we are constantly looking for properties, because at anytime, if one of the sole surviving parents of my partner dies, the farm will probably be split up between six children.

So we are actively looking at properties. We may have to move our business. Owners will call us and say, Can you take a two-year-old? We say, no, we don't have room, send it somewhere else, or find somebody else that takes it. There's just -- it's a wide range of variables.

We look at properties all the time, because we

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are not sure how much longer we are going to be able to use this family farm situation. That's just to give you an idea of what I do.

Q. It's ancillary to your trade?

A. Yes.

Q. Your primary occupation is the horse business and when the need arises, you go out and try to find --

A. As it happens, you know, our business may have to be transferred to another piece of land because of this particular situation we're in, so our partner and I are both actively involved in keeping track of what's out there in case something happens, it's a family situation, and if we have to move.

MR. GILDEA: I am not going to object as to his being an expert in the horse business. I think he clearly is.

Where I have the issue is I don't think he's an expert as far as the need issue and as far as a property assessor to go out and actually find a property.

He indicated he hasn't done it at all in the past year, and it's simply an ancillary part of his business.

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MR. NELSON: That's just like saying an attorney who hasn't handled a case in the federal courts for the last twelve months, doesn't mean he can't then try a case. The man has been in business for twenty-five years.

THE CHAIRMAN: I am going to overrule the objection, for the record. An expert opinion, certainly, carries a great deal of weight with the Board. But, again, the Board is not obligated to accept it as gospel. Anything an expert brings to it is basically a judgmental factor that has to be weighed in each Board member's mind.

So having said that, we are going to permit the line of questioning with Mr. Nelson obviously going to proceed and the Board will take into recognition on an individual basis what Mr. Potts has to say.

Q. Mr. Potts, with respect to the Carroll property in Greenspring Valley, can you estimate for this Board, roughly, when you first spoke to Doug Carroll about the possibility of setting up a horse operation? Not you, personally, but the idea of creating a horse operation at that property, how long ago was that? Very approximate.

A. I mean over the last five or six years, Doug

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first brought up the idea. You know, he and I were talking about things, looked at equipment together, or I'd go down there, he'd weld something for me. He's also asked me -- said he wanted to do something with the farm, would I be interested in having a horse operation there, would I think about it?

So it's been -- I mean, at least five or six years since the idea came up.

Q. Now, based on your experience of over twenty-five years in the horse business, and based on your knowledge of the needs of the horse industry in this area, do you have an opinion, Mr. Potts, as to what type of horse operation one could set up at the Carroll property, what sort of viable profitable self-sustaining horse operation one could set up at the Carroll property, do you have an opinion as to what those are, if any?

A. Yes. Several ways. You could go with lay-ups, a boarding facility. You can take horses that are injured or post-operative cases.

Q. What sort of horses are these?

A. Thoroughbred racehorses, show horses that have

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Q. Together. And one of your clients -- hypothetically -- said to you, Should I send my horse that just came from the racetrack to the Carroll farm, even though the helicopter lands there every day, landing and taking off, and they sought advice from you on that, should we send this thoroughbred that's come from the racetrack to the Carroll farm, in the path of this helicopter, what would you say?

A. I would say no. But nobody that I know that trains horses would consider sending a lay-up to a farm that had a helicopter landing next door.

It's absurd. I wouldn't put a horse in that environment.

Q. Why is it absurd?

A. These are horses that are very high-strung, oftentimes accident prone. You know, animals, you know, when you look for a place to put an animal like that, you look for a farm that's got a very quite rural setting and has good quite gentle people to handle horses.

You know, I just think it's an option with a horse that's been at the track or a horse that's -- even

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dressege horses, show horses, stand in stalls all day, you have to be careful when you turn these animals out.

You can't have a whole lot of stimulation, especially things they haven't seen or experienced before. It's just -- and I mean, there's no formula here, no guarantee of what's going to happen.

What you try to do is reduce the variables, make it as safe as possible. I have turned a horse out, had a truck come in the lane, a UPS man blow the horn, and the horse ran through the fence.

So there's no guarantee, but you just try to reduce the amount of variables, make it as safe an environment as you can. And if you're an owner looking to place a horse, that's what you're trying to do.

Q. Now, if Dr. Carroll were to set up such a lay-up operation, and the helicopter operation were approved next door, in your opinion, based on your training and experience, would the helicopter have an adverse impact on Doug Carroll's ability to make that a profitable operation?

A. Yes.

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Q. Why is that?

A. For the reasons I just stated. The first time a horse ran through the fence or got injured because of that helicopter, everybody would know about it, and the stigma would be there.

If somebody would say, What about Doug Carroll's place? No. I heard a helicoper chased a horse through the fence. Nobody would call again. It's the way the business works.

Q. Let me ask you about the riding stable option, the training setup. If you had a client who said to you, I want to set up a training school. I want to set up a stable and be able to service this part of Baltimore County, because I know Garrison Forest is full, I know St. Tim's is full, Oldfields is full, I know there's a great demand for this type of business, and I want to lease a farm and I want you to run it for me, go find me a place with adequate turn-out space and a place where we can put some stables, where the owner can build some stables, you will lease it, and I want you to run the business, if this helicopter operation is approved by this Board at the end

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of the day -- we argue it shouldn't be -- but would you counsel that hypothetical client they ought to invest their money into the Carroll operation to run that riding school in close proximity to the helicopter operation?

A. No, because if you're going to make a riding operation profitable, you have to have classes, you have to teach a lot of classes. You're going to have people, kids, coming and getting on school horses and riding ponies. That's a very libelous situation, what you're describing to me. I think the liability factor would be limited.

If you're talking about teaching kids on horses in a show ring with a helicopter landing next door, you can't – I'm not sure you can get an umbrella policy, and I think that would be a limited factor.

MR. NELSON: Mr. Chairman, may I have just one moment?

THE CHAIRMAN: Surely.

MR. NELSON: Mr. Chairman, that's all I have of this witness. Mr. Potts, he has the right to ask a few questions.

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MR. BARHIGHT: One moment, please.

CROSS EXAMINATION

BY MR. GILDEA:

Q. Mr. Potts, are you familiar with the property under petition here, Helmore Farm?

A. Yes.

Q. You visited the property?

A. Not really. I have been by it.

Q. Have you ever been on the property?

A. Not Helmore, no.

Q. Are you familiar with the Federal Aviation Administration Part 150?

A. No.

MR. NELSON: Objection. Beyond the scope of direct.

THE CHAIRMAN: Sustained.

MR. GILDEA: That's all the questions I have.

THE CHAIRMAN: Any further questions? Any redirect?

MR. NELSON: No, sir.

THE CHAIRMAN: Thank you, sir.

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MR. NELSON: You're free to leave. Thank you very much, Mr. Potts.

Mr. Chairman, there's a Mr. John Williams here who like to speak, briefly. He's not one of my clients. He wanted to address the Board. He's not my client. I told him he could speak. I anticipate just a few minutes, and then that would conclude my evidence for today.

THE CHAIRMAN: You're not going to cross-examine?

MR. NELSON: I will defer to the Board.

THE CHAIRMAN: Why don't you put him on, so the record is clean.

MR. NELSON: He lives on Seminary Avenue, a helicopter comes over like clockwork in the morning and night, it's disruptive.

MR. BARHIGHT: Doesn't bother me. I live right there.

MR. NELSON: Let me put Mr. Barhight on. I will call Mr. Barhight now.

MR. BARHIGHT: I will be happy to.

MR. NELSON: You can take the stand, sir.

JOHN WILLIAMS,

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having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. Please state your name, sir.

A. John Williams.

Q. Your address?

A. 1907 Seminary Drive. It's just south of Seminary Avenue in a development called Seminary Springs.

Q. That's your development?

MR. BARHIGHT: Right across the street from me.

MR. NELSON: Let me introduce you to your neighbor, Scott Barhight.

MR. BARHIGHT: Mr. Williams, how are you?

Q. Mr. Williams, I'm not your lawyer. I told the Board that, but would you tell the Board, briefly, because there is our third day of this hearing, everyone pretty much knows the story, but tell them from your point of view what it's like, what you perceive with your own eyes and ears?

A. Well, we live a little bit south of Seminary

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Avenue, and there's a helicopter that flies twice a day -- actually, four times a day, because I usually comment, and it goes, comes and goes on a pretty regular schedule, obviously not on the weekend, but sometimes on the weekend, and it's noisy. It is very noisy. And it's the only noise we can identify.

We say, Well, he's on time this morning, or must have been at a meeting last night, because he's a little bit late. And sometimes in the wintertime when the windows are closed, it's enough to vibrate windows.

Q. Is there anything else you want to tell the Board?

A. That's basically our complaint. We don't think it's -- we don't think that's a good place for a helicopter port.

MR. NELSON: I have nothing further.

CROSS EXAMINATION

BY MR. GILDEA:

Q. Approximately how far away are you from Helmore Farm?

A. Probably a mile, or three-quarters of a mile as

IN THE MATTER OF * BEFORE THE

EDGAR LUCAS - Petitioner * COUNTY BOARD OF APPEALS

901 Greenspring Valley Road * OF BALTIMORE COUNTY

3rd Election District * Case No. 98-294-SPHX

3rd Councilmanic District * May 18, 1999

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 401 Washington Avenue, Baltimore, Maryland 21204 at 10 o'clock a.m., May 18, 1999.

* * * * *

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Dillon, why don't we take a short lunch break until about 12:30.

(A luncheon recess was taken.).

THE CHAIRMAN: We can go back on the record.

CROSS EXAMINATION

BY MR. GILDEA:

Q. Mr. Dillon, I am going to hand you what's been marked as a final report of the Baltimore County planning board adopted July 26, 1979 and August 2, 1979 entitled, Growth Management Legislation Phase I. It's marked as Exhibit 6.

MR. GILDEA: Just so the record is clear, I have taken this Growth Managment Legislation Phase One document out of People's Counsel's Hearing Memorandum which was attached as Exhibit 6.

Q. Are you familiar with that document?

A. It looks familiar.

Q. I will direct your attention to the area where it says on page 6.9 and actually page four of the Growth Management Legislation, RC 2 Zone Classification-agriculture?

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A. Uh-huh.

Q. Is an airport use permitted by special exception -- did the planning board in its growth management legislation recommend an airport be permitted by special exception in the RC 2 zone? Yes or no?

A. It's not listed here, no. I'm sorry. I drifted back to memory. I'm sorry.

Q. Now, I'd like to have you identify --

MR. GILDEA: I would like to offer this as petitioner's next exhibit,

MR. MELVIN: That would be No. 10.

Q. I would now like you to identify for the record County Council, Baltimore County, Maryland Bill No. 178-79 which you discussed at length this morning. I assume you are familiar with that bill?

A. Uh-huh.

Q. Now, directing your attention to the RC 2 portion of the bill, special exceptions, page eighteen, is an airport use permitted by special exception in the RC 2 zone?

A. Yes.

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Q. So the County Council, despite the recommendation of the planning board, permits airports as a special exception use in the RC 2 zones?

A. Yes.

MR. GILDEA: I have no further questions.

THE CHAIRMAN: Any redirect?

MR. NELSON: No, sir. This is why I asked for the lunch break. I did that in good faith, you know, for a reason. I have two witnesses on their way.

THE CHAIRMAN: When will they be here?

MR. NELSON: Thirty minutes or so.

MR. GILDEA: I will, to clean, up the record, I would like to submit that bill also, although it is a legislative document.

MR. NELSON: No objection.

THE CHAIRMAN: Admitted. Off the record.

(A discussion was held off the record.)

MR. NELSON: I apologize.

THE CHAIRMAN: No problem.

(A recess was taken.)

THE CHAIRMAN: We can go back on the record.

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MR. NELSON: Mr. chairman, at this time -- I'm sorry. I thought you were going to call the case. I call our next witness, Dr. Douglas Carroll. I apologize he wasn't here earlier, but he's here.

THE CHAIRMAN: No problem.

DOUGLAS CARROLL,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. State your name, for the record, please.

A. My name is Douglas Carroll

Q. Are you an M.D., sir?

A. Yes.

Q. Where do you live?

A. 1117 greenspring Valley Road.

Q. Now, we have been talking about Helmore Farm. If we were driving down Greenspring Valley Road in the westerly direction, we pass the entrance to Helmore Farm. What's the next entrance on the left on the south side?

A. That is the Trimble-Immelt entrance.

IN RE:	*	BEFORE THE DEPUTY
HELMORE FARM		
SPECIAL HEARING/	*	ZONING COMMISSIONER
SPECIAL EXCEPTION		
	*	OF
	*	BALTIMORE COUNTY
LEGAL OWNER/PETITIONER	*	CASE NO.: 98-294 SPHX
EDGAR LUCAS		

****

MEMORANDUM OF LAW

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IN RE: HELMORE FARM SPECIAL HEARING/ SPECIAL EXCEPTION	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
LEGAL OWNER/PETITIONER: Edgar Lucas	*	Case No: 98-294 SPHX

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MEMORANDUM OF LAW

Edgar Lucas, ("Lucas") Petitioner, by and through his attorneys, G. Scott Barhight, David K. Gildea and Whiteford, Taylor & Preston L.L.P., hereby submits this memorandum of law in lieu of closing argument and states:

I. PETITION FOR SPECIAL EXCEPTION FOR AN AIRPORT.

A. THE SPECIAL EXCEPTION STANDARD.

A special exception use is "expressly permissible." *Mossburg v. Montgomery County*, 107 Md. App. 1, (1995). Further, a special exception 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." *Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8 (1995) (emphasis added). "The legislative body, by designating the special exception, has deemed it to be generally compatible with the other uses." *Id.* at 8.

In Baltimore County, pursuant to Section 502.1 of the Baltimore County Zoning Regulations ("BCZR"), the Deputy Zoning Commissioner may grant a Petition for

Special Exception if the petitioner demonstrates 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 way inconsistent with the spirit and intent of these zoning regulations; nor
h. Be inconsistent with the impermeable surface and vegetative retention provision of these zoning regulations.

BCZR Section 502.1.

"By reasons of the holdings in *Schultz v. Pritts*, 291 Md. 1 (1988) and its progeny, [the general conditions listed in BCZR Sections 502.1(a) through (h)] 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 ([Baltimore County]) in this case." *Mossburg*, 107 Md. App at 21. As the Court of Appeals explained in *Schultz*, and repeated in *Board of County Commissioners v. Holbrook*, 317 Md. 210 (1988):

> "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 plan.
> The extent of any harm or disturbance to the neighboring area and uses is of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the

> comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. **But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or if factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."**

Holbrook, 314 Md. at 216-17 (quoting *Schultz*, 291 Md. at 11-13)(emphasis added).

Regarding the adverse impact necessary to warrant denial of a Petition for Special Exception, the *Schultz* court explained 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.** Thus, these cases establish 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."*** (emphasis added).

Id. at 217. (Bolding added).

In *Mossburg*, 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.

B. LUCAS MET HIS BURDEN OF PROOF FOR SPECIAL EXCEPTION APPROVAL. THE PROTESTANTS DID NOT REBUT THE PRESUMPTION THAT THE AIRPORT USE SHOULD BE PERMITTED.

In the instant matter, Lucas introduced testimony demonstrating that the proposed airport use complied with the standards of Section 502.1 of the BCZR, that the proposed airport use would not have a detrimental impact on the surrounding neighborhood, and that the proposed airport use would not adversely affect the public interest. Charles Lamb with Delta Airport Consultants testified that the proposed airport meets all Federal Aviation Administration, Maryland Aviation Administration and Baltimore County regulations. Lamb also testified that the proposed airport would not have a detrimental impact on the surrounding area.

Kevin Miller testified that the proposed airport meets all Federal Aviation Administration and Maryland Aviation Administration standards for aircraft noise levels. Miller also testified that the proposed use would not have a detrimental impact on the surrounding neighborhood.

James Matis testified that the proposed airport complies with the standards of BCZR Section 502.1 and that the proposed airport would not have a detrimental impact on the surrounding neighborhood, nor would it adversely affect the public interest. Lucas, therefore, met his burden of proof.

There is a presumption that the general welfare is promoted by allowing the special exception which cannot be overcome, unless there are strong and substantial existing facts and circumstances showing that the proposed use has detrimental effects above and beyond ones ordinarily associated with such uses. *Anderson v. Sawyer*, 23 Md. App. 612 (1974).

The Protestants did not provide sufficient evidence to show that the potential effects of the airport use would be greater at the instant site then elsewhere in RC-2 zones. Additionally, the Protestants did not provide sufficient evidence that the proposed airport use would have a greater detrimental impact to the health or safety of the vicinity at this location than that ordinarily associated with an airport use in a RC-2 zone.

C. LUCAS PLACED SEVERAL LIMITATIONS AND RESTRICTIONS ON HIS PROPOSED AIRPORT USE WHICH MINIMIZES THE INHERENT ADVERSE AFFECTS ASSOCIATED WITH ANY AIRPORT USE IN A RC- 2 ZONE.

Lucas submitted a site plan into evidence as Petitioner's Exhibit No. 2B. On the site plan, there are several self-imposed limitations or restrictions which minimize the inherent adverse impact of the airport use. The limitations and restrictions are as follows:

a. There be no fueling of aircraft at the airport;
b. There will be no aircraft storage at the airport for more than 14 consecutive days;
c. There will be no aircraft repair at the airport, except emergency repairs;
d. There will be no sale of aircraft at the airport;
e. The hours of taking off and landing of aircraft will be between 7:00 a.m. and 10:00 p.m.;
f. The airport operation shall not exceed 65 Ldn (acoustic criteria);
g. The airport use shall be limited to no more than 8 fixed wing aircraft events per day and 8 helicopter events per day. An event consists of landing, idling, take-off and fly by; and

h. The airport shall meet the Zoning Commissioner's Policy Manual ("ZCPM" Section 420.1, page 4-85) in regard to helipad construction and safety standards approved May 13, 1992.

The self imposed limitations and restrictions minimize the inherent adverse impacts for any airport use in an RC-2 zone. The typical airport use is not as restricted and limited as the proposed airport at Helmore Farm.

D. THE PROPOSED AIRPORT MEETS ALL FEDERAL AVIATION ADMINISTRATION, MARYLAND AVIATION ADMINISTRATION, AND BALTIMORE COUNTY REGULATIONS FOR AIRPORT SAFETY, DESIGN AND FLIGHT OPERATIONS.

Charles Lamb ("Lamb") with Delta Airport Consultants, was accepted as an expert in the field of airport engineering and design [T. 85]. Lamb testified that the airport would be a privately owned, private use airport that can accommodate a limited subset of smaller, single-engine aircraft [T. 90, 130]. Pilots could only land their aircraft with the owner's permission. [T. 131-132]

Lamb testified that the proposed airport meets all Federal (Federal Aviation Administration), State (Maryland Aviation Administration) and Baltimore County requirements regarding airport safety, design and flight operations [T. 91-93]. Lamb further testified that the proposed airport was a safe facility for the right type of fixed-wing aircraft and for any helicopter. The right type of aircraft can operate in and out of the facility safely in accordance with the FAA Pilot Operating Handbook [T. 131].

Officer Roy R. Taylor, Jr., Chief Pilot for the Baltimore County Police, submitted a comment which stated, "This property [Helmore Farm] meets all the requirements as established by the Federal Aviation Advisory Circular for the type of aircraft being operated." [Ex. 1]

E. THE PROPOSED AIRPORT MEETS THE FEDERAL AVIATION ADMINISTRATION AND THE MARYLAND AVIATION ADMINISTRATION'S STANDARD FOR AIRCRAFT NOISE LEVELS.

The Federal Aviation Administration ("FAA") has promulgated regulations relating to airport noise compatibility planning. The FAA regulations can be found in the "Federal Aviation Regulations -- Part 150: Airport Noise Compatibility Planning" [Ex. 2]

Table One, "Land Use Compatibility With Yearly Day/Night Average Sound Levels" found at Appendix A-2 in Part 150 of the Federal Aviation Regulations lists Ldn levels and which land uses are compatible in the corresponding Ldn contours.[Ex. 3] The land use compatibility chart has in one column land uses, i.e. residential, public use, commercial use, manufacturing and production, and recreation, while on the other axis the yearly day/night average sound level ("Ldn").

As described by The Federal Aviation Regulations - Part 150, the Ldn levels are measured as contours around the airport use. The FAA Land Use Compatibility Chart suggests whether the requisite land uses are compatible for a particular Ldn contour. For example, the FAA land use compatibility chart indicates that residential uses are compatible in Ldn contours below 65, but are not compatible for Ldn level contours 75 to 80. For comparison sake, the FAA land use compatibility table indicates that agricultural (except livestock) and forestry are permitted in contours over 85 Ldn. The table also indicates that outside parks[1] would be permitted within a Ldn contour of 70 to 75 but not permitted in a contour above 75 Ldn.

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[1] Deidre Smith testified that land surrounding Helmore Farm "is in essence a community park." [T-443].

When municipalities build public use airports, they hire experts such as Miller or Lamb to create Ldn contour maps around the proposed airport. Miller and Lamb both testified that they have been hired by numerous municipalities and airport authorities as a consultant. [T. 83, 145-146] The Ldn contour lines around the airport show the 65 Ldn contour line, the 70 Ldn contour line, the 75 Ldn contour line, and so on. The 65 Ldn contour line obviously would be the farthest from the airport while the over 85 Ldn contour line would be closest to the airport. With that contoured grid completed, the municipality can then make its land use decisions as to which types of zones should be permitted around the airport.

According to the Land Use Compatibility Table, ***agricultural***, mining, and fishing uses would be permitted in the over 85 Ldn contour line, that is, closest to the airport. All uses would be permitted in the "below 65 Ldn" contour line, particularly within the 59 Ldn contour line.

Maryland, through the Maryland Aviation Administration ("MAA"), has similarly promulgated regulations regarding airport noise control. The MAA regulations can be found at COMAR 11.03.03 [Ex. 4]

Maryland Annotated Code of Maryland, Transportation Article Section 5-804 pertains to limits for cumulative noise exposure. Section 5-804 states,

> "(a) *Executive Director to adopt limits.* - With the endorsement of the Secretary and the Secretary of the Environment and after a public hearing following 60 days' notice, the Executive Director shall adopt regulations that establish limits for cumulative noise exposure for residential and other land uses on the basis of the noise sensitivity of a given land use.
> (b) *Scope of limits.* - In adopting limits under this section, the Executive Director shall:
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> (1) Consider:
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> (i) The general health and welfare;
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> (ii) The rights of property owners;

(iii) Accepted scientific and professional standards; and
(iv) The recommendations of the Federal Aviation Administration and Environmental Protection Agency; and
(2) Set the limits at the most restrictive level that, through the application of the best available technology at a reasonable cost and without impairing the safety of flight, is consistent with attaining the environmental noise standards adopted by the Department of Health and Mental Hygiene."

COMAR 11.03.03.03 [Ex. 5] outlines the limits for cumulative noise exposure as defined by Ldn levels. The Ldn levels are measured in a contour grid around the airport with the requirement that certain land uses not be within certain Ldn contour grids. COMAR 11.03.03.03B(15) states that there is ***no limit for cumulative noise exposure for agricultural uses*** (except livestock), mining and fishing. The limit for cumulative noise exposure to neighborhood parks is 70 Ldn (see Footnote 1). The noise level for riding stables is 75 Ldn. The limits for cumulative noise exposure for residential homes is 65 Ldn.

F. BASED ON OBJECTIVE CALCULATIONS, THE MAXIMUM LEVEL OF CUMULATIVE NOISE EXPOSURE TO THE SURROUNDING RESIDENTIAL USES WOULD BE 59 LDN.

Kevin Miller ("Miller") was accepted as an expert in the field of acoustics, specifically as an expert in the field of aircraft acoustics [T. 146]. Miller testified that he took noise measurements[2] at Helmore Farm using objective, not subjective, means. [T. 151-152] .

Miller explained that the manner of measuring noise levels for airport uses was by way of Ldn levels. Miller explained that Ldn levels are shown in contour grids

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[2] Noise measurements were taken pursuant to Section 10-911 (Maryland Courts and Judicial Proceedings Code) which provides objective, regulatory standards which can be compared to both the FAA and MAA standards.

around the airport use. Certain land uses are deemed to be compatible and other land uses are not deemed to be compatible in certain Ldn contour grids. [T. 197]

Miller testified that, based on his objective, scientific readings, the ambient noise at Helmore Farm is between 56 and 58 Ldn. [T. 149] Miller testified that based on his objective ambient noise readings at the site, that the site was not a particularly quiet area. The background noise is produced by highway noise and some aircraft flyover. [T. 195]

Helmore Farm is close to urban areas. Jim Matis testified that Helmore Farm is by no means in the middle of large areas of RC-2 zones, rather it is on the outskirts of the RC-2 zone and close to the urban areas [T. 232] The area surrounding Helmore Farm, described by one Protestant , Deidre Smith, as "very, very close to urban areas ... We are close to the Beltway, we are close to other facilities like that." [T. 443-444] Another Protestant, who lives a "short mile away" from Helmore Farm, Jorgen Jensen, testified that he has taken objective noise readings in his neighborhood which showed the noise level at 90 dBa of the surrounding area at 2206 Fox Hunt Lane.

Miller calculated that the cumulative noise exposure as measured in Ldn to adjacent residential dwellings would be, at most, 59 Ldn [T. 150]. The two locations that Miller monitored the noise levels were located near the two most adjacent residential dwellings, without trespassing on those properties. [T. 151] The 59 Ldn cumulative noise exposure level was based on the maximum use of the airport; that is eight (8) events for fixed-wing aircraft and eight (8) events for helicopters in one day. Lucas testified that the only time the airport would be used at this maximum level would be

Preakness weekend. On all other days, the use of the airport would be significantly less, further reducing the Ldn level. [T.471]

Regardless, the 59 Ldn level is significantly lower than the limit for cumulative noise exposure for residential units, which is 65 Ldn. As previously indicated, there is no limit for cumulative noise exposure for agricultural uses. Presumably the FAA and MAA is not as concerned about the noise effects on corn and soybeans.

Miller testified that the Ldn contour line for the 65 Ldn level from the airport operations would be drawn approximately 200 feet from the helipad's adjacent property. Again, the 65 Ldn level is based on the maximum use of the property [T. 199-200]. As discussed by Miller and confirmed by the FAA and the MAA Land Use Compatibility Chart, residential land uses are not compatible within the 65 Ldn. Agricultural and park uses, including riding of horses, etc., are compatible for within the 65 Ldn contour. The FAA and MAA Land Use Compatibility Chart indicates that a house built within 200 feet from the Lucas/Immelt property, within the 65 Ldn contour line, would not be a compatible land use. The FAA and MAA Land Use Compatibility Chart clearly indicates that agricultural and park-type cases are compatible within the 65 Ldn contour level.

Dr. Douglas Carroll testified that the Immelt property, identified as Parcel 843, shares a density right with the property he owns, which is identified as Parcel 204. [T. 419, 420] According to Dr. Carroll, if he decided to build a dwelling on Parcel 204,

Susan Immelt would be precluded from building a dwelling on Parcel 843. There simply would not be any density units available for Immelt to build on Parcel 843.[3]

Assuming Ms. Immelt beats Dr. Carroll to the race to build on her parcel, the evidence demonstrated that the dwelling would not be built within 65 Ldn contour, that is, within 200 feet from the property line of Parcel 843 and the Helmore Farm property. Immelt testified that she has never received written confirmation from the Baltimore County Department of Permits and Development Management that she is permitted to build a dwelling on Parcel 843. [T. 323-325] Immelt testified that her parents conducted "perc" tests on the property and determined that the property would "perc" at the 325 elevation (as shown by the 7830/428 markings on the site plan, approximately by the "7"). [T. 328] The location where the "perc" test was successful is approximately at the same location as Dale Lucas' house. The "perc" test is clearly outside of the 65 Ldn contour line for the operation of the proposed airport.

Dr. Carroll confirmed that there has not been an application for a permit requested for Parcel 843. [T. 396] Dr. Carroll also confirmed that "perc" tests were done back in the 1960's which showed the property perking at the approximate same elevation as Dale Lucas' current dwelling. [T. 396]

Dr. Carroll testified that a potential house location on Parcel 843 was approximately 300 feet from the closest point on Helmore Farm, 400 feet from the Special Exception area, 500 feet to the fence around the helicopter landing area and approximately 600 feet to the actual concrete pad. [T. 421-424] Clearly by both Ms.

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[3] Carroll asserts that the Maryland Agricultural Preservation Trust Program somehow preempts local zoning and its density calculations so that Immelt would be permitted to build a house on her property even if she did not have the requisite density, pursuant to the Baltimore County Zoning Regulations [T. 421]. We have been unable to find any authority for Carroll's proposition.

Immelt's and Dr. Carroll's own admissions, the placement of the potential house on Parcel 843, if it is permitted by zoning to be built, would be outside of the 65 Ldn contour line.[4]

Both the FAA and MAA regulations clearly contemplate that airport uses will generate noise exposure levels above 85 Ldn. FAA and MAA recognize that airports typically generate noise exposure levels significantly greater than what is produced at Helmore Farm, which is 59 Ldn to the nearest residential dwellings. The fact that Helmore Farm's airport operation will produce a small Ldn level, further demonstrates that the adverse noise impacts at Helmore Farm are significantly less than what you would normally expect for an airport use.

G. NOISE IS AN ADVERSE EFFECT INHERENT TO THE OPERATION OF A PRIVATE USE AIRPORT REGARDLESS OF WHERE IT IS LOCATED IN A RC-2 ZONE DISTRICT.

In *Sharpe v. Howard County Board of Appeal,* 98 Md. App. 57 (1993), the Court affirmed the County Zoning Board's decision to grant a Special Exception for a private airport. In its discussion, the Court of Special Appeals stated:

> "The Board in the instant case was correct to treat noise generally as an adverse effect possibly inherent to the operation of a private airport regardless of where it is located in the R-3 district in Howard County. It indicated that the legislative body must have also foreseen such a potential when it determined to allow such uses with the grant of a Special Exception in the same zone that allowed as permitted uses single family homes on minimum three (3) acre lots."

There are several similarities to the *Sharpe* case and the instant case. In both *Sharpe* and the instant case, the Petition proposed a private airport in a zone which also

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[4] In the unlikely event that Immelt was permitted to build a dwelling on Parcel 843, and modern technology permitted her to build a dwelling on a part of the property which currently does not perc, and Immelt decided to build a dwelling within the 65 Ldn contour line, Lucas testified that he would alter his airport operations so that the proposed house would not be within the 65 Ldn contour. [T. 472-473]

permitted residential uses. Another similarity is that the Protestants in both cases complained about the noise that would be generated from the airport. In both cases, the Petitioner presented objective measurements of noise levels and the Protestants presented subjective measurements of noise levels.

The *Sharpe* court recognized that noise is an adverse effect inherent to the operation of a private airport regardless of where it is located in the zone. The correct special exception analysis determines whether the noise levels generated from the proposed airport are above and beyond those noise levels normally associated with an airport use in an RC-2 zone. Due to the limited and restricted nature of the proposed airport at Helmore Farm, the noise levels will be considerably less than what is normally expected for an airport, regardless of its location within the RC-2 zone.

H. THE LIMITED AND RESTRICTED NATURE OF THE PROPOSED AIRPORT MINIMIZES THE INHERENT ADVERSE IMPACTS ASSOCIATED WITH AN AIRPORT USE.

Lamb testified that due to the limited and restricted use of the proposed airport, only quieter, slower, single engine, piston fixed-wing aircraft such as a Maule, a J-3 Cub or a Citabria could land at Helmore Farm [T. 130, 136]. Lamb further testified that there are thousands of those types of aircraft, however, they are only about ten percent of the total fleet in America. [T. 130-131]

Pursuant to the FAA Pilot Operating Handbook only ten percent of the total fleet of aircraft in America are permitted to land at Helmore Farm. As such, Helmore Farm would be considered a very limited airport facility. [T. 130-131]. Lucas is aware of the types of aircraft which would be permitted to land at Helmore Farm pursuant to the

Pilot Operating Handbook. Since the airport would be a private use, private ownership airport, it is within Lucas' sole discretion to permit or deny access to his airport.

As pointed out by counsel for the Protestants, the type of airport that you would normally expect in an RC-2 zone would accommodate a larger fleet of aircraft. One would normally expect an airport in an RC- 2 zone to have a runway between 2,000 and 3,000 feet to accommodate larger and significantly noisier aircraft.

As previously discussed, the Court of Special Appeals in *Sharpe* found that an inherent adverse impact associated with an airport use is noise. Typically, one expects a large degree of noise to be generated from airport uses, particularly from turboprop planes and jets. Miller testified that turboprop planes and jets make significantly more noise and have a more inherent detrimental impact on the surrounding area then do single engine piston fixed-wing aircraft which would fly in and out of Helmore Farm [T. 199]. The limitation of having a shorter runway then what you normally would expect for an airport significantly minimizes the inherent impacts associated with airport uses. Larger, louder planes cannot fly in and out of Helmore Farm thereby minimizing the noise impact.

I. BY DEFINITION, AIRPORTS PERMIT BOTH FIXED-WING AND ROTARY WING AIRCRAFT.

Principals of statutory construction mandate that if the meaning of a word is questioned, common sense should dictate. The Court in *Kaczorowski v. City of Baltimore*, 309 Md. 505, 513 (1987), addressing a statutory construction issue stated, "The court, in seeking to ascertain legislative intent, may consider the consequence 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***." (emphasis added).

Principals of statutory construction also mandate that when "interpreting a statute, we assume the words of the statute have their ordinary and natural meaning, absence some indication to the contrary." *Atkinson v. State*, 331 Md. 199, 215 (1993). "A principal rule of statutory construction is that 'when the legislature uses commonly accepted words or terms in a statute without qualification, courts construing the statute can and should assume that the legislature was aware of the commonly accepted meaning of the word{s} or terms{s}.' " *In re Douglas P.*, 333 Md. 387, 392 (1994); (citation omitted) *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 699 A.2d 1209, 1219 (1997)("in the absence of statutory definition, we must give the term ... its plain and ordinary meaning").

Lucas proposes to place an airport on Helmore Farm which is zoned RC-2, where airports are permitted by special exception. The Baltimore County Zoning Regulation Section 101 defines an airport as "Any area of land or water designated and set aside for landing or taking-off of ***aircraft.***" The Baltimore County Zoning Regulations do not define "aircraft". However, pursuant to Section 101, the Baltimore County Zoning Regulations advise us to look at the *Webster's Third International Dictionary* for the definition of undefined terms.

Webster's Third International Dictionary defines an aircraft as "A weight carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air either by the buoyancy of the structure or by the dynamic action of the air against its surfaces -- used of ***airplanes***, balloons, ***helicopters***, kites, kite balloons,

orthopters, and gliders, but chiefly of airplanes or aerostats." (emphasis added)[Ex. 6]. See also Maryland Annotated Code, Transportation Article Section 5-101(f) (" 'aircraft' means any contrivance invented, used, or designed to navigate, or fly in the air.")

The Baltimore County Zoning Regulations expressly do not limit airports to the landing and taking off of fixed-wing aircraft. The County Council could have chose to limit the definition of airport, and their use, by incorporating restrictive language in the BCZR. Clearly, the Council chose not to limit the use of airports, rather, expansively defined the use. This expansive use of the word is mirrored in the Annotated Code of Maryland, Transportation Article Section 5-101(h), wherein "airport" is defined as "any area established for the landing and taking off of aircraft, including any appurtenant airport facilities." Of course, the Transportation Article provides the statewide laws for the use of airports.

The Baltimore County Zoning Regulations define a helicopter as "any ***rotary wing aircraft*** which depends principally for its support immersion in the air on the lift generated by one or more power driven rotors rotating on substantial vertical axis." Clearly the use of helicopters, which are defined as "aircraft", are permitted to take off and land at airports.

Lamb, the airport design and safety expert, testified that according to the ICAO and the FAA Pilot Controller Handbook, the definition of an aircraft is "any machine that can derive support in the atmosphere from the reaction of air, other than reaction of the air against the earth's surface."[T. 88] Lamb testified that the definition of aircraft is a very broad term which includes both fixed-wing and rotary wing aircraft. [T. 88-89]

Lamb also testified that it is typical to find rotary wing aircraft (helicopter) operations, along with fixed-wing aircraft operations, at airports. [T. 134].

It is nonsensical to contend that an airport may not have helicopters fly in and out of it. Such an argument is contrary to our everyday understanding of how airports are used and how the FAA and MAA define airports and aircraft. Any typical airport has both fixed-wing and rotary wing aircraft operations.

If a parcel of land has enough space to accommodate the landing and taking off of fixed-wing aircraft, it will similarly have enough land for the taking off and landing of rotary wing aircraft (helicopters). It is counterintuitive to argue that an airport would not be permitted to use its abundance of land for the taking off and landing of helicopters.

There are clearly instances in which a parcel of land is not large enough to accommodate the taking off and landing of fixed wing aircraft, however, could accommodate helicopter operations. There was testimony from Lucas that there is a building on Wall Street from which helicopters take off and land [T. 51]. There are several instances in Baltimore County and the Baltimore metropolitan area where helicopter operations are conducted on rooftops of buildings, most familiar is Maryland Shock Trauma at University of Maryland. Baltimore County also has Black & Decker and PHH which operate similar helicopter operations. Of course, these locations could not accommodate a fixed-wing aircraft use.

The County Council has recognized this distinction and the need for heliports and has created a category for helicopter operation uses only, with no fixed-wing aircraft permitted.

To argue that Lucas must get approval for both an airport and a helistop is counterintuitive, nonsensical and contrary to the clear language of the BCZR. Common sense dictates that approval for an airport includes all aircraft, including fixed-wing aircraft and rotary wing aircraft.

J. THE DISTINCTION BETWEEN *SMITH* AND THE INSTANT CASE IS THAT LUCAS INTENDS TO USE THE AIRPORT FOR BOTH FIXED-WING AND ROTARY AIRCRAFT.

Protestants argued at the hearing that In Re Petition for Special Hearing and Special Exception, Robert J. Smith, Petitioner, case number 90-1-SPHX, is controlling. In *Smith*, the Petitioner owned property in an RC-2 zone and requested permission to use the property for helicopter operations. Deputy Zoning Commissioner Nastarowicz found, "Petitioner failed to produce any testimony evidencing that Petitioner's Exhibit One was a site plan for landing of any aircraft other than a helicopter. Petitioner failed to produce any study regarding the subject sites viability to safely accommodate an airport."

Deputy Zoning Commissioner Nastarowicz concluded, "As Smith was not qualified to render an expert opinion regarding the suitability of the subject site to safely accommodate an airport ... the Petitioner has not met his burden of showing that the proposed use meets the prescribed standards and requirements set forth in Section 502.1 of the BCZR." [Ex. 7][5]

The obvious distinction between Smith and the instant case is that Lucas intends to use the airport for both fixed wing and rotary aircraft. Lucas testified that he is

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[5] Obviously, this Deputy Zoning Commissioner is not bound by a prior Deputy Zoning Commissioner's decision in a different case and under a different set of facts. *See Insurance Company v. Thrall*, 181 Md. 19 (1942)("there is no decision or statute which requires one nisi prius judge to accept as final and conclusive the decision on the law before the trial of another judge or court.")

considering the purchase of a Maule, a type of fixed wing aircraft that would be permitted to fly in and out of the airport. Lucas has received information regarding the Maule prior to these hearings. [Pet. Ex. 6] [T. 460-462] In *Smith*, there was no testimony that the Petitioner intended to land any other type of aircraft besides helicopters.

In the instant case, there was abundant evidence from both the Protestants and Lucas that fixed wing aircraft landed at Helmore Farm since 1956. There was also testimony that there were expenditures made to improve the property to accommodate the use of fixed wing aircraft at Helmore Farm. [T. 39-40] In Smith, there was no such testimony that the property was ever intended to be used for fixed wing aircraft.

II. FEDERAL PREEMPTION IN THE AREA OF AVIATION.

A. THE U.S. SUPREME COURT'S DECISION IN *CITY OF BURBANK* IS THE PREEMINENT AUTHORITY ON THE QUESTION OF FEDERAL PREEMPTION IN THE AREA OF AVIATION.

The U.S. Supreme Court in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854 (1973) found federal preemption of local regulation of aircraft noise emissions and flight operations at airports by federal statute, the Federal Aviation Act of 1958. The Supreme Court in *City of Burbank* discussed at length the Congress' intent regarding the preemptive scope of the Federal Aviation Act.

In *Price v. Chartered Township of Fenton*, 909 F.Supp. 498 (E. D. Mich. 1995), the Court stated,

> "**Federal courts, in the wake of *City of Burbank*, have held that various attempts by local governments to enforce their police power to control noise or otherwise affect flights are preempted**. *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F.Supp. 678 (N.D.Y. 1989) (ordinance that limits, interlia, decibel levels in flight paths of airplanes is preempted); *U.S. v. City of Blue Ash*, 487 F.Supp. 135 (S.D. Ohio 1978) (ordinance requiring aircraft to make "noise abatement turns" is preempted)"; *Command Helicopters, Inc. v. City of Chicago*, 691 F.Supp. 1148 (N.D. Ill.

1988)(ordinance regulating lifting operations of helicopters is preempted); *Gustafson v. City of Lake Angelus*, 856 F.Supp. 320 (E.D. Mich. 1993)(ordinance restricting the storage, landing and flight altitude of aircraft are preempted). (emphasis added).

The Court of Appeals of Maryland in *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528 (1990) held that the County Board of Zoning Appeals' conditions placed on approval of an airport that limited the frequency of take-offs and landing of aircraft and established a curfew for operation of those aircraft were preempted by federal law. The *Harrison* Court, quoting *Blue Sky Entertainment, Inc. v. Town of Gardiner*, stated:

> "The Supreme Court's decision in *City of Burbank* is the 'preeminent authority on the question of federal preemption in the area of aviation' ."

The *Harrison* Court concluded that:

> "The Board's condition three -- the curfew -- falls directly within the preemption rule of *City of Burbank*, as well as that of other cases we have cited. It is plainly an intent to limit aircraft noise by regulating the operation of aircraft in navigable airspace over which the FAA has control. Condition two is a less direct effort to control noise by controlling aircraft operations, but it is one, nevertheless ... We hold that both conditions are preempted under *City of Burbank* and, therefore, unconstitutional."

B. THE FAA'S REGULATIONS PREEMPTS ANY STATE OR LOCAL REGULATIONS REGARDING NOISE EMISSION.

Counsel to Protestants, during the cross-examination of Miller, eluded that the State or local noise ordinances would control over the FAA regulations regarding noise emissions. Clearly, under *City of Burbank* and its progeny, the federal regulations preempt State and local regulations regarding noise emissions.

C. THE FAA'S REGULATIONS PREEMPTS ANY STATE OR LOCAL REGULATIONS REGARDING FLIGHT OPERATIONS.

Counsel to Protestants asked a series of questions regarding flight operation issues such as length of runways, clearance of obstacles, types of planes permitted to land at the airport and the creation of the "safest" airport. All those issues raised by counsel are flight operation issues which the FAA regulates.

Lamb testified that there are extensive FAA regulations regarding all of those flight operation issues. Clearly, based on *City of Burbank*, any its progeny above-cited, the FAA regulations preempt any local regulation which attempts to regulate flight operations. The Deputy Zoning Commissioner may not deny the special exception on the basis of flight operations issues raised by the Protestants -- to do so would be an unconstitutional act. *See Harrison v. Schwartz*, 319 Md. 360 (1990). The FAA regulates flight operation issues, and the United States Supreme Court has ruled in *City of Burbank* that any regulating of flight operations by local authorities is unconstitutional.

D. ZONING COMMISSIONER WOULD BE NOT PERMITTED UNDER THE LAW TO PLACE THE LIMITATIONS AND RESTRICTIONS THAT LUCAS SELF-IMPOSED ON THE USE OF THE AIRPORT.

Lucas has unilaterally limited and restricted his airport use further than what this Deputy Zoning Commissioner would be permitted under the law. For example, Lucas placed a self-imposed curfew on his airport which this Deputy Zoning Commissioner would not have the power to impose. Further, Lucas unilaterally imposed a condition of the number of flights at his airport, another condition which the Deputy Zoning Commissioner would not have the power to impose. Similarly, several

of the self-imposed restrictions, such as the fueling of aircraft and the storage of aircraft, would also be conditions which the Deputy Zoning Commissioner would not have the ability to impose.

The self-imposed restrictions and limitations, limitations which even the Deputy Zoning Commissioner could not impose as conditions for special exception approval, further demonstrate that the proposed airport use at Helmore Farm would not have an adverse impact on the surrounding community above and beyond that which you would normally expect for an airport use in the RC-2 zone. The typical airport could have as many take-offs and landings, no curfew, significant amount of storage of aircraft and fueling, etc., without the ability of the Deputy Zoning Commissioner to place restrictions on any special exception approval to minimize the adverse impacts of the airport.

III. PETITION FOR SPECIAL HEARING - LUCAS HAS A LEGAL NON-CONFORMING USE FOR HELICOPTER OPERATIONS AT HELMORE FARM PURSUANT TO BCZR SECTION 420.5.

A. THE STANDARD FOR LEGAL NON-CONFORMING USES.

The Court of Special Appeals in Loane v. Montgomery County, 85 Md. App. 477, 496, 584 A.2d 142 (1990) discussed the concept of non-conforming uses:

> "An owner of land may establish a 'lawful non-conforming use' if the evidence conclusively establishes that before and at the time of the adoption of the original zoning ordinance, he was using substantially all of his tract of land in a then-lawful manner for use which by a later legislative action became non-permitted. Board of Zoning Appeals of Howard County v. Mayer, 207 Md. 389, 114 A.2d 629 (1955)."

In McKemy v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978), the Court discussed the application of Baltimore County Zoning Regulations and the issue of legal

non-conforming uses. The McKemy Court stated, "In deciding whether the current activity is within the scope of the non-conforming use, the Board (administrative zoning tribunal) should have considered the following factors:

> (1) To what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) Is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) Does the current use have a substantially different effect on the neighborhood;
> (4) Is the current use a 'drastic enlargement or extension' of the original non-conforming use." (footnotes omitted)

Under Maryland law, a non-conforming use may be permissibly intensified, however, it may not be enlarged. The Court of Special Appeals in Prince George's County v. E. L. Gardiner, Inc., 47 Md. App. 471, 476, 424 A.2d 392 (1981), reversed on other grounds, 293 Md. 259, 443 A.2d 114 (1982), discussed the distinction between intensification and enlargement, and stated:

> "A distinction is to be drawn between the enlargement or extension of non-conforming uses and an intensification of such lawful uses. An increase in floor space ... an increase in the area of a lot used for non-conforming uses, or a change in business methods or the provision of new accessory facilities with the resulting extension of the use involved have all been upheld to be proposals for the enlargement of a non-conforming use. Conversely, an increase in the volume of an existing business is usually referred to as an intensification rather than an enlargement and such intensification has been under a valid non-conforming use."

In a case involving Memorial Stadium in Baltimore City, the Court of Appeals in Green v. Garrett, 192 Md. 52, 63, 63 A.2d 326, affirmed after remand, 193 Md. 260, 66 A.2d 412 (1949) stated:

> "The Appellants contend that the enlargement of this use {Memorial Stadium} to include professional baseball game for a considerable period of the year is not within the exemption, but we cannot find so ... we have never held that the more frequent use of a property for a purpose which

does not conform to the ordinary restrictions of the neighborhood is an extension of an infrequent use of the same building for a similar purpose ..."

B. LUCAS PROPERLY VESTED HIS RIGHT TO USE HIS PROPERTY FOR HELICOPTER OPERATIONS PURSUANT TO BCZR SECTION 420.5.

BCZR 420.5 states *"No special exception shall be required* to permit either a type one or type two heliport if such a use is located: at least 1,000 feet from any property line; in an R-6 or R-40 zone; and beyond the urban rural demarcation line." (emphasis added)

BCZR 420.5 was enacted pursuant to Bill 85, 1967. [Ex. 8] In 1967, at the time that Bill 85-67 was enacted, Helmore Farm was zoned R-40.

BCZR Section 100.3.A states:

> The residential zones and zoning classifications as previously changed in Section 100.3 are further changed: The ***R.40***, R.20, R.10, R.6, R.G., and R.A. zones and zoning classifications established before the effective of this subsection by the official maps and amendments thereto and by Section 100.1 as previously enacted ***are also changed;*** and all of them are residential on the effective date of this subsection as set forth below. Any requirement, stipulation or designation with respect to said classification, any law, ordinance, regulation, private agreement, or official zoning shall be applied to or construed as the corresponding D.R. zoning classification, as follows, to the full extent of consistent applicability:
>
> ***Zones heretofore classified as R.40 are now classified as D.R. 1 . . ."***

The 1971 zoning maps show Helmore Farm as zoned RDP. Dillon testified that although not enacted in any legislation, all R.40 zoned property outside of the URDL was changed to the zone RDP (Rural Deferred Planning) instead of D.R.1. [T. 247-248]

Pursuant to Dillon's testimony it was the clear legislative intent for the R.40 classification to be converted to RDP. Therefore, in reading BCZR 420.5, the RDP zoning classification should be inserted for R-40 zoning classification.

Lucas testified that he began helicopter operations in 1971 or 1972 at Helmore Farm. [T. 503, 516]. In the early 1970's, Lucas legally began using his property for helicopter operations pursuant to Section 420.5. In the early 1970's, Lucas properly vested his right to use his property for helicopter operations. Pursuant to Section 420.5, Lucas did not need to obtain special exception approval for his helicopter operations -- the use was permitted as a matter of right.

C. LUCAS NEVER INTENDED TO ABANDON OR DISCONTINUE THE USE OF HIS PROPERTY AT HELMORE FARMS FOR HELICOPTER OPERATIONS.

BCZR Section 104 relates to non-conforming uses. BCZR Section 104.1 states:

> "A non-conforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change of such non-conforming use to any other use whatsoever, or any ***abandonment or discontinuance*** of such non-conforming use for a period of one year or more, the right to continue and to resume such non-conforming use shall terminate." (emphasis added)

Abandonment or discontinuance are not defined by the Baltimore County Zoning Regulations. *Webster's Third New International Dictionary* defines abandonment as, "***To cease to assert or exercise*** an interest, right, or title to esp. with the intent of never again resuming or reasserting it."[6]

Black's Law Dictionary, 6th Edition, defines abandonment as, "To desert, surrender, forsake, or cede. To relinquish or give up with ***intent*** of never again resuming one's rights or interests."[7]

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[6] There are other definitions but they do not appear to be applicable. However, we have attached the full definition as Exhibit 9.

[7] There are other definitions but they do not appear to be applicable. However, we have attached the full definition as Exhibit 10.

Webster's Third New International Dictionary defines discontinue as, "***To abandon*** or terminate by a discontinuance or by other legal action, to cease to continue, come to an end."[8]

Black's Law Dictionary, 6th Edition, defines discontinuance as, "Ending, causing to cease, ceasing to use, giving up, leaving off. Refers to the **termination or abandonment** of a project, structure, highway, or the like."[9]

Clearly, the County Council intended that the terms abandonment and discontinuance refer to one another. A review of the definitions of discontinuance and abandonment show that the two words both contain an ***intent*** element, and discontinuance is defined as a form of abandonment. In other words, the owner of the property must intend to stop exercising his lawfully vested right.

In the instant matter, the Protestants must prove that Lucas intended to stop exercising his right to use Helmore Farm for helicopter operations. There was no evidence that Lucas ever intended to stop exercising his rights to use his property for helicopter operations. To the contrary, the uncontradicted evidence was that Lucas believed he had a right to use his property for helicopter operations and continues to use his property for helicopter operations. Without a proper showing that Lucas intended to abandon or discontinue his legal right, Lucas has a valid legal non-conforming use to use his property for helicopter operations.

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[8] There are other definitions but they do not appear to be applicable. However, we have attached the full definition as Exhibit 11.

[9] There are other definitions but they do not appear to be applicable. However, we have attached the full definition as Exhibit 12.

D. THE CURRENT ACTIVITY ON LUCAS' PROPERTY IS WITHIN THE SCOPE OF THE ORIGINAL LEGAL NON-CONFORMING USE.

The current activity on Lucas' property is within the scope of the original legal non-conforming use and is a permissible intensification of that legal non-conforming use and not an enlargement.

Lucas' use of his property for helicopter operations does not have a substantially different affect upon the neighborhood than his original legal non-conforming use. Finally, the current use is an intensification of the original legal non-conforming use and is not a drastic enlargement or extension of the original legal non-conforming use.

IV. CONCLUSION.

WHEREFORE, for the foregoing reasons, Petitioner, Edgar Lucas, respectfully requests this Deputy Zoning Commissioner to grant the Petition for Special Exception and Petition for Special Hearing.

Respectfully submitted,

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134726

CERTIFICATE OF SERVICE

I hereby certify on this 1ST day of May, 1998 that the Memorandum of Law was mailed, first class, postage prepaid to:

G. Macy Nelson, Esquire
Suite 803
401 Washington Avenue
Towson, Maryland 21204

David K. Gildea
David K. Gildea

134726

TERRENCE B. SHERIDAN
Chief of Police



Integrity . . . Fairness . . . Service

Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

To Mr. Carl Richards, Jr.
Department of Permits and
Development Management

February 19, 1998

Sir:

As per your departments request, I have inspected the property located at 901 Greenspring Valley Road. This property meets all the requirements as established by the Federal Aviation Adv ory Circular for the type of aircraft being operated.

If you have any other questions, please feel free to call me at the Baltimore County Police Aviation Unit (410)887-0279.

Sincerely;

Officer Roy R. Taylor, Jr.
Chief Pilot

cc:
Sergeant Ron Wines
Captain Don Roby

98-294-SPHX

U.S. Department
of Transportation

**Federal Aviation
Administration**

Federal Aviation Regulations

Part 150
Airport Noise Compatibility Planning

This edition replaces the existing loose-leaf
Part 150 and its changes.

This FAA publication of the basic Part 150, effective January 18, 1985,
incorporates Amendments 150–1 and 150–2 with preambles.

Published
September 1993

Introductory Note

Part 150 is codified under Subchapter I, Airports, of Title 14 of the Code of Federal Regulations.

This FAA publication of the basic Part 150, effective January 18, 1985, incorporates Amendments 150–1 through 150–2.

Bold brackets**[ ]** throughout the regulation indicate the most recent changed or added material for that particular subpart. The amendment number and effective date of new material appear in bold brackets at the end of each affected section.

IMPORTANT NOTICE

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Part 150—Airport Noise Compatibility Planning

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Revision of Part 150

Airport Noise Compatibility Planning

Adopted: December 13, 1984 **Effective: January 18, 1985**

(Published in 49 FR 49260, December 18, 1984)

SUMMARY: This final rule revises, and makes final, the FAA's interim rule that prescribes requirements for airport operators who choose to submit noise exposure maps and develop airport noise compatibility planning programs to the FAA. This regulation is needed to implement portions of the Aviation Safety and Noise Abatement Act of 1979, as amended (49 USC 2101 *et seq.*). It amends the interim rule adopted on January 19, 1981 (46 FR 8316). The revisions reflect, in part, comments invited and received following promulgation of the interim rule.

Comments must be received on or before June 14, 1985.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 18691, 800 independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202)755–9027.

SUPPLEMENTARY INFORMATION: The purpose of these regulations is to implement portions of Title I of the Aviation Safety and Noise Abatement Act of 1979 as amended (49 USC 2101 *et seq,* the "ASNA Act"). These final regulations amend and make final the interim regulations promulgated January 19, 1981 (published in 46 FR 8316, January 26, 1981). That interim rule was issued in order to meet the statutory deadline to prescribe regulations by February 28, 1981. Although the interim rule was based largely on Notice No. 76–24 (41 FR 51522), full implementation of the statutory dictates required certain provisions in the rule that varied in some respects from those proposed in the Notice. Accordingly, comments were invited on the interim rule based on the rule text and experience under the rule. A number of interested persons submitted written comments to the public regulatory docket. All comments received have been reviewed and considered in the issuance of this final rule. They are discussed below.

Comments Invited

The FAA has determined that it is appropriate to adopt this revision of Part 150 without additional public notice and comment on the text thereof. In view of the fact that the FAA has already received comments on the interim rule and that, except for a shift of certain review functions within the FAA, the changes in Part 150 are all either editorial or clarifying in nature, notice and public procedure are unnecessary. In addition, the FAA has been ordered by the United States Court of Appeals for the District of Columbia Circuit (*People of the State of Illinois* v. *Langhorne Bond,* No. 81–1317, September term, 1983) to promulgate final regulations governing airport noise abatement planning and noise assessment methodology no later than December 18, 1984.

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on regulations, even when not required to do so by statute. The DOT policy further provides that prior notice may be foregone when it can reasonably be anticipated that such action will not result in the receipt of useful information. In such a case the initiating office, nevertheless, is to provide notice and opportunity to comment subsequent to the final regulation. This procedure will assure that continued public participation is allowed and also permit the FAA to assure compliance with the Judicial deadlines. Accordingly, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this amendment. Communications should identify the regulatory docket and be submitted in duplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this amendment must submit with those comments a self addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 18691." All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Synopsis of the Final Rule

As provided under the ASNA Act, these regulations apply to any "public use airport" as defined by Section 502(17) of the Airport and Airway Improvement Act of 1982. It should be noted that, although Part 150 specifies requirements that must be met when submitting noise exposure maps and airport noise compatibility planning programs to the FAA, the submission of these maps and programs is completely voluntary.

These proposed amendments also incorporate changes required by amendments to the ASNA Act, Docket comments received during the February 28, 1981 through December 31, 1981 comment period, and the practical experience gained by the FAA in implementing the program. FAA's internal processing of Part 150 submissions are modified to simplify the airport operator's procedural requirements and to place primary review responsibility in the FAA's regional offices.

Overview of the Changes

As required by the Act, the regulations as revised establish a single system of measuring aircraft noise and a single system for determining the exposure of individuals to noise in the vicinity of airports. The regulations as revised also establish a standardized airport noise compatibility planning program, including (1) Voluntary development and submission to the FAA of noise exposure maps and noise compatibility programs by airport operators; (2) standard noise methodologies and units; (3) identification of land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) the procedures and criteria for preparation and submission of noise exposure maps and noise compatibility programs.

This rule changes the administrative process to be followed by the FAA when it receives a noise exposure map or airport noise compatibility program (or their revisions) from an airport operator in accordance with the ASNA Act. Airport operators volunteering to participate in the program submit five copies of their noise exposure maps, noise compatibility programs, and their revisions to the Director of the FAA Regional Office having jurisdiction over the area in which the airport is located. If the submission conforms to the applicable requirements, it is received by the FAA and a notice of receipt is published in the *FEDERAL REGISTER*. Submissions which do not conform, will be returned by the Regional Director to the airport operator for further consideration and development to comply with Part 150.

The Regional Director (or designee) conducts the necessary evaluations of noise compatibility programs and, within the prescribed time period, recommends to the Administrator whether to approve or disapprove the program. The region is provided broad discretion to conduct the evaluation and to follow the necessary procedures to ensure that the decision will be made efficiently and on a well-informed and reasoned basis. Some of the evaluation criteria are prescribed under § 104 of the ASNA Act, but in other situations, such as those relating to flight procedures or affecting the safe and efficient use of the navigable airspace, the FAA will apply appropriate policy and program criteria to the matters presented by the program. The FAA considers only one program at a time for any specific airport; if a program is already under review, it will have to be revised or withdrawn by the applicant before the FAA will review another program. Except for specific situations, each revised program will be considered under the proposed rule as a new program. Under prescribed conditions, an approval may be revoked or modified for cause after notice to the airport operator. Determinations become effective upon issuance and continue until revoked or modified.

In framing the ASNA Act, the Congress reaffirmed the FAA's responsibilities to review local actions for flight safety and for economic burden. Under ASNA, the proposal of restrictions or other actions under a noise compatibility program is entirely discretionary on the part of the airport operator; however, review of the operator's proposal by the FAA for safety and economic burden is not optional. Once submitted to the FAA, each noise compatibility program must be scrutinized and be approved or disapproved under all of the criteria in § 104 of the ASNA Act.

Administrative Process

This rule describes the revised administrative process the FAA will follow when it receives a noise exposure map or airport noise compatibility program (and their revisions) in accordance with the requirements

of the ASNA Act. As previously indicated, the Director of the FAA Region in which the airport is situated has, through delegation from the Administrator, the primary responsibility for administering the Part 150 airport noise compatibility planning program. The FAA Region will evaluate the submission and will coordinate any aspects of the noise program affecting other agency programs.

The process provides for notice to the public of the receipt of each airport "noise exposure map" and "noise compatibility program" by publication in the *FEDERAL REGISTER* when, based on a preliminary review, the requirements for those submissions are satisfied. It provides a means for timely and thorough evaluation by the FAA of the measures presented in each program to ensure an informed and reasoned determination on whether that program should be approved. That decision is based on the program itself, information presented or developed during the evaluation, and other information available to the agency.

The administrative process does not include adversary pleadings or proceedings in which interested persons submit their complaints, evidence, or arguments for a "record" of hearing as the sole basis upon which the Administrator's determination on a program will be made. Instead, Section 103(a)(1) of the ASNA Act provides that, before a Noise Exposure Map is submitted to the FAA, it be prepared "in consultation with any public agencies and planning agencies in the area surrounding the airport". FAA's role is then simply to approve or disapprove a subsequent program within the 180-day time set by Congress. Section 104(b) of the ASNA Act requires the Administrator to approve or disapprove each program submitted in accordance with the Act (except those measures relating to flight procedures) within 180 days after it is received or, upon failure to do so, the program is "deemed" to be approved. Except for those measures relating to flight procedures, the Administrator must approve a program if the measures to be undertaken under the program, (1) Would not create an undue burden on interstate or foreign commerce, (2) are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, and (3) the program provides for its revision made necessary by a revised noise exposure map. Clearly, those decisions do not preempt local authority or responsibility for land use decisions.

Program measures relating to proposals for revised flight procedures for noise control or abatement purposes were treated separately from other measures under the ASNA Act, and the interim regulation, in view of their potential impact on air safety and on the efficient and prudent management of the Nation's air transportation system. As specified herein, FAA determinations relating to the use of flight procedures for noise control purposes may be issued either in connection with the decisions made on other portions of the program or they may be issued separately. The FAA recognizes that a proposal concerning flight procedures may be an integral part of a noise compatibility program so that it would be difficult to approve the program if the flight procedures are considered separately. Consequently, the FAA intends to conduct its evaluation of flight procedures together with, and at the same time as, its evaluation of the rest of the program and to issue its determinations at the same time within the 180 days, whenever possible. It is only when further extensive evaluation may be necessary relative to flight procedures which cannot be accomplished within the 180 days allowed for program approval or disapproval that the FAA will issue a separate determination. A separate determination on flight procedures will then be made within an indefinite, but reasonable, time after receipt of the program.

Section 104(a) of the ASNA Act specifically excludes (from the 180-day rule) those portions of a program that "relate to" flight procedures, not just the flight procedures themselves.

An airport operator may revise or withdraw a noise compatibility program at any time before a determination is issued on that program by the Administrator; in addition, the Regional Director may terminate evaluation of the program immediately upon notice of the intent to revise or withdraw a program. A revised program will be treated as a new program and a new 180-day review period will begin unless the Regional Director finds that, in light of the overall program, the modifications can be evaluated separately and integrated into the unmodified portions of the program without exceeding the 180-day review period or creating an undue workload or expense to the Government. The FAA will evaluate only one program at a time for any one airport.

Discussion of Comments on the Interim Rule

As previously stated, interested persons have been afforded the opportunity to participate in development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed December 31, 1981. All comments received have been reviewed and considered in the issuance of this final rule.

Twenty public comments were received in response to the Notice contained in the interim rule (Docket No. 16729); about half supported the interim rule as published, while the others contained specific

suggestions and recommendations for change. In addition to comments directly on the rule, several commenters took the opportunity to comment on other aspects of the ASNA Act.

The assignment of specific responsibilities for local airport noise control planning and implementation to the local airport proprietor, users' groups, planning agencies, and the FAA received considerable discussion. The general consensus among those responding in support of the interim rule procedures was that, without a regulation, many airport noise problems will be overlooked until they are beyond the point of simple or effective solution. Although a majority of individuals responding to the docket were in agreement that the development of noise plans by airport proprietors was a desirable goal, many specific and significant objections to individual sections of the interim rule were raised. The primary objections were with those sections dealing with the interactions between groups and the consultations required as a condition of approval by the FAA. While the commenters seldom agreed on what should be required, it was possible to discern a consensus that the provisions of the interim rule were too vague and indistinct to be really useful guidance.

The comments received in public Docket No. 16729 are discussed below. They are grouped by broad categories of issues.

Safety Reviews

One commenter was concerned with the scope of safety reviews of actions that may be proposed by airport proprietors under FAR Part 150. A trade association of U.S. airlines asserted that the present text restricts the safety reviews to "flight procedures." It was suggested that safety involves other areas, such as displaced thresholds, reverse thrust usage, and glide slopes.

The FAA certainly agrees that the matters listed by the commenter are deserving of safety reviews if and when such actions are proposed for implementation. However, it should be noted that they are already included in FAR Part 150. The definition of flight procedures in § 150.7 includes "any requirements, limitations, or other actions affecting the operation of aircraft in the air or on the ground." This final rule continues the use of the general definition of flight procedures in order to avoid inserting a list of specific actions. Such lists tend to be exclusionary and need more frequent revision.

Aircraft Operational Controls vs. Land Use Controls

This docket received several comments regarding the emphasis that should be placed on aircraft operational controls or limitations relative to emphasis on land use controls. One commenter stated that "greater emphasis should be placed on flight procedures which diminish aircraft noise at its source or lessen its impact on noise sensitive areas." Another commenter stated that land use controls and off-airport construction techniques with limited aircraft operational modifications would be acceptable but remained opposed to aircraft noise restrictions beyond those already required by FAR Part 36. The commenter continued that "it would be a serious error on the part of FAA to adopt a policy that encourages local airport operators to establish additional noise restrictions and thus adversely impact the fleet transition process." This final rule will not limit, in any way, FAA's close review of proposed operating restrictions with respect to the impact of such proposals or the fleet transition process.

It is not the intent of the FAA through FAR Part 150 to encourage one noise abatement alternative over another but through the very process set forth in Part 150 to provide a reasonable planning and implementation approach to ensure that maximum noise abatement benefits are derived in a manner that does not place an undue burden on air commerce, is not discriminatory, and does not adversely affect the safe and efficient use of airspace. The Part 150 process provides a voluntary avenue for airport proprietors to gain Federal approval of noise abatement proposals.

Level of Federal Involvement in Local Planning

One commenter observed that most airports serving air transportation have been in existence for a long time with known incompatible land uses in the airport environs. The commenter believes that there are few situations where political, social, and financial conditions would permit conversion of these uses to compatible ones. Two commenters expressed concern about the degree of Federal involvement as stated in the interim regulation and the effect it may have on diminishing local responsibilities relative to noise controls. One of these, the American Association of Airport Executives, complained that attempts by local proprietors to protect the citizens from noise have run afoul of Federal action through the courts or otherwise citing restraint of trade or discrimination. On the other hand, the Air Transport Association (ATA) argued for the establishment of its proposed national aircraft noise abatement program which would preclude FAA approval of plans which unduly affect interstate commerce, jeopardize safety, unjustly discriminate or interfere with safe and efficient use of airspace. ATA's proposal would allow for local involvement by initiation of a plan by the local proprietor and opportunity for public review.

FAA proposes to support the ATA position with respect to factors which should not be allowed and has provided for them in the Program Standards section of Appendix B and in paragraph 150.35(b) on program approval.

Voluntary vs Mandatory Planning

Nine comments were received on whether or not Part 150 should require at least some airport proprietors to submit noise exposure maps and noise compatibility programs. For instance, the City of Chamblee, Georgia, stated that all airports with an Airport Operating Certificate should be required to submit their noise maps and programs as a condition for their certification, that any airport with noncompatible uses should be required to hold advertised public hearings during the plan development process, and should receive Federal assistance with respect to the costs incurred in developing these plans. The Attorney General of the State of Illinois went further and suggested that Part 150 should be revised to allow citizens and communities that are severely noise impacted to require the airport operator to engage in the noise abatement planning programs. FAA encourages all affected communities to participate in the land use and related compatibility planning process, but does not wish to interfere in local decisions concerning which local government body should exercise legal jurisdiction over such planning.

On the other hand, the City of Syracuse, New York, and agencies of several states (Alaska, Arizona, and Maryland) supported voluntary participation in the Part 150 process. They felt that a uniform national requirement for the preparation and submission of noise maps and programs, whether or not the airport had a demonstrable noise problem, would be burdensome and unnecessary. The FAA agrees with this position. Further, the ASNA Act requires that the process be voluntary. Therefore, that principle is maintained in the final rule.

The Department of Law of the State of New York, however, expressed concern that the voluntary nature of Part 150 could lead to noncompliance and to subsequent undermining of the purpose and intent of the rule. They urged some strengthening of sanctions, either positive or negative, to encourage wider use of the Part 150 process. The FAA shares the expressed concern and believes the New York suggestion to be appropriate. Nothing in the ASNA Act or other statutes prohibits the government from encouraging airport operators to participate. In fact, the ASNA Act, itself, provides that certain legal protections exist for those airport operators submitting maps, and authorizes grants of funds for airport noise compatibility planning and for projects to carry out approved noise compatibility programs.

Of particular concern are those airport operators who, in the name of noise abatement, consider only some of the alternatives and some of the economic impacts of those alternatives, and then proceed with a particular course of action without full and public consultation with the FAA and other affected parties. In this regard the ATA suggested that noise program submissions should not be approved without demonstrations of attempts to balance noise mitigation with burden on interstate commerce, promotion of competition, energy conservation, undue discrimination, efficient use of airspace, cost benefits, and other trades. The FAA believes that, as currently adopted, the Part 150 process permits this. The final rule does not limit FAA's ability to consider these factors.

Review of Existing Local Noise Control and Planning Actions

Several commenters had questions or made statements regarding the relationship between existing local plans or actions regarding noise abatement and how they would relate to or fit in with the Part 150 program objectives.

Part 150 submissions of compatibility programs can be logical extensions to existing local plans and programs. Separate from this proposal, the FAA has funded and otherwise participated in airport noise abatement and land use compatibility planning under the ADAP Planning Grant Program. Many of these planning efforts are conducted in such a manner that, with minor modification, the resultant plans would qualify for submission under Part 150. There are provisions in this rule to waive certain requirements of the rule for those locations which began their studies prior to the end of the fiscal year in which the interim rule was issued.

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests, ensuring broad public and aeronautical participation, and, finally, balancing all of these interests to assure a reasonable, nonarbitrary, and nondiscriminatory result. That result must be consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

Relation to Airport Proprietor's Responsibility

As stated above, Part 150, like the ASNA Act itself, does not place a duty on airport operators to submit noise compatibility programs to the FAA, or to refrain from implementing programs unless they are approved by the FAA. In this sense, the provisions of Part 150 are not mandatory. However, the FAA believes that the provisions of Part 150, like those in the ASNA Act, are essential to the attainment of an adequate weighing and balancing of air transportation and air commerce objectives against the myriad of social, community, and other real interests that may be affected by airport noise. In addition, it is clear from the legislative history of the Act that the Congress intended to establish a standardized framework for ensuring that localized airport noise restrictions are based on a broad base of information and are thus reasonable, fair, and responsive to the needs of both air commerce and the community.

The FAA, therefore, views Part 150, or a process similar to it (whether or not the process is approved by the FAA), as setting forth the kind of rational decision making procedure that is appropriate to meet the test of reasonableness set forth by the United States Court of Appeals for the Second Circuit in *British Airways Board, et al.* v. *Port Authority of New York ard New Jersey,* 558 F.2d 2075 (1977). In that case, the Court noted that the Federal Government conceded that it may not preempt airport proprietors from promulgating their own noise regulations (as is also stated in Part 150), but then went on to consider what limits, if any, apply to the airport proprietor who seeks to restrict the use of its airport for noise purposes. The Court noted the pervasive scheme of FAA regulation of aircraft operation and noise abatement, and set the stage for its conclusion as follows: "Implicit in the Federal scheme of noise regulations, which accords to local airport proprietors the critical responsibility for controlling permissible noise levels in the vicinity of their airports, is the assumption that their responsibility will be exercised in a fair, reasonable and nondiscriminatory manner." (558 F.2d 82). The Court considered both the airport proprietor's liability for noise damages flowing from *Griggs* v. *Allegheny County,* 369 U.S. 84 (1962) and the wide range of air commerce responsibility and activities that are covered by the protective mantle of preemption (citing *City of Burbank* v. *Lockheed Air Terminal, Inc.,* 411 U.S. 624, (1973)), and then struck a reasoned accommodation between each of these conflicting interests. Accordingly, the Court held that the Port Authority "...is vested only with the power to promulgate reasonable, nonarbitrary and nondiscriminatory regulations that establish acceptable noise levels for the airport and its immediate environs. Any other conduct by an airport proprietor would frustrate the (aviation) statutory scheme and unconstitutionally burden the commerce Congress sought to foster." (588 F.2d 84).

The Court also noted that the duty to act reasonably is further stated in Federal airport development grants which, pursuant to 49 U.S.C. 1718(a)(1), provide that the Federally funded airport will be "available for public use on fair and reasonable terms and without unjust discrimination (558 F.2d 84).

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests, ensuring broad public and aeronautical participation, and, finally, balancing all of these interests in a manner that is needed to assure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

This duty is carried forward, without change under the Airport and Airway Improvement Act of 1982 (at 49 U.S.C. 2210).

Public Involvement

Two commenters proposed that proponents actively seek public involvement in the review of noise compatibility programs rather than merely passively await public comment. Another commenter recommended that the rule emphasize that a "critically important purpose of noise compatibility planning" is to provide for direct involvement in the planning process; it was stated that successful efforts require a thorough understanding of the legal responsibilities (and limits) of the parties involved. It was further recommended that this involvement take place early in the process when there is still opportunity to develop mutually acceptable plans and that more explicit instructions be given regarding citizen participation generally. FAA agrees with these comments and has revised § 150.23(d) accordingly.

One commenter proposed that a formal docket be established upon receipt of a noise exposure map to provide a means for filing written comments and assuring adequate consideration and that all comments received should be included in submissions of noise compatibility programs. This commenter suggested that a summary could be substituted, but only if the commenters (to the noise exposure map docket) agreed that it was a fair representation of their comments. Since the responsibility for local coordination of draft noise exposure maps and draft noise compatibility programs rests with the airport operator and with local public and planning agencies (See Sections 103 and 104 of the ASNA Act), FAA does not agree that an FAA or other Federal docket is appropriate. The proposed rule does require,

for both the submission of noise exposure maps and noise compatibility programs, a signed statement by the airport operator stating that full coordination with responsible local public agencies has been accomplished (See § 150.23(d) and (e)). The procedures set forth for evaluation of the programs in § 150.33 include ample provision for FAA to confer with affected parties and otherwise ascertain the validity of the material submitted. Nothing in the rule would prevent any party from pointing out to FAA any aspects of the program he or she feels should have a bearing on final disposition.

In response to comments recommending that the FAA specify the form and nature of consultation and mandate public meetings at critical stages during development of a plan, FAA believes that the methods for ensuring proper coordination at the local level should be left entirely to local government. Accordingly, these comments are not accepted.

One commenter suggested that "states" be specifically included as among the public agencies with whom airport operators consult in the process of developing noise exposure maps and compatibility programs. FAA agrees and proposes to revise §§ 150.21(b) and 150.23(c) accordingly.

Internal Review and Approval Processes Within FAA

The FAA agrees with the recommendation of several commenters that more authority be given to FAA regional offices in the review and approval process. The proposed rule reflects changes which give the FAA Regional Directors primary responsibility for program review and approval with FAA Regional Airports Divisions having a central role in coordination of FAA's review of noise exposure maps and compatibility programs. However, specific overview is to be retained in FAA headquarters and approvals by the Administrator.

The Air Transport Association (ATA) has recommended specific changes in Subpart C regarding the internal review process and factors to be considered. For the most part, FAA agrees with these suggestions and has made changes accordingly. FAA cannot accept ATA's recommendation relative to limiting automatic approval, after the 180-day review period, only to those options strictly under local control. The final regulation reflects the provisions in the law as regards those items which are exempt from the automatic approval provisions (i.e., items related to flight procedures).

Funding Availability for Noise Planning

Several commenters indicated the strong need for noise abatement funding. One respondent made the point that a positive step of encouragement of sponsor participation in the Part 150 program would be the attractiveness or probability of funding through the Federal grant program. Another commenter said that, without the good prospect of funding, many of these plans would be counterproductive and even frustrating to the public. This would include loss of credibility to the aviation industry because of the real possibility that the Part 150 process would generate public expectations of noise relief with no guarantees of the funding to implement the measures that would produce that relief.

There is no commitment within Part 150 to provide for the funding of particular projects, nor is there any guarantee that any part of an approved compatibility program will be funded on the Federal level. There is nothing in Part 150 that prohibits local or state funding of projects recommended in approved compatibility programs.

Land Use Compatibility Table

One commenter stated a belief that land uses are not inherently incompatible with specific noise levels. It should be noted that there is no intent to preempt local determinations concerning land use compatibility for noise purposes. We believe that the Land Use Compatibility Table used in the interim regulation, and retained in the final rule, is fair, that it represents the best available information on the subject, and that it fully meets the requirements of the ASNA Act. Like other parts of the rule, it is not intended to replace site specific determinations by local authorities or to supplant other appropriate criteria for use in local programs. Instead, the Table identifies consistent national guidelines for the resolution of airport noise compatibility problems and for needs arising out of the ASNA Act.

The FAA appreciates the intent of another commenter's suggestion that certain changes be made to Part 150 Land Use Compatibility Guidelines to make them more consistent with the Federal Interagency Committee on Urban Noise guidelines. Specifically, the commenter requested that the Table pick up a note in the Guidelines that states in part that "although local conditions may require residential use, it is discouraged (between L_{dn} 65 and 70 dB) and strongly discouraged (between L_{dn} 70 and 75dB)." While it is FAA policy to advise against new residential development within the L_{dn} 65 dB contour, the purpose of the Table is to set a clear unambiguous national guidance for the purpose of potential funding of subsequent projects. Since the proposed language would make it less clear as to which situations meet the guidelines and which do not, the note has not been accepted.

Background Noise

Two comments were received on the impact of other (nonairport) noise sources on airport noise compatibility programs. The Arizona Department of Transportation expressed the view that where other noise sources are causing problems in conjunction with airport noise, the airport noise compatibility program should take this into account. They point out that some land uses are incompatible with major arterial streets or with certain industries, as well as with some airport noise levels. In the FAA's opinion, this fact is, or should be, a major consideration in the development of any airport noise compatibility program. No airport is conceived in a vacuum or operated in isolation. Rather, each airport is designed and operated to serve the unique needs of the communities around it. This is historically a major goal of responsible noise planning. Instead, such planning ideally seeks to integrate the airport with its environs by employing land uses that complement airport activities but which are not disturbed by normal airport operations. Obviously, at some airports compatible land uses could include areas for high-noise industrial activities and might also include transportation corridors. Thus, the FAA agrees with the comment that noise compatibility programs should take into account ambient noise levels. However, it is also apparent that there are many airports and communities where it would be unnecessary for the Federal Government to require precise measurements or estimates of ambient noise. Therefore, the FAA maintains the policy that, for purposes of FAR Part 150 maps and programs, no land use shall be identified as noncompatible where the self-generated cumulative noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the cumulative noise from aircraft and airport sources.

The second comment concerning background noise levels expressed the opinion that it would be difficult to determine such ambient noise levels without noise monitoring systems, since the Integrated Noise Model and other computer models do not generally estimate nonaircraft noise. In part, the FAA agrees but does not propose to make noise monitoring systems mandatory.

During the drafting of the interim FAR Part 150, the FAA carefully considered use of a method proposed by the U.S. Environmental Protection Agency (EPA). The EPA proposal included among other things methods for measuring or computing what they called the "community background noise level." While the FAA rejected the proposal to require the use of this method, nothing in the interim FAR Part 150 or in this final rule precludes an airport proprietor from using it in appropriate situations. Another accepted quick handbook method of estimating ambient noise due to other transportation sources such as railway or roadway is the Department of Housing and Urban Development (HUD) "Interim Noise Assessment Guidelines." This is a worksheet method that gives a close approximation of probable noise due to other sources. However, the FAA agrees with the commenter that it is generally more accurate to determine background noise levels by measurement. This does not mean that the FAA endorses or recommends for this purpose permanently installed noise monitoring systems at fixed points throughout each community surrounding every airport. Certainly such systems serve a valued function in many communities. For instance, the FAA maintains a system for the two federally owned airports in the Washington, DC area. From this and other experience, the FAA believes that small portable systems, possibly even sound level meters, are more appropriate for the determination of nonaircraft levels in broad areas.

Alternate Contour Methods

One commenter suggested that smaller general aviation airports should be allowed to develop noise exposure contours by using simplified procedures. Specifically, the suggestion was to use procedures published by the FAA several years ago in Report No. FAA–AS–75–1 entitled, *Developing Noise Exposure Cotours for General Aviation Airports.*

The FAA agrees in part with the suggestion. The interim text of § A150.103 required the use of an approved computer program, such as the FAA's Integrated Noise Model (INM). After consideration of the suggestion, it now appears that this language was too restrictive in requiring the use of only computer programs. Accordingly, the text of § A150.1 is broadened to include any approved equivalent. It should be noted that approval of any proposed equivalent will be contingent upon its capability to produce essentially the same results (contours) as the INM computer program, from standardized technical information input about the airport, its operations, and environs. Generally, the burden to demonstrate equivalency to the FAA will be with the applicant. However, the FAA will maintain a list of programs and other methods that have been already approved.

Report No. FAA–AS–75–1 has been examined to see whether it produces equivalent results to the INM. Report FAA–AS–75–1 was developed a number of years ago with the intent that it be used to provide a simplified method to estimate noise for purposes of depicting impacts associated with an environmental assessment for proposed airport development at non air carrier airports. The latest FAA guidance on environmental impact threshold criteria allows the report to be used as a rough estimate to determine if there is the potential for serious noise impacts, and, if not, to produce contours for

general aviation airports. The method lacks flexibility and is overly conservative (i.e., tends to overpredict impact). Because of the flexibility which is required to analyze noise abatement procedures fully and the degree of accuracy desired under Part 150, use of this particular handbook method would not be acceptable as an equivalent.

Another commenter noted that the interim rule does not recognize that there may be prior local or state requirements that conflict with the new regulation. He cited the example of one state that required the preparation of DNL noise contours for certain airports. According to the commenter, these maps "have been developed using a variety of methods more-or-less different from the INM of the rule." He suggested that FAR Part 150 should be amended to allow for continued use of these other methods for consistency.

The FAA disagrees with this suggestion and believes that continued use of methods which do not reflect the state-of-the-art in noise prediction is undesirable and would work to the airport operator's detriment since older models tend to overpredict noise contours when compared to newer models. However, the FAA recognizes the burden involved in requiring work to be redone as new models come on line and, therefore, proposes to accept as "FAA-approved equivalent" the use of a noise methodology which represented an equivalent to the INM state-of-the-art at the time the noise exposure maps and noise compatibility programs were prepared, provided that the contours are shown using DNL. One of the primary thrusts of Title I of the ASNA Act was to require the FAA to standardize the methodology used in the reporting and evaluation of aircraft and airport noise. Although participation in the FAR Part 150 noise compatibility planning process is, under ASNA, voluntary on the part of airport proprietors, the establishment of "a single system for determining the exposure of individuals to noise which results from the operations of an airport" is not discretionary for the FAA. Instead, the FAA is required to establish this single system by regulation for the purpose of approval of noise compatibility proposals, even though no person is required to apply for, or have, such approval. Thus, the requirement is not just to compute or calculate contours in standardized units of L_{dn} but to compute or calculate those contours in a consistent and uniform manner and to compare the land uses within those contours against a national guideline.

Revision of Noise Exposure Map

Several commenters expressed confusion regarding the contents of the submittal documentation of the noise exposure map, especially the 1985 or 5-year map. They further indicated that it was unclear when a map must be revised. A primary point of confusion was in the definition of "substantial new noncompatible land use" in Section 103 of ASNA and that of "significant" in Section 107 of the same Act. The FAA agrees that these points were unclear and need further explanation.

As indicated in Section 103 of ASNA, a noise exposure map is required to be revised when any charge in airport operation would create any substantial new noncompatible use in any area surrounding the airport. "Substantial new noncompatible use" is now defined in § 150.21(d). Another comment questioned whether the requirement for revision applies to the current map, the 1985 or 5-year map, or both. Section 150.21(d) indicates that, so long as the change in airport operation does not exceed the 1985 or 5-year forecast map to the extent that it would create a substantial new noncompatible use (as defined therein) with respect to that map, no revision is necessary. The 1985 or 5-year map remains in submitted status even after the year 1985 or subsequent year has passed, until it is required to be revised because of a substantial new noncompatible use with respect to that map.

Sections 150.21 (g) and (h) have been added to clarify the relationship of Section 107 of ASNA to the process described in Part 150. The term "significant" in Section 107(a) of ASNA is defined in relationship to the revision of the noise exposure map.

Other Comments

In addition to the comment already noted, the Attorney General of the State of Illinois made other comments related to matters in litigation that were not comments on the substance of the interim rule.

Section-by-Section Analysis of the Changes to the Rule

The final rule establishing the FAA's "Airport Noise Control and Abatement Planning" program is a revision of the interim Part 150 to the Federal Aviation Regulations (14 CFR Part 150). This Part, as revised, consists of three subparts and two technical Appendixes described as follows:

Subpart A—General Provisions

Section 150.1 is Entitled "Scope and Purpose"

The applicability of Part 150 is specified in § 150.3. As prescribed in the amended ASNA Act, it now covers the airport noise compatibility planning activities of operators of all public use airports not used exclusively by helicopters, as defined in the amended ASNA Act; e.g., any public airport, any privately owned reliever airport, and any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft which is used or to be used for public purposes. The FAA will receive and evaluate submissions of noise programs from any of the covered airports in order to provide the benefits of the planning, evaluation, and FAA advice to those airport operators wishing to participate. By so doing, the rule covers approximately 2,800 airports.

Section 150.5 specifies the limitations of Part 150. Subsections (a), (b), and (c) have nonsubstantive changes made for clarification. A new subsection (d) is added to clarify that responsibility for the interpretation of the effects and placement of noise contours upon specific subjacent land uses lies with appropriate local governments rather than with the FAA.

Section 150.7 prescribes the definitions of certain terms used in Part 150. Other special usages of terms are provided in those Appendixes in which the term appears.

The word "airport" is now defined to cover all public use airports not used exclusively by helicopters, as defined in Section 101(1) of the ASNA Act as amended.

A Part 150 "airport operator" is changed to comply with the amended ASNA Act.

"Noise exposure maps," has the unnecessary requirement for topographic data deleted, and has other changes for clarification.

"Noncompatible land use," also has minor changes for clarification.

Section 150.9 contains the designation of standardized noise systems prescribed under § 102 of the ASNA Act. "Uses of land which are normally compatible . . .," has been moved to a new § 150.11 and changed for clarification. References to FAA approved equivalents in subsections (a) and (b) have been moved to a new subsection (c) and expanded for clarification.

Section 150.11, incorporations by reference, has been renumbered, § 150.13. Minor changes have been made for clarification and the addresses in subsection (e) have been updated.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

Subpart B of Part 150 prescribes the substantive and procedural standards for airport operators wishing to develop original or revised noise exposure maps (and the related descriptions of projected airport operations) and proposed noise compatibility programs. It also describes the response of FAA Regional Directors in receiving submissions and in publishing notices in the *FEDERAL REGISTER*.

Section 150.21 covers noise exposure maps and the related documentation under § 103 of the ASNA Act. Section (b) is changed to reflect the new administrative procedures by directing that all copies of airport operator submissions be sent to the FAA Regional Directors.

Section (a)(1) is changed to reflect the passing of the 1982 calendar year and now requires the future data forecast for the fifth calendar year beginning after the date of submission. Additional technical changes are made to both subsections (1) and (2) to clarify the information actually needed.

Section 150.21(b) is changed to clarify the existing requirements for consultation in the preparation of noise exposure maps and to require submission of basic documentation of that consultation. Some of these requirements were previously included in subsection 150.21(e).

Section 150.21(c) is changed to reflect the new administrative procedures and for clarification.

Section 150.21(d), which indicates the circumstances under which an acceptable map must be revised because of changes in airport operations that would create any substantial, new noncompatible land uses, has been expanded to more clearly delineate these circumstances.

For purposes of Part 150, a change in airport operation which creates a substantial new noncompatible use is an increase in the yearly day-night average sound level of L_{dn} 1.5 dB or greater as a result of aircraft operations which either cause a land area to become noncompatible for the first time or increases the noncompatibility of a previous noncompatible area. The requirement in § 150.21(d) for revision of the noise exposure map is related to the definition of "significant" changes in Section 107(a) of

ASNA. When an airport realizes a "significant" change in the type or frequency of aircraft operations, in airport layout, in flight patterns, or in nighttime operations which either individually or cumulatively results in a L_{dn} 1.5 dB increase in noncompatibility, that change would create a "substantial new noncompatible use" and triggers this need for a map revision. This, of course, leaves the responsibility for monitoring these factors on the airport operator.

A revised map is not required if the changes increase the contours of the existing map but are still within the parameters of either the 1985 or 5-year forecast map so that, while the contours may be larger than or different from the map of existing conditions, they are not larger than or different from the forecast conditions. The FAA believes that this situation reflects the fact that the noise contours are changing just as the airport operator had forecast and that this forecast map has been available for public review; therefore, no revision is necessary. It is only when changes in airport operations (i.e., type and/or frequency of aircraft operations, number of nighttime operations, flight patterns, or airport layout) would cause the noise contours to increase in a way that is larger than or different from the forecast conditions and on an order of magnitude that could create a "substantial", (again, defined as an increase of L_{dn} 1.5dB or more) new noncompatible use as defined in Part 150 definitions that a revised map is required. Changes in land uses or demographics in the area around the airport do not automatically require the submission of a revised map. At some point in the future, when the forecast year has been reached or passed, no revised map is necessary until changes in airport operations create substantial, new noncompatible uses. Comments are invited on whether revised noise exposure maps should be required when local ambient noise levels are substantially changed or the changes result in new noncompatible uses. The FAA will review comments on this issue and will consider further action, if appropriate. Revised noise exposure maps are treated the same, both substantively and procedurally, under Part 150 as initial submissions of maps.

Section 150.21(f) has been renumbered 150.21(e).

Section 150.21(f) has been added to reflect Section 107 of ASNA which deals with circumstances under which a person who acquires a property interest in an area surrounding an airport for which a noise exposure map has been submitted shall be entitled to recover damages with respect to noise attributable to the airport.

In new § 150.21(g) the term "significant", in Section 107(a) of ASNA is defined for Part 150 in relation to a change or increase that would result in a substantial, new noncompatible use. This serves to tie together the requirement to revise the noise exposure map with the significant circumstances expressed in Section 107(a) so that the two will occur in unison.

Section 150.23 governs Part 150 noise compatibility programs and their revisions, pursuant to portions of Section 104 of the ASNA Act. Any Part 150 airport operator, who has submitted a noise exposure map, may submit to the FAA a "noise compatibility program."

Section 150.23(a) has been revised to reflect the new administrative procedures.

Section 150.23(b) has been renumbered as (c) and a new paragraph (b) inserted to clarify acceptance and review sequence when a map and a program are submitted together. The FAA will not begin the 180-day formal review period for the program until after the FAA has had an opportunity to review the map and has found it in compliance with the applicable requirements.

Section 150.23(c), which gives requirements for developing and preparing noise compatibility programs, is expanded to include the requirements for an FAA-approved equivalent. These requirements are also delineated in Appendix B under Section B150.9 and are further described in this preamble under the analysis of that section.

As with the noise exposure maps, it is the FAA's intention to require as little modification as possible of documents prepared under previously funded or approved programs for acceptance under Part 150, where consistent with the need to ensure full equivalency.

Section 150.23(d) is renumbered (e) and a new (d) is added. It covers opportunity for public involvement and is in response to the comments received. FAA will not intervene in the consultative process used by local government.

Section 150.23(e) contains a description of the minimum content of a noise compatibility program. Subsection (1) is simplified for clarity. Subsection (4) is changed to place additional emphasis on citizen participation in response to the comments received. Other changes are made for additional clarity. Subsection (5) is changed to clarify the need to prevent the introduction of additional noncompatible uses from future airport operations. Subsection (7) is changed to clarify the documentation requirements for public

comments. Subsection (8) is changed to add the estimated costs of proposals as a requirement. Subsection (9) is changed to clarify the requirements for revision of the program.

Subpart C—Evaluation and Determination of Effects of Noise Compatibility Programs

Subpart C of Part 150 describes the procedure followed and general criteria applied by the FAA to determine the pertinent effects of proposed noise compatibility programs and whether the proposed program should be approved or disapproved.

Section 150.31 prescribes the procedure and initial response of the FAA when it receives (from a Part 150 airport operator) a noise compatibility program. Section 150.31(a) is changed so that the Regional Director acknowledges to the airport operator receipt of five copies of the program and conducts a preliminary review of the submission. Section 150.31(b) is renumbered (c) and a new (b) is added. If based on the preliminary review the Regional Director finds that it does not conform to the application requirements of Part 150, it will be returned to the airport operator for reconsideration.

Section 150.31(c), which covers acceptable programs and the FAA's requirements for publication of a *FEDERAL REGISTER* notice is clarified, is brought into conformance with the revised administrative procedures, and reduced in bulk.

Section 150.31(d) has been added to clarify the starting date of the mandated 180-day approval period.

Section 150.33 describes the process for evaluation of the programs. It is clarified, brought into conformance with the revised administrative procedures, and reduced in bulk. In conducting the evaluation, the Regional Director (or designee) will take the lead and have the primary responsibility. It is expected that the FAA Regional Airports Divisions will have a central role in the program reviews since they maintain basic working relationships with airport operators, have experience with airport noise planning studies done prior to Part 150, and have responsibility for the airport grant program which may provide funding for noise planning and noise projects. The region will send two copies of each program which has been accepted on the basis of preliminary review to FAA headquarters. Detailed internal FAA guidance or orders will be issued to the regional offices establishing criteria for approval of noise compatibility programs. Specific overview is to be retained by FAA headquarters offices to assure overall quality and uniformity of the reviews and a uniform high quality for approved programs. Approval of a program must be by the Administrator (Section 150.35(b)). Any headquarters comments will be sent to the region to incorporate in its review. The Regional Director (or designee) may, to the extent considered necessary, confer with other officials, persons, and agencies which may have responsibilities or information pertinent to the issues.

Section 150.35 governs the issuance of determinations on noise compatibility programs. Section 150.35(a) now includes the provision that no conditional approvals be given and clarifies the program items which are not subject to the 180-day rule. Section 150.35(d) clarifies the criteria for revision of a program. It also incorporates former § 150.23(c). Sections 150.35 (d) through (f) are renumbered. Section 150.35(d) is changed to add two conditions under which an FAA approval of a program or a portion thereof may be rescinded: when a term or condition of the program or its approval is violated, and when a flight procedure or other FAA action upon which the approved program is dependent is subsequently disapproved or rescinded by the FAA. Section 150.35(e) is revised for clarification.

Appendix A—Noise Exposure Map Development

Appendix A to Part 150 contains the technical description and standards constituting the methodology for developing acceptable airport noise exposure maps. Section A150.5(b) and its accompanying Table 1, "Tolerances Allowed on the A-Weighting Characteristics for Type 2 Meters," were redundant and have been deleted. Section A150.5(c) has been renumbered (b) and technical corrections have been made. This section is also changed to clarify that the computer based noise prediction program used must be either the FAA's Integrated Noise Model (INM) or an FAA approved equivalent. Additional technical corrections have been made to Sections A150.1(b) and A150.3(b). Section A150.5(a) is changed to clarify the types of sound measuring equipment which must be used.

Section A150.101 prescribes the content requirements for noise exposure maps, while Sections A150.101 (a) and (b) have technical corrections. Section A150.101(c) is changed for clarification. Section A150.101(e) is changed for clarification, subsection (8) which was redundant is deleted, and subsection (9) is renumbered. A new subsection (9) has been added to clarify the scale and graphic quality of the maps. Location of historic preservation sites, which had been previously overlooked, has been added to the items in subsection (6).

New section A150.101(f) excepts noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. Such studies include Airport Noise Control and Land Use Compatibility (ANCLUC) studies, airport master plans, site selection studies, and environmental impact statements and findings of no significant impact. The date October 1, 1981, reflects the FAA's intention to apply this exception to studies begun before the end of the fiscal year in which the interim Part 150 was issued.

As previously noted, Appendix A, Table 1, identifies the land uses which are normally compatible with the various exposure levels of individuals to noise. The table has been changed to give schools their own subcategory, to recognize their usual close relationship to residential areas and to not appear to encourage their location in a noisier environment than for residential. The footnote to Table 1 has been changed to clarify the local responsibility in determining the relationship between specific properties and specific noise contours. Technical changes have been made to the key and notes to the table for clarification.

Section A150.105 has been simplified for clarity.

Appendix B—Airport Noise Compatibility Program Development

Appendix B to Part 150 prescribes the content and technical methodology for developing airport noise compatibility programs. Those programs set forth the specific measures the airport operator (or other person or agency responsible) has taken, or proposes to take, in light of the noise exposure map for that airport, to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible uses.

Section B150.1(b), which states the purpose of a noise compatibility program, has been rewritten for additional clarity and to state better the purpose as defined by the ASNA Act.

Section B150.3 has been rewritten to indicate clearly the need for an accurate and complete noise exposure map as the basis for determining the need for a noise compatibility program and for developing a responsive compatibility program.

Section B150.5(a) is revised to include reduction of the probability of the establishment of additional noncompatible uses.

Section B150.5(e), (f), and (g) are added to comply fully with the requirements of the ASNA Act.

Sections B150.7(a) and (b) have been reorganized for increased clarity. Section B150.7(c) has been added to require clear identification of the agencies responsible for implementing the program and the agreed upon schedule.

New Section B150.9 is similar, but not identical, to Section A150.10(f). Section B150.9 excepts noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. The list of exceptions is somewhat different from and shorter than the list of exceptions for noise exposure maps. Ambient noise levels and estimates of numbers of people impacted are considered by the FAA to be more critical for program purposes than for maps, and so these have not been excepted from programs. Airport operators may submit to the FAA previously prepared programs with adequate supplemental documentation for those items not excepted to meet the requirements of Part 150.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all changes to Part 150. FAA determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. This rule imposes no additional costs on the Federal Government.

The amendments in this rule will provide benefits in the aggregate to the aviation industry and the general public. These amendments provide benefits to aviation by deleting unnecessary requirements, updating and clarifying the text, and relaxing certain documentation requirements. The regulations are more concise and easier to understand. In addition, the final Part 150 is expected to provide several other benefits to the general public, including: commonality and a more logical progression of the rules, reduced complexity and streamlining of the approval process for maps and programs. These changes provide a regulation that is easier to read and understand. Additionally, it reduces the amount of study time for persons who are responsible for knowing and complying with the regulation. No additional costs result from the rule changes.

Regulatory Flexibility Determination

As detailed in the evaluation, all but one of the changes to Part 150 are editorial or clarifying changes. This one would shift primary responsibility for review of maps and programs from FAA headquarters to the Regional Directors. This change results in improved governmental efficiency.

Therefore, it is certified that the revised rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Enviromental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been made. The changes incorporated in this final rule (which are primarily organizational, administrative, and clarifying), do not significantly affect the quality of the human environment.

Paperwork Reduction Act

Information collection requirements contained in this regulation (sections 9d, 12, and 20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and have been assigned OMB control number 2120–0517.

Conclusion

All but one of these amendments are either editorial or clarifying in nature. One amendment is administrative and shifts responsibility for certain review functions within the FAA. For these reasons the FAA has determined that this document involves a regulation which is not major under Executive Order 12291. However, since this document concerns a matter on which there is substantial public interest, it is considered to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since the amendments are editorial, clarifying and administrative, resulting in no substantial costs or cost savings, it is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation may be examined in the regulatory docket or obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

The Final Rule

Accordingly, the Federal Aviation Regulations (14 CFR Parts 11 and 150) are amended, effective January 18, 1985.

(Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1341(a), 1348, 1354(a), 1421, and 1431); 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); Secs. 101, 102, 103(a), and 104(a) and (b), Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. §§ 2101, 2102, 2103(a), and 2104(b)); 49 CFR 1.47(m); and Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 et seq.).)

Amendment 150–1

Expansion of Applicability of Part 150 to Heliports

Adopted: March 10, 1988 **Effective: March 16, 1988**

(Published in 53 FR 8722, March 16, 1988)

SUMMARY: This rule expands the applicability of the rules governing the airport noise compatibility planning process to include free-standing public-use heliports and allows operators of those heliports to benefit from the Airport Improvement Program (AIP). The rule expansion is needed because the current rule only includes heliports that are located on public-use airports used by fixed-wing aircraft.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Hixson, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3565.

SUPPLEMENTARY INFORMATION:

Background

Part 150 of the Federal Aviation Regulations (14 CFR Part 150) contains standards for airport operators who volunteer to submit noise exposure maps and airport noise compatibility planning programs to the FAA. Operators of airports whose maps have been found to be in compliance with the applicable requirements of Part 150 and whose programs have been approved by the FAA in accordance with the provisions set forth under Part 150 are then eligible to apply for noise control project funding under the AIP. The Aviation Safety and Noise Abatement Act of 1979, as amended, (49 U.S.C. 2101 *et seq*. "the ASNA Act") also provides certain legal protections for airport proprietors whose maps have been accepted by the FAA.

Operators of public-use airports have been able to avail themselves of the benefits of Part 150 since its original adoption on an interim basis on January 19, 1981 (46 FR 8316, January 26, 1981). However, in that interim rule and in the final rule adopted December 13, 1984 (49 FR 49260, December 18, 1984), access to Part 150 was denied to the operators of public-use heliports used exclusively by helicopters, "free-standing public-use heliports." The restriction was imposed because there were relatively few free-standing public-use heliports and because adequate computational tools for drawing noise contours around heliports were not available at that time. The recent opening of several prototype public-use heliports and the FAA's development of a Heliport Noise Model (HNM) computer program have prompted expansion of Part 150 to include free-standing public-use heliports.

Discussion of the Comments and the Amendment

On November 4, 1986, FAA issued a notice of proposed rulemaking (NPRM) to expand Part 150 to include free-standing public-use heliports. Interested parties were afforded the opportunity to participate in the development of this final rule by submitting written comments to the public regulatory docket on or before February 3, 1987. Six comments were received in response to Notice No. 86–17 (51 FR 40037, November 4, 1986) and all have been duly considered in promulgating this amendment. All of the comments supported expansion of the applicability of Part 150 to include free-standing public-use heliports. However, three of the comments also included specific suggestions about one or more of the FAA's proposed amendments.

The comments received in response to the notice were grouped by broad categories of issues and are discussed below.

Applicability of Rule

Based on his understanding that Part 150, the ASNA Act, and the Airport Improvement Program are related to "public airports" rather than "public-use airports," one commenter suggested that the expanded Part 150 program will not result in significant benefits to the public since the majority of heliports are privately owned and will not be eligible for funds through the ASNA Act and Part 150, even if these heliports are made available for public use.

In replying to this comment it is first necessary to clarify the applicability of the Part 150 program. The amended § 150.3 applies to "airport noise compatibility planning activities of the operators of public-use airports," including heliports, as that term is used in § 101(1) of the ASNA Act as amended (49 U.S.C. 2101) and as defined in § 503(a)(17) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2202)." Section 503(a)(17) of the Airport and Airway Improvement Act defines a public-use airport as "(a) any public airport, (b) any privately owned reliever airport, and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft which is used or to be used for public purposes." Section 503(a)(16) of the Airport and Airway Improvement Act defines a public airport as "any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned." Thus, although the expansion of Part 150 to include heliport noise compatibility planning programs will not include privately owned heliports not used for public purposes, it will include those which are used for public purposes as defined in the Airport and Airway Improvement Act.

Availability of Heliport Noise Model

One commenter recommended that reference to the Heliport Noise Model (HNM) not be included in the amendment because the HNM is not available and its ability to produce results which accurately reflect actual heliport noise conditions in its present stage of development may be in question. The commenter also stated that other less complicated methods of producing noise contours are now available to the user public.

The commenter is correct that the final HNM was not available when the NPRM was published; however, it is now available. The HNM represents the best method for obtaining helicopter noise contours. Since the date the docket closed, the HNM has been evaluated by a significant part of the helicopter industry and the FAA has approved the HNM for use in Part 150 heliport studies. It should be noted that the regulation permits the use of FAA approved methodologies or computer programs other than the HNM to obtain noise contours. However, FAA is not aware of any other methodologies applicable to helicopter noise that accurately reflect the noise impact. As with airport noise modeling, where FAA has approved more than one methodology, FAA will approve additional methodologies for heliport noise modeling when their effectiveness is demonstrated.

Use of Heliport Noise Model

One commenter suggested changing the wording of the third sentence of proposed Section A150.103(c) from "For static operation (hover), identify helicopter type and duration in minutes shall be identified" to "For static operations (hover), identify the types of helicopters involved and the total annual duration in minutes of the hover operation for each type." It should be noted that the NPRM contained a typographical error in this sentence.

Although the FAA agrees with the intent of the commenter in clarifying the wording of this sentence, the total annual duration in minutes of the hover operation is not used as input for the HNM. The HNM develops noise exposure contours by computing the noise exposure for a typical day, with the number of operations for the typical day being the average of the daily operations for a one year period. Thus, the HNM input for hover operations consists of (a) the helicopter type, (b) the duration in minutes of the hover operation for a particular helicopter type, and (c) the average number of daily operations for that helicopter type based on an annual average. The intent of this requirement is to put the data into its most useful form for input to the HNM. Should, at a future date, additional models for assessing heliport noise impacts be approved by the FAA for use in Part 150 studies, that approval will also take into account the data input requirements of those models. Therefore, the final rule retains the HNM inputs. However, to clarify the meaning of this sentence in the regulation, it has been reworded as follows: "For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and the duration in minutes of the hover operation shall be identified."

Synopsis of the Final Rule

Sections 150.3 and 150.7 have been amended to include all public-use heliports. Section A150.103 has been amended to reference use of the HNM and to insert map scale and size requirements which are appropriate to heliports.

REGULATORY EVALUATION

The FAA evaluated the regulatory impact of removing the Part 150 restrictions which apply to the operators of heliports. It was determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. Since Part 150 is a voluntary program, heliport operators, like other airport operators, will participate only when it is in their best interests. Since the new rule only increases the number of airport operators eligible to apply for Federal matching grants under the Airport Improvement Program (AIP) by one-tenth of one percent, the incremental administrative costs to the FAA will be insignificant. Grant funds come from the AIP in which an 8% set-aside is held for noise mitigation purposes. AIP funding is derived from an 8% tax on passenger tickets and a general aviation fuel tax, as mandated by Congress. The expansion of the program to include heliports is not expected to adversely impact current AIP funding. In addition, this rule will have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Regulatory Flexibility Analysis

As explained in the background section, this amendment to Part 150 to include free-standing public-use heliports will broaden access to a voluntary Federal program. Heliport operators who submit maps or programs under the amendment will do so voluntarily and on the basis of self-interest. Since Part 150 is a voluntary program, this amendment will have no significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Moreover, as of June 1986, only six heliports would be eligible to participate in the Part 150 program; none are small entities.

Environmental Analysis

Pursuant to Departthent of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been made. This amendment to Part 150 does not significantly affect the quality of the human environment.

Reporting and Recordkeeping

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping provisions in this regulation will be submitted for approval to the Office of Management and Budget (OMB). Participation in the voluntary noise compatibility planning process is estimated by the FAA to affect only six heliports and the reporting and recording impact is minimal. Submission to OMB of the reporting and recording provisions will be made as an amendment to the existing OMB approval for Part 150 (OMB control number 2120–0517). The revised reporting and recordkeeping provisions are not effective until OMB approval has been obtained and notice of the approval is published in the *Federal Register*. Pending OMB approval, FAA will review any submission from an eligible heliport in accordance with the regulations implementing the provisions of the Paperwork Reduction Act of 1980. 5 CFR Part 1320.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Conclusion

The only costs associated with this amendment are (1) the voluntary costs incurred by a heliport operator for the initial preparation and submission of a noise exposure map and compatibility program and (2) the minimal FAA administrative costs. Therefore, the FAA has determined that this amendment involves a regulation that is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since no small entities will be affected by the rule, it is certified under the criteria of the Regulatory Flexibility Act that the rule will not have a significant economic impact, either positive or negative, on a substantial number of small entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

The Amendment

Accordingly, Part 150 of the Federal Aviation Regulations (14 CFR Part 150) is amended effective March 16, 1988.

The authority citation for Part 150 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, 1431, 2101, 2102, 2103(a), 2104(a) and (b), 2201 *et seq.*; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

Amendment 150–2

Organizational Changes and Delegations of Authority

Adopted: September 15, 1989 **Effective: October 25, 1989**

(Published in FR 39288, September 25, 1989)

SUMMARY: This amendment adopts changes to office titles and certain terminology in the regulations that were affected by a recent agencywide reorganization. These changes are being made to reflect delegations of authority that were changed, as well as offices that were renamed or abolished and replaced with new office designations. These changes are necessary to make the regulations consistent with the current agency structure.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone (202) 267–9683.

SUPPLEMENTARY INFORMATION

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional offices. The most significant change is that certain Regional Divisions and Offices, which formerly reported to the Regional Director, are now under "straight line" authority, meaning that these units within each Regional Office report to the appropriate Associate Administrator (or Chief Counsel) in charge of the function performed by that unit.

Within Part 11 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated rulemaking authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of reorganization.

Title 14 of the Code of Federal Regulations must therefore be amended to reflect the reorganizations and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

This amendment is needed to avoid possible confusion about the FAA reorganization and to hasten the effective implementation of the reorganization. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and because it is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR Chapter I) effective October 25, 1989.

The authority citation for Part 150 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1355, 1421, 1431, 2101, 2102, 2103(a), 2104(a) and (b), 2201, *et seq.*; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

Subpart A—General Provisions

§ 150.1 Scope and purpose.

This part prescribes the procedures, standards, and methodology governing the development, submission, and review of airport noise exposure maps and airport noise compatibility programs, including the process for evaluating and approving or disapproving those programs. It prescribes single systems for— (a) measuring noise at airports and surrounding areas that generally provides a highly reliable relationship between projected noise exposure and surveyed reaction of people to noise; and (b) determining exposure of individuals to noise that results from the operations of an airport. This part also identifies those land uses which are normally compatible with various levels of exposure to noise by individuals. It provides technical assistance to airport operators, in conjunction with other local, State, and Federal authorities, to prepare and execute appropriate noise compatibility planning and implementation programs.

§ 150.3 Applicability.

This part applies to the airport noise compatibility planning activities of the operators of "public use airports," including heliports, as that term is used in section 101(1) of the ASNA Act as amended (49 U.S.C. 2101) and as defined in section 503(17) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2202).

(Amdt. 150–1, Eff. 3/16/88)

§ 150.5 Limitations of this part.

(a) Pursuant to the ASNA Act (49 U.S.C. 2101 et seq.), this part provides for airport noise compatibility planning and land use programs necessary to the purposes of those provisions. No submittal of a map, or approval or disapproval, in whole or part, of any map or program submitted under this part is a determination concerning the acceptability or unacceptability of that land use under Federal, State, or local law.

(b) Approval of a noise compatibility program under this part is neither a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

(c) Approval of a noise compatibility program under this part does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and applicable regulations, directives, and guidelines.

(d) Acceptance of a noise exposure map does not constitute an FAA determination that any specific parcel of land lies within a particular noise contour. Responsibility for interpretation of the effects of noise contours upon subjacent land uses, including the relationship between noise contours and specific properties, rests with the sponsor or with other state or local government..

§ 150.7 Definitions.

As used in this part, unless the context requires otherwise, the following terms have the following meanings.

"Airport" means any public use airport, including heliports, as defined by the ASNA Act, including: (a) Any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned; (b) any privately owned reliever airport; and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.

"Airport noise compatibility program" and "program" mean that program, and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B of this part, including the measures proposed or taken by the airport operator to reduce existing

noncompatible land uses and to prevent the introduction of additional noncompatible land uses within the area.

"Airport Operator" means, the operator of an airport as defined in the ASNA Act.

"ASNA Act" means the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 et seq.).

"Average sound level" means the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.

"Compatible land use" means the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under Appendix A (Table 1) of this part.

"Day-night average sound level" (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn}.

"Noise exposure map" means a scaled, geographic depiction of an airport, its noise contours, and surrounding area developed in accordance with section A150.101 of Appendix A of this part, including the accompanying documentation setting forth the required descriptions of forecast aircraft operations at that airport during the fifth calendar year beginning after submission of the map, together with the ways, if any, those operations will affect the map (including noise contours and the forecast land uses).

"Noise level reduction" (NLR) means the amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

"Noncompatible land use" means the use of land that is identified under this part as normally not compatible with the outdoor noise environment (or an adequately attenuated noise reduction level for the indoor activities involved at the location) because the yearly day-night average sound level is above that identified for that or similar use under Appendix A (Table 1) of this part.

"Regional Airports Division Manager" means the Airports Division Manager having responsibility for the geographic area in which the airport in question is located.

"Restriction affecting flight procedures" means any requirement, limitation, or other action affecting the operation of aircraft, in the air or on the ground.

"Sound exposure level" means the level, in decibels, of the time integral of squared A-weighted sound pressure during a specified period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a duration of one second.

"Yearly day-night average sound level" (YDNL) means the 365-day average, in decibels, day-night average sound level. The symbol for YDNL is also L_{dn}.

(Amdt. 150–1, Eff. 3/16/88); (Amdt. 150–2, Eff. 10/25/89)

§ 150.9 Designation of noise systems.

For purposes of this part, the following designations apply:

(a) The noise at an airport and surrounding areas covered by a noise exposure map must be measured in A-weighted sound pressure level (L_A) in units of decibels (dBA) in accordance with the specifications and methods prescribed under Appendix A of this part.

(b) The exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day-night average sound level (YDNL) calculated in accordance with the specifications and methods prescribed under Appendix A of this part.

(c) Uses of computer models to create noise contours must be in accordance with the criteria prescribed under Appendix A of this part. .

§ 150.11 Identification of land uses.

For the purposes of this part, uses of land which are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under Appendix A of this part. Determination of land use must be based on professional planning criteria and procedures utilizing comprehensive, or master, land use planning, zoning, and building and site designing, as appropriate. If more than one current or future land use is permissible, determination of compatibility must be based on that use most adversely affected by noise.

§ 150.13 Incorporations by reference.

(a) *General.* This part prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated by reference and were approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that affects compliance with standards and procedures of this part will be made under 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this part is as follows:

International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters," dated 1973.

(d) *Availability for purchase.* Published material incorporated by reference in this part may be purchased at the price established by the publisher or distributor at the following mailing addresses.

IEC publications:

(1) The Bureau Central de la Commission Electrotechnique, Internationale, 1, rue de Varembe, Geneva, Switzerland.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this part is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, AGC–10, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(3) The respective Regional Offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts 01803.

(ii) Eastern Regional Office, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, New York 11430.

(iii) Southern Regional Office, 3400 Norman Berry Drive, East Point, Georgia (P.O. Box 20636, Atlanta, Georgia) 30320.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois 60018.

(v) Central Regional Office, 601 East 12th Street, Kansas City, Missouri 64106.

(vi) Southwest Regional Office, 4400 Blue Mound Road, (P.O. Box 1689), Fort Worth, Texas 76101.

(vii) Northwest Mountain Regional Office, 17900 Pacific Highway, South, C–68966, Seattle, Washington 98168.

(viii) Western Pacific Regional Office, 15000 Aviation Boulevard, Hawthorne, California (P.O. Box 92007, Worldway Postal Center, Los Angeles) 90009.

(ix) Alaskan Regional Office, 701 "C" Street, Box 14, Anchorage, Alaska 99513.

(xi) European Office, 15, Rue de la Loi (3rd Floor) B1040 Brussels, Belgium.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, D.C.

(Amdt. 150–2, Eff. 10/25/89)

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

§ 150.21 —Noise exposure maps and related descriptions.

(a) Each airport operator may after completion of the consultations and public procedure specified under paragraph (b) of this section submit to the Regional Airports Division Manager five copies of the noise exposure map (or revised map) which identifies each noncompatible land use in each area depicted on the map, as of the date of submission, and five copies of a map each with accompanying documentation setting forth—

(1) The noise exposure based on forecast aircraft operations at the airport for the fifth calendar year beginning after the date of submission (based on reasonable assumptions concerning future type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including any planned airport development, planned land use changes, and demographic changes in the surrounding areas); and

(2) The nature and extent, if any, to which those forecast operations will affect the compatibility and land uses depicted on the map.

(b) Each map, and related documentation submitted under this section must be developed and prepared in accordance with Appendix A of this part, or an FAA approved equivalent, and in consultation with states, and public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within the L_{dn} 65 dB contour depicted on the map, FAA regional officials, and other Federal officials having local responsibility for land uses depicted on the map. This consultation must include regular aeronautical users of the airport. The airport operator shall certify that it has afforded interested persons adequate opportunity to submit their views, data, and comments concerning the correctness and adequacy of the draft noise exposure map and descriptions of forecast aircraft operations. Each map and revised map must be accompanied by documentation describing the consultation accomplished under this paragraph and the opportunities afforded the public to review and comment during the development of the map. One copy of all written comments received during consultation shall also be filed with the Regional Airports Division Manager.

(c) The Regional Airports Division Manager acknowledges receipt of noise exposure maps and descriptions and indicates whether they are in compliance with the applicable requirements. The Regional Airports Division Manager publishes in the FEDERAL REGISTER a notice of compliance for each such noise exposure map and description, identifying the airport involved. Such notice includes information as to when and where the map and related documentation are available for public inspection.

(d) If, after submission of a noise exposure map under paragraph (a) of this section, any change in the operation of the airport would create any "substantial, new noncompatible use" in any area depicted on the map beyond that which is forecast for the fifth calendar year after the date of submission, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map. A change in the operation of an airport creates a substantial new noncompatible use if that change results in an increase in the yearly day-night average sound level of 1.5 dB or greater in either a land area which was formerly compatible but is thereby made noncompatible under Appendix A (Table 1), or in a land area which was previously determined to be noncompatible under that Table and whose noncompatibility is now significantly increased. Such updating of the map shall include a reassessment of those areas excluded under sec. A150.101(e)(5) of Appendix A because of high ambient noise levels. If the five-year forecast map is based on assumptions involving recommendations in a noise compatibility program which are subsequently disapproved by the FAA, a revised map must be submitted if revised assumptions would create a substantial, new noncompatible use not indicated on the initial five-year map. Revised noise exposure maps are subject to the same requirements and procedures as initial submissions of noise exposure maps under this part.

(e) Each map, or revised map, and description of consultation and opportunity for public comment, submitted to the FAA, must be certified as true and complete under penalty of 18 U.S.C. 1001.

(f) (1) The ASNA Act provides, in section 107 (a) (49 U.S.C. 2107(a)), that:

No person who acquires property or an interest therein after the date of enactment of the Act in an area surrounding an airport with respect to which a noise exposure map has been submitted under section 103 of the Act shall be entitled to recover damages with respect to the noise attributable to such airport if such person had actual or constructive knowledge of the existence of such noise exposure map unless, in addition to any other elements for recovery of damages, such person can show that—

(i) A significant change in the type or frequency of aircraft operations at the airport; or

(ii) A significant change in the airport layout; or

(iii) A significant change in the flight patterns; or

(iv) A significant increase in nighttime operations; occurred after the date of the acquisition of such property or interest therein and that the damages for which recovery is sought have resulted from any such change or increase.

(2) The Act further provides in section 107(b), (49 U.S.C. 2107(b)):

That for this purpose, "constructive knowledge" shall be imputed, at a minimum, to any person who acquires property or an interest therein in an area surrounding an airport after the date of enactment of the Act if—

(i) Prior to the date of such acquisition, notice of the existence of a noise exposure map for such area was published at least three times in a newspaper of general circulation in the county in which such property is located; or

(ii) A copy of such noise exposure map is furnished to such person at the time of such acquisition.

(g) For this purpose, the term "significant" in paragraph (f) of this section means that change or increase in one or more of the four factors which results in a "substantial new noncompatible use" as defined in § 150.21(d), affecting the property in issue. Responsibility for applying or interpreting this provision with respect to specific properties rests with local government.

(Amdt. 150–2, Eff. 10/25/89)

§ 150.23 Noise compatibility programs.

(a) Any airport operator who has submitted an acceptable noise exposure map under § 150.21 may, after FAA notice of acceptability and other consultation and public procedure specified under paragraphs (b) and (c) of this section, as applicable, submit to the Regional Airports Division Manager five copies of a noise compatibility program.

(b) An airport operator may submit the noise compatibility program at the same time as the noise exposure map. In this case, the Regional Airports Division Manager will not begin the statutory 180-day review period (for the program) until after FAA reviews the noise exposure map and finds that it and its supporting documentation are in compliance with the applicable requirements.

(c) Each noise compatibility program must be developed and prepared in accordance with Appendix B of this part, or an FAA approved equivalent, and in consultation with FAA regional officials, the officials of the state and of any public agencies and planning agencies whose area, or any portion or whose area, of jurisdiction within the L_{dn} 65 dB noise contours is depicted on the noise exposure map, and other Federal officials having local responsibility of land uses depicted on the map. Consultation with FAA regional officials shall include, to the extent practicable, informal agreement from FAA on proposed new or modified flight procedures. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For other airports, consultation must include, to the extent practicable, aircraft operators using the airport.

(d) Prior to and during the development of a program, and prior to submission of the resulting draft program to the FAA, the airport operator shall afford adequate opportunity for the active and direct participation of the states, public agencies and planning agencies in the areas surrounding the airport, aeronautical users of the airport, and the general public to submit their views, data, and comments on the formulation and adequacy of that program.

(e) Each noise compatibility program submitted to the FAA must consist of at least the following:

(1) A copy of the noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c).

(2) A description and analysis of the alternative measures considered by the airport operator in developing the program, together with a discussion

of why each rejected measure was not included in the program.

(3) Program measures proposed to reduce or eliminate present and future noncompatible land uses and a description of the relative contribution of each of the proposed measures to the overall effectiveness of the program.

(4) A description of public participation and the consultation with officials of public agencies and planning agencies in areas surrounding the airport, FAA regional officials and other Federal officials having local responsibility for land uses depicted on the map, any air carriers and other users of the airport.

(5) The actual or anticipated effect of the program on reducing noise exposure to individuals and noncompatible land uses and preventing the introduction of additional noncompatible uses within the area covered by the noise exposure map. The effects must be based on expressed assumptions concerning the type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including planned airport development, planned land use changes, and demographic changes within the L_{dn} 65 dB noise contours.

(6) A description of how the proposed future actions may change any noise control or compatibility plans or actions previously adopted by the airport proprietor.

(7) A summary of the comments at any public hearing on the program and a copy of all written material submitted to the operator under paragraphs (c) and (d) of this section, together with the operator's response and disposition of those comments and materials to demonstrate the program is feasible and reasonably consistent with obtaining the objectives of airport noise compatibility planning under this part.

(8) The period covered by the program, the schedule for implementation of the program, the persons responsible for implementation of each measure in the program, and, for each measure, documentation supporting the feasibility of implementation, including any essential governmental actions, costs, and anticipated sources of funding, that will demonstrate that the program is reasonably consistent with achieving the goals of airport noise compatibility planning under this part.

(9) Provision for revising the program if made necessary by revision of the noise exposure map.

(Amdt. 150–2, Eff. 10/25/89)

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

§ 150.31 Preliminary review: acknowledgments.

(a) Upon receipt of a noise compatibility program submitted under § 150.23, the Regional Airports Division Manager acknowledges to the airport operator receipt of the program and conducts a preliminary review of the submission.

(b) If, based on the preliminary review, the Regional Airports Division Manager finds that the submission does not conform to the requirements of this part, he disapproves and returns the unacceptable program to the airport operator for reconsideration and development of a program in accordance with this part.

(c) If, based on the preliminary review, the Regional Airports Division Manager finds that the program conforms to the requirements of this part, the Regional Airports Division Manager publishes in the FEDERAL REGISTER a notice of receipt of the program for comment which indicates the following:

(1) The airport covered by the program, and the date of receipt.

(2) The availability of the program for examination in the offices of the Regional Airports Division Manager and the airport operator.

(3) That comments on the program are invited and, will be considered by the FAA.

(d) The date of signature of the published notice of receipt starts the 180-day approval period for the program.

(Amdt. 150–2, Eff. 10/25/89)

§ 150.33 Evaluation of programs.

(a) The FAA conducts an evaluation of each noise compatibility program and, based on that evaluation, either approves or disapproves the program. The evaluation includes consideration of proposed measures to determine whether they—

(1) May create an undue burden on interstate or foreign commerce (including unjust discrimination);

(2) Are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and

(3) Include the use of new or modified flight procedures to control the operation of aircraft for purposes of noise control, or affect flight procedures in any way.

(b) The evaluation may also include an evaluation of those proposed measures to determine whether they may adversely affect the exercise of the authority and responsibilities of the Administrator under the Federal Aviation Act of 1958, as amended.

(c) To the extent considered necessary, the FAA may—

(1) Confer with the airport operator and other persons known to have information and views material to the evaluation;

(2) Explore the objectives of the program and the measures, and any alternative measures, for achieving the objectives.

(3) Examine the program for developing a range of alternatives that would eliminate the reasons, if any, for disapproving the program.

(4) Convene an informal meeting with the airport operator and other persons involved in developing or implementing the program for the purposes of gathering all facts relevant to the determination of approval or disapproval of the program and of discussing any needs to accommodate or modify the program as submitted.

(d) If requested by the FAA, the airport operator shall furnish all information needed to complete FAA's review under (c).

(e) An airport operator may, at any time before approval or disapproval of a program, withdraw or revise the program. If the airport operator withdraws or revises the program or indicates to the Regional Airports Division Manager, in writing, the intention to revise the program, the Regional Airports Division Manager terminates the evaluation and notifies the airport operator of that action. That termination cancels the 180-day review period. The FAA does not evaluate a second program for any airport until any previously submitted program has been withdrawn or a determination on it is issued.

A new evaluation is commenced upon receipt of a revised program, and a new 180-day approval period is begun, unless the Regional Airports Division Manager finds that the modification made, in light of the overall revised program, can be integrated into the unmodified portions of the revised program without exceeding the original 180-day approval period or causing undue expense to the government.

(Amdt. 150–2, Eff. 10/25/89)

§ 150.35 Determinations; publications; effectivity.

(a) The FAA issues a determination approving or disapproving each airport noise compatibility program (and revised program). Portions of a program may be individually approved or disapproved. No conditional approvals will be issued. A determination on a program acceptable under this part is issued within 180 days after the program is received under § 150.23 of this part or it may be considered approved, except that this time period may be exceeded for any portion of a program relating to the use of flight procedures for noise control purposes. A determination on portions of a program covered by the exceptions to the 180-day review period for approval will be issued within a reasonable time after receipt of the program. Determinations relating to the use of any flight procedure for noise control purposes may be issued either in connection with the determination on other portions of the program or separately. Except as provided by this paragraph, no approval of any noise compatibility program, or any portion of a program, may be implied in the absence of the FAA's express approval.

(b) The Administrator approves programs under this part, if—

(1) It is found that the program measures to be implemented would not create an undue burden on interstate or foreign commerce (including any unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses;

(2) The program provides for revision if made necessary by the revision of the noise map; and

(3) Those aspects of programs relating to the use of flight procedures for noise control can be implemented within the period covered by the program and without—

(i) Reducing the level of aviation safety provided;

(ii) Derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(iii) Adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

(iv) Adversely affecting any other powers and responsibilities of the Administrator prescribed by law or any other program, standard, or requirement established in accordance with law.

(c) When a determination is issued, the Regional Airports Division Manager notifies the airport operator and publishes a notice of approval or disapproval in the FEDERAL REGISTER identifying the nature and extent of the determination.

(d) Approvals issued under this part for a program or portion thereof become effective as specified therein and may be withdrawn when one of the following occurs:

(1) The program or portion thereof is required to be revised under this part or under its own terms, and is not so revised;

(2) If a revision has been submitted for approval, a determination is issued on the revised program or portion thereof, that is inconsistent with the prior approval.

(3) A term or condition of the program, or portion thereof, or its approval is violated by the responsible government body.

(4) A flight procedure or other FAA action upon which the approved program or portion thereof is dependent is subsequently disapproved, significantly altered, or rescinded by the FAA.

(5) The airport operator requests rescission of the approval.

(6) Impacts on flight procedures, air traffic management, or air commerce occur which could not be foreseen at the time of approval.

A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operator of the FAA's intention to rescind or modify the determination for the reasons stated in the notice. The airport operator may, during the 30-day period, submit to the Regional Airports Division Manager for consideration any reasons and circumstances why the determination should not be rescinded or modified on the basis stated in the notice of intent. Thereafter, the FAA either rescinds or modifies the determination consistent with the notice or withdraws the notice of intent and terminates the action.

(e) Determinations may contain conditions which must be satisfied prior to implementation of any

portion of the program relating to flight procedures affecting airport or aircraft operations.

(f) Noise exposure maps for current and five year forecast conditions that are submitted and approved with noise compatibility programs are considered to be the new FAA accepted noise exposure maps for purposes of part 150.

(Amdt. 150–2, Eff. 10/25/89)

Appendix A To Part 150—*Noise Exposure Maps*

PART A—General

Sec. A150.1 Purpose.
Sec. A150.3 Noise descriptors.
Sec. A150.5 Noise measurement procedures and equipment.

PART B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land usages.
Sec. A150.103 Use of computer prediction model.
Sec. A150.105 Identification of public agencies and planning agencies.

PART C—Mathematical Descriptions

Sec. A150.201 General.
Sec. A150.203 Symbols.
Sec. A150.205 Mathematical computations.

PART A—General

Sec. A150.1 Purpose.

(a) This appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. It also identifies land uses which, for the purpose of this part are considered to be compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of the FAA's Integrated Noise Model (INM) or an FAA approved equivalent, for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, under this part, it should be accomplished in accordance with Sec. A150.5 of this appendix.

Sec. A150.3 Noise descriptors.

(a) *Airport Noise Measurement.* The A-Weighted Sound Level, measured, filtered and recorded in accordance with Sec. A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) *Airport Noise Exposure.* The yearly day-night average sound level (YDNL) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise around airports.

Sec. A150.5 Noise measurement procedures and equipment.

(a) Sound levels must be measured or analyzed with equipment having the "A" frequency weighting, filter characteristics, and the "slow response" characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters" as incorporated by reference in Part 150 under § 150.11. For purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in IEU 179, are acceptable.

(b) Noise measurements and documentation must be in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI 51.13, dated 1971 as revised 1979, entitled "ANS—Methods for the Measurement of Sound Pressure Levels"; ARP No. 796, dated 1969, entitled "Measurement of Aircraft Exterior Noise in the Field"; "Handbook of Noise Measurement," Ninth Ed. 1980, by Arnold P.G. Peterson; or "Acoustic Noise Measurement," dated Jan., 1979, by J.R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels (L_{AM}); for computation or validation of the yearly day-night average level (L_{dn}), measurements must be reported in sound exposure level (L_{AE}), as defined in Sec. A150.205 of this appendix.

TABLE 1—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings.	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
PUBLIC USE						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
COMMERCIAL USE						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment.	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
RECREATIONAL						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM=Standard Land Use Coding Manual.

Y (Yes)=Land Use and related structures compatible without restrictions.

N (No)=Land Use and related structures are not compatible and should be prohibited.

NLR=Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35=Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

(8) Residential buildings not permitted.

PART B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land usages.

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop L_{dn} contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than L_{dn} 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and indentify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of L_{dn} 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the L_{dn} 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The L_{dn} 70 dB noise contour and data related to L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 differ between L_{dn} 65–70 dB and the L_{dn} 70–75 dB, determinations should either use the more conservative L_{dn} 70–

75 dB column or reflect determinations based on local needs and values.

(4) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

Sec. A150.103 Use of computer prediction model.

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved methodology or computer program, such as the Integrated Noise Model (INM) for airports or the Heliport Noise Model (HNM) for heliports. In considering approval of a methodology or computer program, key factors include the demonstrated capability to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) Except as provided in paragraph (c) of this section, the following information must be obtained for input to the calculation of noise exposure contours:

(1) A may of the airport and its environs at an adequately detailed scale (not less than 1 inch to 8,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

(c) For heliports, the map scale required by paragraph (b)(1) of this section shall not be less than 1 inch to 2,000 feet and shall indicate heliport boundaries, takeoff and landing pads, and typical flight tracks out to at least 4,000 feet horizontally from the landing pad. Where these flight tracks cannot be determined, obstructions or other limitations on flight tracks in and out of the heliport shall be identified within the map areas out to at least 4,000 feet horizontally from the landing pad. For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and the duration in minutes of the hover operation shall be identified. The other information required in paragraph (b) shall be furnished in a form suitable for input to the HNM or other FAA approved methodology or computer program.

Sec. A150.105 Identification of public agencies and planning agencies.

(a) The airport proprietor shall identify each public agency and planning agency whose jurisdiction or responsibility is either wholly or partially within the L_{dn} 65 dB boundary.

(b) For those agencies identified in (a) that have land use planning and control authority, the supporting documentation shall identify their geographic areas of jurisdiction.

PART C—Mathematical Descriptions

Sec. A150.201 General.

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level (L_{dn}), the data necessary for its calculation, and the methods for computing it.

Sec. A150.203 Symbols.

The following symbols are used in the computation of L_{dn}:

Measure (in dB)	Symbol
Average Sound Level, During Time T	L_T
Day-Night Average Sound Level (individual day)	L_{dm}
Yearly Day-Night Average Sound Level	L_{dn}
Sound Exposure Level	L_{AE}

Sec. A150.205 Mathematical computations.

(a) Average sound level must be computed in accordance with the following formula:

$$L_T=10\log_{10}\left[\frac{1}{T}\int_0^T 10^{L_A(t)/10}\,dt\right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; $L_A(t)$ is the instantaneous time varying A-weighted sound level during the time period T.

(1) NOTE: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

$$L_T=10\log_{10}\left[\frac{1}{T}\sum_{i=1}^{n} 10^{L_{AEi}/10}\right] \quad (2)$$

where L_{AEi} is the sound exposure level of the i-th event, in a series of n events in time period T, in seconds.

(2) NOTE: When T is one hour, L_T is referred to as one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn}=10\log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt + \int_{0700}^{2200} 10^{L_A(t)/10}\,dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10}\,dt\right)\right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn}=10\log_{10}\frac{1}{365}\sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where L_{dni} is the day-night average sound level for the i-th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE}=10\log_{10}\left(\frac{1}{t_0}\int_{t_1}^{t_2} 10^{L_A(t)/10}\,dt\right) \quad (5)$$

where t_o is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval t_1 to t_2.

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

(Amdt. 150–1, Eff. 3/16/88)

Appendix B To Part 150—*Noise Compatibility Programs*

Sec. B150.1 Scope and purpose.
Sec. B150.3 Requirement for noise map.
Sec. B150.5 Program standards.
Sec. B150.7 Analysis of program alternatives.
Sec. B150.9 Equivalent programs.

Sec. B150.1 Scope and purpose.

(a) This appendix prescribes the content and the methods for developing noise compatibility programs authorized under this part. Each program must set forth the measures which the airport operator (or other person or agency responsible) has taken, or proposes to take, for the reduction of existing noncompatible land uses and the prevention of the introduction of additional noncompatible land uses within the area covered by the noise exposure map submitted by the operator.

(b) The purpose of a noise compatibility program is:

(1) To promote a planning process through which the airport operator can examine and analyze the noise impact created by the operation of an airport, as well as the costs and benefits associated with various alternative noise reduction techniques, and the responsible impacted land use control jurisdictions can examine existing and forecast areas of noncompatibility and consider actions to reduce noncompatible uses.

(2) To bring together through public participation, agency coordination, and overall cooperation, all interested parties with their respective authorities and obligations, thereby facilitating the creation of an agreed upon noise abatement plan especially suited to the individual airport location while at the same time not unduly affecting the national air transportation system.

(3) To develop comprehensive and implementable noise reduction techniques and land use controls which, to the maximum extent feasible, will confine severe aircraft YDNL values of L_{dn} 75 dB or greater to areas included within the airport boundary and will establish and maintain compatible land uses in the areas affected by noise between the L_{dn} 65 and 75 dB contours.

Sec. B150.3 Requirement for noise map.

(a) It is required that a current and complete noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c) be included in each noise compatibility program:

(1) To identify existing and future noncompatible land uses, based on airport operation and off-airport land uses, which have generated the need to develop a program.

(2) To identify changes in noncompatible uses to be derived from proposed program measures.

(b) If the proposed noise compatibility program would yield maps differing from those previously submitted to FAA, the program shall be accompanied by appropriately revised maps. Such revisions must be prepared in accordance with the requirements of Sec. A150.101(e) of Appendix A and will be accepted by FAA in accordance with § 150.35(f).

Sec. B150.5 Program standards.

Based upon the airport noise exposure and noncompatible land uses identified in the map, the airport operator shall evaluate the several alternative noise control actions and develop a noise compatibility program which—

(a) Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(b) Does not impose undue burden on interstate and foreign commerce;

(c) Provides for revision in accordance with § 150.23 of this part.

(d) Is not unjustly discriminatory.

(e) Does not derogate safety or adversely affect the safe and efficient use of airspace.

(f) To the extent practicable, meets both local needs and needs of the national air transportation system, considering tradeoffs between economic benefits derived from the airport and the noise impact.

(g) Can be implemented in a manner consistent with all of the powers and duties of the Administrator of FAA.

Sec. B150.7 Analysis of program alternatives.

(a) Noise control alternatives must be considered and presented according to the following categories:

(1) Noise abatement alternatives for which the airport operator has adequate implementation authority.

(2) Noise abatement alternatives for which the requisite implementation authority is vested in a local agency or political subdivision governing body, or a state agency or political subdivision governing body.

(3) Noise abatement options for which requisite authority is vested in the FAA or other Federal agency.

(b) At a minimum, the operator shall analyze and report on the following alternatives, subject to the constraints that the strategies are appropriate to the specific airport (for example, an evaluation of night curfews is not appropriate if there are no night flights and none are forecast):

(1) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations.

(2) The construction of barriers and acoustical shielding, including the soundproofing of public buildings.

(3) The implementation of a preferential runway system.

(4) The use of flight procedures (including the modifications of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.

(5) The implementation of any restriction on the use of airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to—

(i) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;

(ii) Capacity limitations based on the relative noisiness of different types of aircraft;

(iii) Requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA;

(iv) Landing fees based on FAA certificated or estimated noise emission levels or on time of arrival; and

(v) Partial or complete curfews.

(6) Other actions or combinations of actions which would have a beneficial noise control or abatement impact on the public.

(7) Other actions recommended for analysis by the FAA for the specific airport.

(c) For those alternatives selected for implementation, the program must identify the agency or agencies responsible for such implementation, whether those agencies have agreed to the implementation, and the approximate schedule agreed upon.

Sec. B150.9 Equivalent programs.

(a) Notwithstanding any other provision of this part, noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks.

(2) A noise contour of L_{dn} 70 dB resulting from aircraft operations and data related to the L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 of Appendix A differ between L_{dn} 65–70 dB and L_{dn} 70–75 dB, the determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(3) The categorization of alternatives pursuant to Sec. B150.7(a), although the persons responsible for implementation of each measure in the program must still be identified in accordance with § 150.23(e)(8).

(4) Use of ambient noise to determine land use compatibility.

(b) Previously prepared noise compatibility program documentation may be supplemented to include these and other program requirements which have not been excepted.

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TABLE 1—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	*Yearly day-night average sound level (L_{dn}) in decibels*					
	Below 65	65–70	70–75	75–80	80–85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings.	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
PUBLIC USE						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
COMMERCIAL USE						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment.	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
RECREATIONAL						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM=Standard Land Use Coding Manual.

Y (Yes)=Land Use and related structures compatible without restrictions.

N (No)=Land Use and related structures are not compatible and should be prohibited.

NLR=Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and *construction of the structure.*

25, 30, or 35=Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

(8) Residential buildings not permitted.

PART B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land usages.

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop L_{dn} contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than L_{dn} 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and indentify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of L_{dn} 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the L_{dn} 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The L_{dn} 70 dB noise contour and data related to L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 differ between L_{dn} 65–70 dB and the L_{dn} 70–75 dB, determinations should either use the more conservative L_{dn} 70–

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 MARYLAND AVIATION ADMINISTRATION

Chapter 03 Airport Noise Control Program

Authority: Transportation Article, §§5-204(d)(4), 5-208(a) and (b), and 5-801 et seq., Annotated Code of Maryland

.01 Definitions.

A. Acoustic Terminology.

(1) "Annual day-night (average) sound level (L_{dn})" means for locations in the neighborhood of an airport, the day-night (average) sound level, in decibels, resulting from the effective annual average daily traffic and the utilization of runways and flight paths that affect the noise exposure at the location in question.

(2) "Average sound (noise) level (L_{eq})" means the constant sound level, in decibels, which, in a given situation and time period, would convey the same sound energy as does the actual time-varying sound during the same period. A-weighting is understood. Unless otherwise qualified, the average is reckoned over a 24-hour day, from midnight to midnight. The mathematical formulation of average sound level is as follows: If $LA_{(t)}$ represents the value of instantaneous A-weighted sound pressure level fluctuating with time,

$$L_{eq} = 10\ log_{10}\left[\frac{1}{t_2 - t_1}\cdot\int_{t_1}^{t_2} 10^{(L_{A(t)}/10)}\,dt\right]$$

where t_1 and t_2 are, respectively, the times marking the beginning and end of the observation period over which the average is reckoned.

(3) "Contours of equal noise exposure" means the locus of points on the ground with a given noise exposure.

(4) "Data range" means for a set of 24-hour measurements of L_{dn}, the difference between the highest value and the lowest value of L_{dn} in decibels.

(5) "Day-night (average) sound level (L_{dn})" means the average sound level, in decibels, reckoned over a 24-hour day with a 10 decibel weighting applied to the noise occurring during the nighttime period; that is, noise levels occurring at night are treated as though they

were 10 dB higher than they actually are. The mathematical formulation of day-night sound level is as follows:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{24} \left(\int_{0700}^{2200} 10^{(L_{A(t)}/10)} dt + \int_{2200}^{0700} 10^{(L_{A(t)}+10)/10)} dt \right) \right],$$

or equivalently:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{24} \left(15 \left(10^{L_d/10} \right) + 9 \left(10^{(L_n+10)/10} \right) \right] \right] .$$

(6) "Daytime (average) sound level (L_d)" means the average sound level, in decibels, for the 15 hour time period between 0700 and 2200 (7 a.m. to 10 p.m.). The mathematical formulation for daytime sound level is as follows:

$$L_d = 10 \log_{10} \left[\frac{1}{15} \int_{0700}^{2200} 10^{(L_{A(t)}/10)} dt \right] .$$

(7) "Decibel (dB)" means a division of the logarithmic scale customarily used to express the ratio of two like quantities proportional to power or energy.

(8) "Decibel scale" means a logarithmic scale used to express the ratio of two like quantities proportional to power or energy. The ratio is expressed on the decibel scale by multiplying its common logarithm by ten.

(9) "Hourly (average) sound level, (L_h)" means the average sound level, in decibels, for a 1-hour period, usually reckoned between integral hours. There would be 24 such values per day. The mathematical formulation of hourly sound level is, for example:

$$L_h = 10 \log_{10} \left[\frac{1}{9 - 8} \int_{0800}^{0900} 10^{(L_{A(t)}/10)} dt \right] .$$

(10) "Level (L)" means the ratio, expressed on the decibel scale, of two like quantities, the second of which is a standard reference quantity.

(11) "Nighttime (average) sound level (L_n)" means the average sound level, in decibels, for the 9 hour period from 2200 to 0700 the next morning (10 p.m. to 7 a.m.). The mathematical formulation for nighttime sound level is as follows:

$$L_n = 10 \log_{10} \left[\frac{1}{9} \int_{2200}^{0700} 10^{(L_{A(t)}/10)} dt \right].$$

(12) "Sound level (noise level) (L_A)" means the quantity in decibels measured by an instrument satisfying the requirements of American National Standard Specifications for Sound Level Meters, S1.4-1971, or its latest revision; that is, the frequency-weighted sound pressure level obtained with the standardized "fast" dynamic characteristic and the "A" frequency weighting of the sound level meter.

(13) "Sound pressure (p)" expressed in micropascals, means a fluctuating pressure superimposed on the static atmospheric pressure in the presence of sound. Unless qualified, the term means root-mean-square sound pressure.

(14) "Sound pressure level (L_p)" means the squared ratio, expressed on the decibel scale, of the sound pressure under consideration to the standard reference pressure of 20 micropascals (= 20 micronewtons/square meter or 0.0002 dynes/square centimeter).

B. Airport Terminology. The following terms refer to physical and operational characteristics of airports:

(1) "Airport" means any airport licensed by the Administration.

(2) "Airport operator" means the licensee, or any person who is designated by the licensee as airport operator and who is made responsible to the licensee for the supervision and operation of the airport.

(3) "Effective annual average daily traffic "EAADT" means the standard daily volume of air traffic typifying airport operations, which is determined as follows:

(a) Calculate the average number of airport operations for the 10 busiest days of the year:

$$N = \frac{(N_1 + N_2 + N_3 + \ldots + N_{10})}{10}$$

N_1 through N_{10} being the number of operations on the 10 busiest days;

(b) Eliminate from further consideration the number of days and the number of operations at the airport which are less than N/2;

(c) The effective annual average daily traffic is the average number of daily operations for all the remaining days of the year.

(4) "Flight operation" means a single take-off, landing or flyby. (A "touch-and-go" counts as two operations.)

(5) "Licensee" means the person, firm, agency, or political subdivision to whom the airport license is issued by the Administrator.

(6) "Start of takeoff roll" means the position on a runway where an aircraft starts to accelerate in taking off.

(7) "Threshold" means that position on a runway, seen from the approach end, designated as the first point where a landing is permitted. The first point does not necessarily coincide with the start of paving.

(8) "Utilization" means the percentage of the total number of a specific category of operations, on an annual basis, that uses a particular runway or flight track.

C. Other Terminology. Other terms concerning airport noise regulation, but not specifically related to airports or acoustics, are as follows:

(1) "Certified noise abatement plan" means a noise abatement plan accepted by the Administrator for implementation by an airport operator.

(2) "Daytime" means 0700 to 2200 hours (7 a.m. to 10 p.m.).

(3) "Nightime" means 2200 to 0700 hours (10 p.m. to 7 a.m.).

(4) "Noise abatement plan" means a detailed program of changes in airport operation which has as its goal the reduction or elimination of impacted land use areas.

.02 Methods for Calculation and Measurement of Levels of Cumulative Noise Exposure.

A. Authority. Transportation Article, §5-805(a) authorizes the Administrator, by regulation, to establish methods for the calculation or measurement of cumulative noise exposure values.

B. Noise Rating. The noise rating for description of exposure to aircraft noise shall be the day-night average sound level (L_{dn}).

C. Development of noise contours of equal noise exposure are to be determined using a prediction method in accordance with the procedures of §D, below. Measurements, undertaken in accordance

with the procedure of §E, below, may be used to confirm the locations of contours of equal noise exposure.

D. Prediction Method.

(1) Contours of equal noise exposure in terms of the day-night average sound level are to be prepared using a procedure designed to develop L_{dn} contours based on data as described in this section. The use of a particular procedure is subject to the approval of the Administrator.

(2) Data Base. The following information is required to develop contours of equal noise exposure:

(a) Map location and dimensions of all runways and the airport property line at a scale specified by the Administrator.

(b) Map location of landing threshold and start of takeoff roll for each direction on each runway. If there are several thresholds or start-of-roll points corresponding to different types of aircraft, these shall be noted with a clear description of the relevant aircraft types.

(c) Map locations of engine runup and maintenance areas within the airport property.

(d) Map locations of flight tracks or descriptions of departure procedures for all arriving and departing aircraft and for traffic patterns, if any. If there are different flight tracks or procedures associated with different types of aircraft, these shall all be included. The scales of any maps shall be as specified by the Administration.

(e) Special flight procedures or restrictions, including, but not limited to, airspace management, curfews, and noise abatement procedures.

(f) Effective annual average daily numbers of flight operations by type of operation (landing, takeoff, touch-and-go), by aircraft type, by gross weight for takeoffs, by runway, by flight track, and by time of day.

(g) Annual average daily number of engine maintenance runups by type, by duration, and by time of day (daytime or nighttime).

(h) Flight profiles for arriving and departing aircraft.

(i) The relationship of aircraft sound level to the distance between the aircraft and the ground location, by aircraft time and operation.

E. Measurement Method.

(1) Noise Measurement System Requirements.

(a) The system for the measurement of noise exposure shall provide the hourly sound level for each hour of the day, together with identification of the hour, and the measurement location.

(b) The overall accuracy of a noise measurement system shall be ±1.5 dB.

(c) The system shall be of a type approved by the Administrator.

(2) Measurement Requirements.

(a) Measurement Conditions. Measurements shall be made when aircraft operations occur that affect the location being studied.

(b) The number of 24-hour measurements of L_{dn} shall be equal to the value given in the table below, depending on the data range in decibels for the set of measurements. For this purpose, the data range shall be determined from the field measured noise data. Noise measurements shall be continued at each location until the requirement of this article is satisfied.

Data Range (dB)	*Required Number of Measurements*
2	3
3	4
4	5
5-6	6
7	7
8	8

.03 Limits for Cumulative Noise Exposure.

A. Authority. The Transportation Article, §5-804(a) mandates the Administrator, by regulation, to adopt limits for cumulative noise exposure for residential land use and other categories of land use, on the basis of their noise sensitivity, with the endorsement of the Secretary of Transportation and the Secretary of the Environment and after a public hearing following 60 days notice.

B. Limits. Limits for cumulative noise exposure are hereby established as follows:

Limits for Cumulative Noise Exposure (Annual Day-Night Average Sound Level, dB RE 20 μPA)

Effective 1 July 1975

Land Use	
(1) Residential single and two family; mobile homes	65
(2) Residential multifamily, dormitories	65
(3) Schools, hospitals, rest homes, homes for the aged, nursing homes	65
(4) Libraries, churches	65
(5) Transient lodging, hotels, motels	70
(6) Auditoriums, concert halls	65
(7) Sports arenas, outdoor spectator sports	70
(8) Playgrounds, neighborhood parks	70
(9) Golf courses, riding stables, water recreation, cemeteries	75
(10) Office buildings, personal, business, professional	75

Land Use	
(11) Commercial (retail), movie theaters, restaurants	75
(12) Commercial (wholesale, some retail), industry, manufacturing utilities	75
(13) Manufacturing, communications, (noise sensitive)	70
(14) Livestock farming, animal breeding	75
(15) Agriculture (except livestock), mining, fishing	no limit
(16) Aviation-related (hangars, runways, maintenance facilities)	no limit

.04 Duties of an Airport Operator.

A. Authority. Transportation Article, §§5-805 and 5-806, Annotated Code of Maryland, mandates the Administrator to establish procedures which airport operators or the intended operators of new airports shall follow in accomplishing certain required actions which need to be approved by the Administrator. These actions include:

(1) Assessment of the noise environment created by the operation of their airports, including current conditions and projections of future usage;

(2) Delineation of the noise zone, if any, base year and future year contours of equal noise exposure, and the identification of any impacted land-use areas;

(3) Development of a plan to reduce or eliminate the impacted land-use area.

B. Development of Contours of Equal Noise Exposure.

(1) An airport operator, or the intended operator of a proposed airport, shall prepare the airport data base described by Regulation .02D(2) of this chapter. The data are to be presented as maps and supplemental information in the manner required by the Administrator, as described in §B(2)—(4) of this regulation.

(2) Base Year Noise Contour. Contours of equal noise exposure shall be developed representing cumulative noise levels for a full 12-month period that typifies current airport operations. The base year for a proposed airport is the initial year of operation.

(3) Future Year Noise Contours. Contours of equal noise exposure shall be developed representing projected cumulative noise levels for a full 12-month period expected 5 years beyond the year of certification for all airports, and 10 years beyond the year of certification for air carrier airports.

(4) Airport Noise Zone. When base year or future year contours of equal noise exposure include land uses within which the cumulative noise exposure is equal to or greater than the lowest limit for cumulative noise exposure established in Regulation .03B of this chapter, a composite of the base and future years' noise contours shall be developed as an airport noise zone that provides the greatest protection to public health and welfare.

C. Data supporting the contours of equal noise exposure developed under §B of this regulation shall be submitted to the Administrator according to the following schedule:

(1) Airports shall submit data when required as part of an environmental impact study or by the Administration;

(2) Airports shall submit data by July 1 of each 5th year pursuant to Transportation Article, §5-805(c), Annotated Code of Maryland.

D. The Administrator may prepare contours of equal noise exposure at the request of the airport operator. The Administrator shall maintain the aircraft data base described under Regulation .02D(2)(a)—(i) of this chapter.

E. Determination of Impacted Land Use Areas.

(1) An airport operator shall obtain or prepare a map at a scale specified by the Administration showing land use within the noise

zone of the airport as described under §B(3) of this regulation. All land uses shall be defined in terms consistent with the land use descriptions in Regulation .03 of this chapter and pursuant to Transportation Article, §5-805, Annotated Code of Maryland. For proposed airports, the land uses are those anticipated at the time of initial airport operation.

(2) The operator shall identify impacted land-use areas, if any, and prepare a map clearly indicating the impacted land-use areas for any of the periods investigated in compliance with Transportation Article, §5-805(a)(1), (2) and (3), Annotated Code of Maryland. The Administrator, at the request of the operator, may assist in the identification of impacted land-use areas.

(3) If no impacted land-use areas exist, or will exist for any of the periods investigated, the operator shall submit a proposal to the Administrator for certification of a noise zone for the airport. The noise zone shall be the one that provides, by its extent, the greatest protection to the public health and welfare.

(4) If impacted land-use areas exist, or will exist for any of the periods investigated, the operator shall develop and implement a noise abatement plan in accordance with the procedures of §F of this regulation.

F. Noise Abatement Plans.

(1) The goal of a noise abatement plan is the reduction or elimination of impacted land-use area.

(2) An airport operator shall develop proposals for noise abatement plans which can meet this goal through the use of available methods in accordance with the Transportation Article, §5-805(a) and (b).

(3) Noise abatement plans shall be submitted to the Administrator for approval and certification of the noise zone in accordance with Transportation Article, §5-805, Annotated Code of Maryland. The noise zone shall be the one that provides, by its extent, the greatest protection to the public health and welfare in accordance with Transportation Article, §5-804, Annotated Code of Maryland.

(4) Airport operators shall implement approved plans consistent with provisions of Transportation Article, §5-806, Annotated Code of Maryland.

G. Airport operators required to develop noise abatement plans shall periodically submit reports detailing progress in implementation

of the approved noise abatement plans as may be deemed necessary by the Administration.

.05 Permits for Construction Within the Noise Zone Surrounding a State-Owned Airport.

A. Authority. The Transportation Article, §5-821, Annotated Code of Maryland authorizes the Administrator, by regulation, to issue permits for new construction within the noise zone surrounding State-owned airports.

B. Permits.

(1) Except as provided in §B(3) of this regulation, a person wishing to establish or construct a new structure, or to make new uses of land or structures, or to replace existing structures, or to make substantial changes in a structure or use of land, or to make substantial repairs to a structure within the noise zone surrounding a State-owned airport, shall obtain a permit from the Administrator before the undertaking may begin.

(2) Application for the permits shall be in a form required by the Administrator, and shall include:

(a) A full description of the project use;

(b) A description of the project location, including Maryland grid coordinates.

(3) Notwithstanding §B(1) of this regulation, the Administration may not require a person to obtain a permit to construct an addition to a residential structure in a noise zone if the:

(a) Resultant improved structure retains the same number of family dwelling units; and

(b) Addition is not made eligible for participation in those State-funded noise assistance programs established by Transportation Article, Title 5, Subtitle 12, Annotated Code of Maryland.

(4) In accordance with Transportation Article, §5-821, Annotated Code of Maryland, the Administrator may not grant a permit if the proposed action will enlarge the size of or create an impacted land-use area or violate local land-use and zoning laws.

(5) Variances are available only in accordance with the provisions of §5-822(a) and (b) of the Transportation Article.

(6) For purposes of administration of this regulation the following terms are defined:

(a) "Substantial change in a structure" means any change in a residential structure when the value of the work is greater than $5,000 or when change results in additional independent living units or increased habitable floor area, or a change in a nonresidential structure when the value of the work is greater than $5,000.

(b) "Substantial repairs" means repairs other than those needed to keep existing structures in sound condition.

(7) Unless a person has an appropriate permit issued by the Administration or a variance granted by the Board of Airport Zoning Appeals, a political subdivision may not approve a final subdivision plan or issue any permit that is prerequisite to the construction of improvements in a noise zone established pursuant to Transportation Article, §5-821, Annotated Code of Maryland.

.06 Severability.

The provisions of these regulations are intended to be severable, and the finding by any court that any provision is invalid may not affect the validity of the remaining portions, except to the extent that the court finds the remaining portions alone are incomplete and incapable of being enforced.

Administrative History

Effective date: August 6, 1975 (2:17 Md. R. 1192)
Regulations .03 and .05 amended effective February 2, 1977 (4:3 Md. R. 146)
Chapter recodified from COMAR 11.03.14 to 11.03.03
Regulation .01B amended effective October 29, 1990 (17:21 Md. R. 2530)
Regulation .03A amended effective October 29, 1990 (17:21 Md. R. 2530)
Regulation .04 amended effective October 29, 1990 (17:21 Md. R. 2530); August 30, 1993 (20:17 Md. R. 1347)
Regulation .05 amended effective October 29, 1990 (17:21 Md. R. 2530)

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 03 MARYLAND AVIATION ADMINISTRATION

Chapter 04 Aeronautical Regulations

Authority: Transportation Article, §5-208, Annotated Code of Maryland

.01 Authority.

These regulations are issued under the authority granted to the Maryland Aviation Administration by the Transportation Article, §5-208, Annotated Code of Maryland.

.02 Definitions.

A. "Administration" means the Maryland Aviation Administration of the Maryland Department of Transportation.

B. "Airport" refers to a combination of one or more designated landing areas and any surrounding support facilities.

C. "Commercial use airport" means any airport which:

(1) Charges landing or tie down fees;

(2) Sells aviation fuel or oil;

(3) Rents space;

(4) Sells goods or services, whether for profit or not;

(5) Engages in any activity for which fees are charged or payment is received; or

(6) Engages in any combination of the above activities.

D. "Designated landing area" means any surface on land, on water, or on a structure which is specifically adapted and maintained for the landing and taking off of aircraft. It does not include a location used only as the point of departure or only as the destination of an aircraft operation.

E. "FAA" means Federal Aviation Administration.

F. "Noncommercial use airport" means any airport which is not a commercial use airport.

G. "Occasional guest" when used in conjunction with an airport, means any individual invited to use an airport for infrequent, irregular flight operations.

(See page 128)

H. "Person" means any:

(1) County, municipal corporation, or other political subdivision of the State or any of their units;

(2) Individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind; or

(3) Partnership, firm, association, public or private corporation, or any other entity.

I. "Private use airport" means any airport which the owner or person having a right of access and control authorizes use only to specific designated individuals and occasional guests.

J. "Public use airport" means any airport, whether privately or publicly owned, which the owner or persons having a right of access and control invite, encourage, or allow flight operations by the public. Any airport that is not a private use airport is a public use airport.

.03 Purpose.

In order to further the public interest and aeronautical progress, provide for the protection and promotion of safety in aeronautics, contribute to the principle of effecting uniform regulations of aeronautics, and in order that those engaged in aeronautics of every character may so engage with the least possible restriction consistent with the safety and rights of others, these regulations have been adopted by the Maryland Aviation Administration of the Maryland Department of Transportation. (Reference: Transportation Article, §§5-102(a) and 5-208, Annotated Code of Maryland.)

.04 Aircraft Operation.

A. Licensed Airports. Except in emergency situations, a person may not conduct any aircraft operations at a licensed airport other than those in conformity with the airport traffic pattern, ground traffic rules, and noise abatement procedures developed by the airport manager.

B. Public Property.

(1) Public Property: Commercial Operation. Aircraft may not be operated commercially from any public land or water owned or controlled by the State unless the landing area has been approved by the Administration.

(2) Public Land: Noncommercial Operation.

(a) State Land. Aircraft may not operate from any State land unless prior approval is obtained from the Administration.

(b) Other Public Land. Aircraft may not be operated from any public land, not owned or controlled by the State, unless prior approval is obtained from the political subdivision owning or controlling the land.

(3) Public Waters: Noncommercial Operation.

(a) Except as specifically restricted in this regulation, public waters controlled by the State are available for noncommercial seaplane use.

(b) Seaplanes may not take-off and land on the designated portions of the following bodies of water:

(i) Chester River	Rock Hall Harbor Queenstown Creek Winchester Creek.
(ii) Deal (Herring Bay)	Rockhold Creek from the entrance Buoy Fl. R "2" to the headwaters.
(iii) Choptank River	Knapp Narrows Buoy Fl. R "4" to Fl. R "6".
(iv) Tred Avon River	Oxford Harbor.
(v) Wicomico River	From lighted beacon "57" at Harbor Point to head of the Wicomico River and tributaries thereof.
(vi) Crisfield Harbor	From the entrance to the headwaters of Somers Cove.
(vii) Patuxent River	Solomons Island Harbor from the entrance Buoy N "4" and all tributaries thereof.
(viii) Potomac River	St. Patricks Creek (1.3 miles north of northern tip of St. Clements Island) from daymarkers "3" and "4" to the headwaters, including tributaries thereof.

(viii) Potomac River (cont.)	St. Catherines Sound—White Neck Creek from White Neck Pt. to the headwaters and all tributaries thereof. Cobb Island—Neale Sound, beginning at the eastern entrance Buoy Fl. R 4 sec "2" extending through the entire sound and its tributaries to Fl. 4 sec "72" on the western end.

(c) Unless prior written permission is obtained from the Secretary of Natural Resources and the Pennsylvania Power and Electric Co., seaplane operations may not be conducted on Deep Creek Lake in Garrett County.

(d) Seaplanes may not operate from bodies of water controlled by political subdivisions without the prior approval of the appropriate political subdivision.

(e) The following bodies of water are controlled by political subdivisions:

(i) Loch Raven Reservoir;

(ii) Pretty Boy Reservoir;

(iii) Liberty Reservoir;

(iv) Triadelphia Reservoir;

(v) Rocky Gorge Reservoir;

(vi) Rocky Gap Reservoir Cumberland;

(vii) Savage River Reservoir Bloomington;

(viii) Youghiogheny Lake—Selbyport/Friendsville Maryland/Pennsylvania.

.05 Repealed.

.06 Airports: General.

A. Public Safety. The Administration may not issue or renew an airport license or registration if operations conducted at the airport seriously impair public safety.

B. License or Registration Required.

(1) A person may not operate an airport without an airport license or registration unless exempted by:

(a) The Transportation Article, §5-302(a), Annotated Code of Maryland; or

(b) Regulation .09, Airports: Specific Exemptions.

(2) A person may not operate a public-use airport without a public-use airport license. See Table I: Airport Standards.

(3) A person may not operate a private-use, commercial-use airport without a commercial-use airport license. See Table 1: Airport Standards.

(4) A person may not operate a private-use, noncommercial-use airport without an airport registration. See Table I: Airport Standards, on the following page.

(See page 132)

Table I: Airport Standards

	Commercial Use	Non-Commercial Use
Public Use	(1) Public-use license required. (2) Must meet or exceed the public-use ~~minimum standards~~ and comply with any restrictions imposed by the Administration.	(1) Public-use license required. (2) Must meet or exceed the public-use ~~minimum standards~~ and comply with any restrictions imposed by the Administration.
Private Use	(1) Commercial-use license required. (2) Must meet or exceed the commercial use minimum standards and comply with any restrictions imposed by the Administration.	(1) Registration required. (2) Must comply with any restrictions imposed by the Administration.

C. Approval of Local Governing Body. A person may not operate an airport without land use approval from the local governing body if that body has an airport zoning ordinance.

D. Approval of FAA. An airport may not be licensed or registered without airspace approval by the FAA.

E. Depiction on Aeronautical Charts. Public use airports shall be shown on aeronautical charts and listed in airport directories. Private use airports may be shown on aeronautical charts and listed in airports' directories if they carry the notation "Private" or a symbol conveying the same meaning. Private use airports may be listed or shown only to provide information to aid aircraft in distress.

F. Tampering with Airport Property. A person may not tamper with any airport property.

G. Administration Testimony. The Administration, upon request by the local governing body, may provide, at its discretion, expert

testimony as to the safety of any particular airport. Nothing in these regulations waives the rights granted by the Transportation Article, §5-211, Annotated Code of Maryland.

.07 Airports: License.

A. Scope. This regulation prescribes minimum licensed airport safety standards. For requirements concerning the airport noise control program, see COMAR 11.03.03, Airport Noise Control Program.

B. General.

(1) Airport Licensee Responsibility. The airport licensee is responsible for operating and maintaining the airport in compliance with State law.

(2) Appointment of Airport Manager. The airport licensee shall appoint an airport manager and notify the Administration of the appointment.

(3) License Display. The airport licensee shall prominently display the airport license at the airport or, if there are no buildings at the airport, at the office of the airport manager.

(4) Renewal. The airport license may be renewed annually.

(5) Transfer of License. An airport license may not be transferred either in its ownership or geographical location, unless the transfer is approved by the Administration.

(6) Liability Insurance.

(a) The owner of any aircraft based or hangared in this State may not operate or allow the operation of that aircraft without a liability insurance policy in force which covers the owner and the pilot for claims by passengers or other persons for injuries to them and their property which might arise out of the operation of the aircraft.

(b) The liability insurance policy shall provide coverage for a minimum of:

(i) $50,000 bodily injury per individual;

(ii) $100,000 bodily injury per accident; and

(iii) $50,000 property damage protection.

(7) Roster of Aircraft.

(a) All airports operated in this State shall maintain a roster of all aircraft based or hangared at that airport.

(b) The roster shall include, for each aircraft, the following:

(i) The "N" number, type, and model;

(ii) The name and address of the owner or operator;

(iii) The period of time which the aircraft has been hangared at the airport;

(iv) The insurance policy or binder number;

(v) The name of the insurance company shown on the policy; and

(vi) The name of the agent or broker.

(c) The above information shall be made available to the Administration at the annual on-site inspection to determine whether an airport is in compliance with the Transportation Article, §5-1002, Annotated Code of Maryland.

(8) Discrimination or Segregation. All services performed at every licensed airport shall be without discrimination or segregation as to race, creed, color, national origin, or sex.

(9) Waivers. Every waiver of an airport requirement shall be stated on the face of the airport license and every waiver granting a substantial deviation from these regulations shall be listed in the State airport directory.

(10) Existing Licensed Airports. The Administration shall waive any portion of these regulations for every existing airport licensed as of the effective date of these regulations if the application of the regulation would be an undue burden on the licensee and is not required in the interest of public safety. However, an airport seeking relicensing after a lapse of more than 30 days shall meet the requirements of these regulations.

C. Airport Manager.

(1) Availability of Airport Manager. The airport manager, or his authorized representative, shall be at the airport, or shall post how he can be contacted, during all hours of operation.

(2) Marking Dangerous Areas. If, for any reason, a landing area becomes dangerous or unusable, the manager shall mark each danger area with appropriate markers or close the landing area with an "X" clearly visible from pattern altitude.

(3) Notice to Airmen. The manager shall file a Notice to Airmen (NOTAM) with the FAA designating any change in airport conditions that may affect safety.

(4) Hazards and Zoning Changes. The manager shall advise the Administration of any proposed construction or zoning change near the airport that may affect safety or airport use.

(5) Local Procedures. The manager shall prominently display the airport traffic pattern, ground traffic rules, noise abatement procedures, and any special orders relating to the airport and its operation at a prominent location on the airport.

D. Site Approval.

(1) Scope. Approval of a site by the Administration entitles the airport operator to an airport license upon completion of the airport, if all the requirements in the site approval and these regulations have been met. (Reference: Transportation Article, §5-303, Annotated Code of Maryland)

(2) Application. Any person desiring to establish a licensed airport may apply on a form provided by the Administration. Applications for site approvals shall include:

(a) Name, address, and telephone number of applicant;

(b) Proposed use of airport;

(c) Location of the site;

(d) Schematic drawing of the proposed airport layout with airport dimensions shown;

(e) Location of obstructions over 150 feet high within a 1-mile radius;

(f) Airport noise control program data as required by COMAR 11.03.03 (for public-use airports only).

(See page 135)

E. Temporary Commercial Use License. A temporary airport license for a period of not more than 30 days may be issued for commercial purposes if the designated landing area is inspected by the Administration and found to be safe for use by the type of aircraft and for the type of operation specified in the request for the temporary license.

F. Minimum Standards: Public-Use Airport.

(1) Scope. Every licensed public use airport that is not specifically limited to the landing and taking off of a special category of aircraft shall meet or exceed these standards.

(2) General Items.

Item	*Minimum Standard*
(a) Runway:	
Length (paved)	2000 feet
Length (turf)	2000 feet
Width (paved)	50 feet
Width (paved): Runway restricted to visual flight rules traffic	40 feet
Width (turf)	75 feet
Longitudinal grade	2 percent or less
Graded width	100 feet
(b) Separations:	
Runway centerline to taxiway centerline	100 feet
Runway centerline to buildings	150 feet
Runway centerline to tie down or apron area	125 feet
(c) Runway lighting (if operated at night):	
Number of threshold lights (each end of runway)	3 on each side
Maximum longitudinal spacing	200 feet
Maximum distance off runway edge	15 feet
(d) Taxiway width	15 feet

Item	*Minimum Standard*
(e) Wind direction indicator: wind cone	Required
Lighted wind cone or lighted tetrahedron (if operated at night)	Required
(f) Segmented circle (with any non-standard landing pattern indicated)	Required
(g) Obstruction lights	As necessary
(h) Fueling area:	
Fire extinguisher	Required
Grounding clamps	Required
"No Smoking" signs	Required
(i) First aid kit	Required
(j) Telephone (with emergency number posted)	Required
(k) Shelter for pilots and crewmembers	Required

(3) Surface. The landing surface shall be smooth and free from hazards or obstructions.

(4) Obstruction-Free Approach Surface.

(a) An obstruction-free approach surface is an imaginary surface, established in relation to a designated landing area, above which there are no obstructions to aerial navigation.

(b) The obstruction-free approach surface shall have a 20:1 slope with a 200-foot clear zone inner width and a 10:1 flare for each side. This standard obstruction-free approach surface is depicted in Diagram 1: Runway and Obstruction Free Approach Surface Configurations.

(5) Runway Visibility. The runway shall be in such condition that two airplanes at rest on the same runway are visible to each other except at airports where traffic control exists and is exercised.

(6) Lighting. If the airport is advertised as lighted for night operations, the lights shall be made available for use from dusk until dawn.

(7) Runway Marking.

(a) Nonpaved Runways. Markers shall be placed 200 feet apart outlining the length of landing surface on both sides. Thresholds shall be marked with at least four markers of a type approved by the Administrator on each side of the landing area where the effective length commences. The threshold markers shall be 5 feet apart and placed on line 90 degrees to the runway heading.

(b) Paved Runways. Marking shall conform to current FAA standards.

(8) State Supplied Safety Equipment. The licensee shall install and operate any safety equipment, such as rotating beacons, wind cones, or other equipment supplied by the Administration.

(9) Compliance with National Standards. To promote uniform airport standards, every licensed airport with a runway over 3,200 feet long shall substantially comply with the airport design standards recommended in the "Airport Design FAA Advisory Circular 150/5300-13" (September 29, 1989) which is incorporated by reference. Deviations from these recommended standards shall be properly justified by the airport operator before a license will be issued by the Administration.

(10) FAA Certification Program. Airports fulfilling the requirements of the FAA airport certification program meet or exceed the minimum standards for a public-use airport.

G. Minimum Standards: Commercial-Use Airport.

(1) Scope. Every licensed commercial-use airport that is not specifically limited to the landing and taking off of a special category of aircraft shall meet or exceed these standards.

(See page 138)

(2) General Items.

Item		*Minimum Standard*
(a) Runway:		
Length	(paved)	1,500 feet
Length	(turf)	1,500 feet
Width	(paved)	30 feet
Width	(turf)	50 feet
Graded width		75 feet
(b) Clearance over adjoining land (unless waived by property owner)		20 feet
(c) Wind direction indicator		Required

(3) Surface. The landing area shall present a surface which may be used for the landing and take-off of aircraft without undue hazard.

(4) Obstruction-Free Approach Surface. The obstruction-free approach surface minimum standards for a commercial-use airport are the same as the public-use airport obstruction-free approach surface minimum standards (see Diagram 1).

H. Minimum Standards: Public-Use or Commercial-Use Seaplane Base.

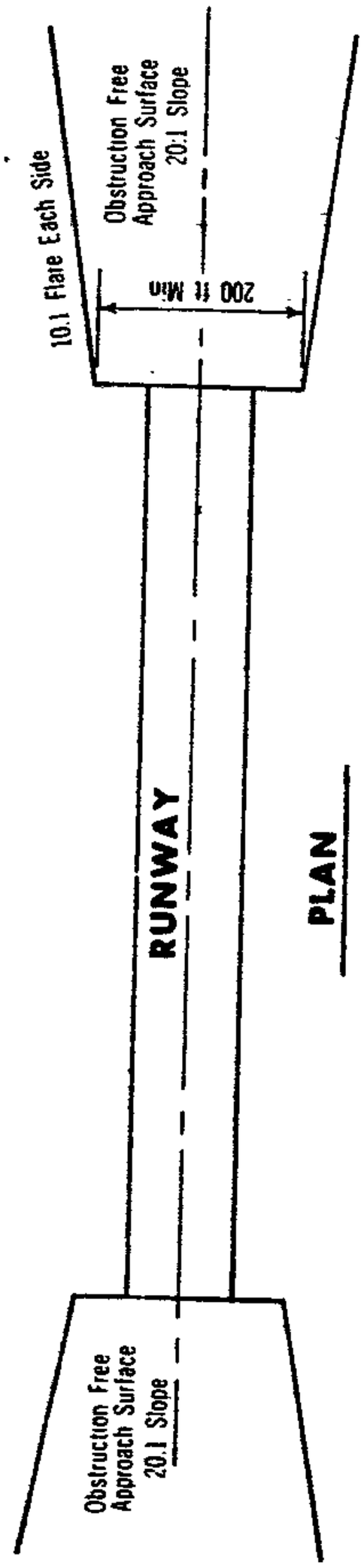
(1) Scope. Every licensed airport specifically adapted for the landing and taking off of seaplanes shall meet or exceed these standards.

(2) Size. The body of water shall have a minimum effective length of at least ½ mile and shall be of sufficient width and depth to permit the safe operation of aircraft on the surface.

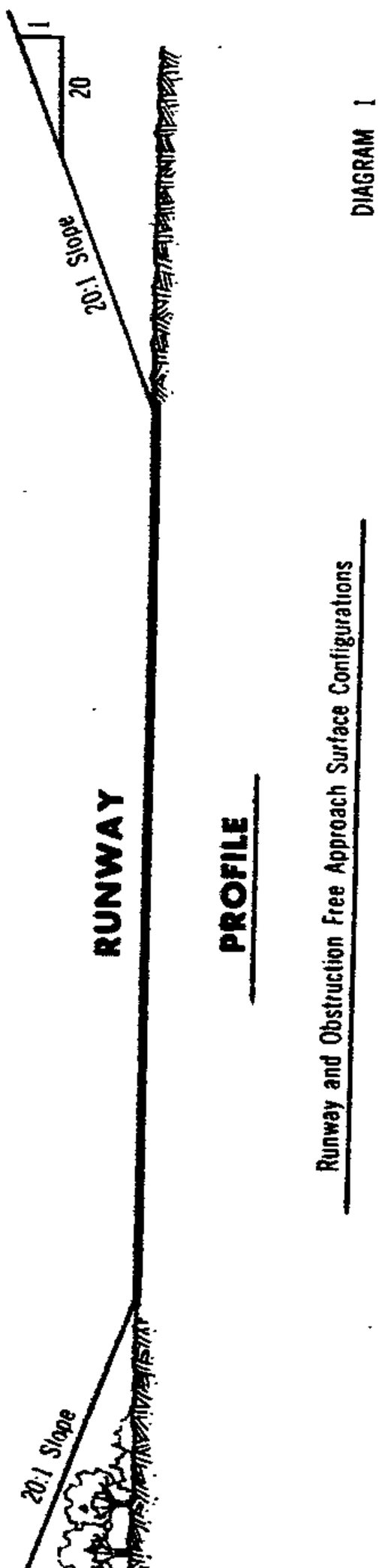
(3) Boundary Markers. The area available for landing and take-off and for taxiing, when required in the interest of safety, shall be marked in a way approved by the Administration, or as may be required by the marine traffic regulations of the authority having jurisdiction.

(4) Hazards. Every hazard in the approach or landing area, including underwater obstructions, shall be marked in a way approved by the Administration.

(5) Wind Indicator. Every public-use seaplane base shall be equipped with a wind indicator which is clearly visible from pattern altitude. If night operations are conducted, the wind indicator shall be lighted.



PLAN



PROFILE

DIAGRAM 1

Runway and Obstruction Free Approach Surface Configurations

(6) Minimum Facilities and Equipment. Every licensed seaplane base shall be equipped with, as a minimum:

(a) A dock ramp, or float, suitable for the loading of seaplanes;

(b) An immediately available life preserver of the ring or throw type with sufficient line attached;

(c) An immediately available boat and operable motor while student training flights are in progress.

I. Minimum Standards: Public-Use or Commercial-Use Heliport. To promote uniform heliport standards, every licensed heliport shall substantially comply with the appropriate recommendations in the "Heliport Design FAA Advisory Circular 150/5390-2" (January 4, 1988) which is incorporated by reference.

J. Minimum Standards: Public Use or Commercial-Use Airport (Nonconventional Aircraft). Every licensed airport specifically adapted for the landing and taking off of airships, balloons, gliders, STOL aircraft, or other nonconventional types of aircraft not specifically provided for in these regulations shall meet or exceed the minimum safety requirements the Administration will prescribe for each application. These minimum safety requirements will be prescribed in light of the special operating characteristics of the specific nonconventional aircraft, the location and condition of the airport, and any other circumstances that may affect public safety.

.08 Airports: Registration.

A. Restrictions.

(1) The airport operations may not endanger lives or property on the ground.

(2) The airport operations may not interfere with other authorized use of the navigable airspace.

(3) If published manufacturer's specifications exist for the aircraft operating from the airport, the airport shall be of sufficient size to meet the specifications.

B. Minimum Standards. The airport operator may not be required to exceed the minimum standards of a commercial-use airport for the same class of aircraft.

.09 Airports: Specific Exemptions.

A. Agricultural Airstrips (Agstrips).

(1) An agstrip is any designated landing area maintained solely for temporary or occasional use by aircraft engaged in aerial application of chemicals, fertilizers, or other substances to agricultural or forest lands.

(2) If an agstrip is in an area where operations do not endanger lives or property on the ground and do not interfere with other authorized use of navigable airspace, the agstrip need not be approved, licensed, or registered by the Administration.

(3) Responsibility for the agstrip rests solely with the user, who shall comply with the following:

(a) Use for any aeronautical purpose other than agricultural or forest aerial application is prohibited;

(b) Prior permission from the property owner shall be obtained;

(c) The strip shall be of sufficient size to accommodate the aircraft operating off the strip;

(d) Persons and property on the ground may not be endangered.

B. Balloon and Glider Landing Areas. If a balloon or glider landing area is located where operations do not endanger lives or property on the ground and do not interfere with other authorized use of the navigable airspace, the landing area need not be approved, licensed, or registered by the Administration. Operations at the landing area shall be carried out in a prudent manner and with due regard for safety.

C. Emergency Landing Areas. None of the airport standards prescribed by these regulations apply to aircraft operation in an emergency situation by public safety agencies, such as those with police and fire control responsibilities, or by a private or commercial operator when performing these functions under contract or control to a public safety agency, if a landing and take-off is necessary to protect life or property. These operations shall be carried out in a prudent manner and with due regard for safety.

.10 Waivers.

A. Administration Authority. Except for the provisions of Regulation .07B(6) which may not be waived, the Administration reserves the right to waive any portion of these regulations. However, a waiver shall be granted only after the Administration determines that the waiver is

in the best interest of the aviation public and does not endanger public safety.

B. Application Procedure. A person desiring a waiver of these regulations may contact: Director of Regional Aviation Assistance, Maryland Aviation Administration, Post Office Box 8766, Baltimore/Washington International Airport, Maryland 21240.

.11 Fees.

A. Airport Site Approval. Certificates of site approval shall be issued without charge to persons qualifying for them (authority: Transportation Article, §5-303, Annotated Code of Maryland).

B. Airport License. The original airport license fee is $25 and the annual license renewal fee is $10 (authority: Transportation Article, §§5-301(b) and (c), 5-304(a) through (e)(2), Annotated Code of Maryland).

C. Airport Registration. If no aircraft, other than those owned by the airport operator, are based at the airport, there is no fee charged for initial registration or annual renewal. Otherwise, the initial registration fee is $10 and the annual registration renewal fee is $5 (authority: Transportation Article, §5-306, Annotated Code of Maryland).

.12 Inspections and Enforcement.

A. Inspections. An applicant for, or a holder of, an airport license, airport registration, or site approval shall offer full cooperation to any authorized representative of the Administration inspecting the airport or proposed airport site. The Administration is entitled to immediate access to the lands, buildings, equipment, and operating records of a licensed airport, registered airport, or approved site.

B. Enforcement.

(1) Violations. Any person violating any of these regulations may be punished under the provisions of the Transportation Article, §§5-1101 through 5-1105, Annotated Code of Maryland, in addition to any other penalties provided by law.

(2) Order Closing Unapproved Facilities. The Administration may order the closing of any airport or landing field or order any air school, air beacon, or other air navigation facility to stop operating until the requirements of the Administration are met (authority: Transportation Article, §§5-210 and 5-304(e)(1), Annotated Code of Maryland).

(3) Injunctive Relief. The Administration may, in the name of the State, enforce these regulations and orders issued under them by injunction or other legal process in the courts of Maryland (authority: Transportation Article, §5-1103, Annotated Code of Maryland).

(4) Appeals. Any person adversely affected by these regulations or orders issued under them may appeal according to the procedures for review set forth in the Administrative Procedure Act. Reference: Transportation Article, §5-304(e)(1), Annotated Code of Maryland.

.13 Severability.

The provisions of these regulations are severable, and the finding by any court that any provision is invalid does not affect the validity of the remaining portions.

Administrative History

Effective date: January 1, 1976 (2:28 Md. R. 1681)
Chapter recodified from COMAR 11.03.15 to 11.03.04
Regulation .03 amended effective October 29, 1990 (17:21 Md. R. 2530)
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Regulation .05 repealed effective March 20, 1981 (8:6 Md. R. 561)
Regulation .06B amended effective October 29, 1990 (17:21 Md. R. 2530)
Regulation .07B, D, F, and I amended effective October 29, 1990 (17:21 Md. R. 2530)
Regulation .10A amended effective October 29, 1990 (17:21 Md. R. 2530)
Regulation .10B amended effective October 19, 1979 (6:21 Md. R. 1709); October 29, 1990 (17:21 Md. R. 2530)
Regulation .11 amended effective October 19, 1979 (6:21 Md. R. 1709); October 29, 1990 (17:21 Md. R. 2530)

E. Measurement Method.

(1) Noise Measurement System Requirements.

(a) The system for the measurement of noise exposure shall provide the hourly sound level for each hour of the day, together with identification of the hour, and the measurement location.

(b) The overall accuracy of a noise measurement system shall be ±1.5 dB.

(c) The system shall be of a type approved by the Administrator.

(2) Measurement Requirements.

(a) Measurement Conditions. Measurements shall be made when aircraft operations occur that affect the location being studied.

(b) The number of 24-hour measurements of L_{dn} shall be equal to the value given in the table below, depending on the data range in decibels for the set of measurements. For this purpose, the data range shall be determined from the field measured noise data. Noise measurements shall be continued at each location until the requirement of this article is satisfied.

Data Range (dB)	*Required Number of Measurements*
2	3
3	4
4	5
5-6	6
7	7
8	8

.03 Limits for Cumulative Noise Exposure.

A. Authority. The Transportation Article, §5-804(a) mandates the Administrator, by regulation, to adopt limits for cumulative noise exposure for residential land use and other categories of land use, on the basis of their noise sensitivity, with the endorsement of the Secretary of Transportation and the Secretary of the Environment and after a public hearing following 60 days notice.

B. Limits. Limits for cumulative noise exposure are hereby established as follows:

Limits for Cumulative Noise Exposure (Annual Day-Night Average Sound Level, dB RE 20 μPA)

Effective 1 July 1975

Land Use	
(1) Residential single and two family; mobile homes	65
(2) Residential multifamily, dormitories	65
(3) Schools, hospitals, rest homes, homes for the aged, nursing homes	65
(4) Libraries, churches	65
(5) Transient lodging, hotels, motels	70
(6) Auditoriums, concert halls	65
(7) Sports arenas, outdoor spectator sports	70
(8) Playgrounds, neighborhood parks	70
(9) Golf courses, riding stables, water recreation, cemeteries	75
(10) Office buildings, personal, business, professional	75

Land Use	Effective 1 July 1975
(11) Commercial (retail), movie theaters, restaurants	75
(12) Commercial (wholesale, some retail), industry, manufacturing utilities	75
(13) Manufacturing, communications, (noise sensitive)	70
(14) Livestock farming, animal breeding	75
(15) Agriculture (except livestock), mining, fishing	no limit
(16) Aviation-related (hangars, runways, maintenance facilities)	no limit

.04 Duties of an Airport Operator.

A. Authority. Transportation Article, §§5-805 and 5-806, Annotated Code of Maryland, mandates the Administrator to establish procedures which airport operators or the intended operators of new airports shall follow in accomplishing certain required actions which need to be approved by the Administrator. These actions include:

(1) Assessment of the noise environment created by the operation of their airports, including current conditions and projections of future usage;

(2) Delineation of the noise zone, if any, base year and future year contours of equal noise exposure, and the identification of any impacted land-use areas;

APR 1 198

Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

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1airbrush \'ₑ,ₑ\ *n* : an often pencil-shaped atomizer for applying by compressed air a fine spray of paint, protective coating, or liquid color (as in shading drawings or retouching photographs)



airbrush: *1* valve, *2* tube for compressed air, *3* color cup

2airbrush \"\ *vt* **1** : to treat with an airbrush ⟨~ the print with gray paint to achieve a soft, high-key effect —*Popular Photography*⟩; *specif* : to take out (as a blemish in a photograph) — used with *out* ⟨freckles and awkward angles are ~*ed* out —*Time*⟩ **2** : to paint (as a picture or a detail in a photograph) with an airbrush — often used with *on* or *in* ⟨orchids ~*ed* on towels⟩

airburst \'ₑ,ₑ\ *n* : the burst of a shell or bomb in the air

air cargo *n* : express, freight, or mail carried by aircraft

air carrier *n* **1** : an organization transporting passengers and cargo by aircraft : AIRLINE **2** : an aircraft certificated by a designated governmental agency to carry persons or cargo for hire

air casing *n* **1** : a casing (as of sheet iron) surrounding a pipe or reservoir with an air space between to prevent transmission of heat **2** : the coaming around the stack of a ship at the weather deck serving to ventilate the boiler room

air castle *n* : CASTLE IN THE AIR

air cell *n* : a cavity or receptacle for air: **a** : the air sac of a bird **b** : a dilation of a trachea of an insect **c** : a pulmonary alveolus **d** : the space between the membranes of an egg usu. at the large end that increases in size with age

air chamber *n* : a cavity filled with air: as **a** : a cavity containing air to act by its elasticity as a spring for equalizing the flow of a liquid in a pump or other hydraulic machine — see HYDRAULIC RAM illustration **b** : one of the chambers in the nautilus or other chambered cephalopods

air check *n* : a recording esp. of a radio broadcast

air chief marshal *n* : an officer of the British Royal Air Force equivalent in rank to a general in the army

air cleaner *n* : any of various devices for removing impurities (as suspended particles) from air (as by filtering, washing, or electrostatic precipitation)

air coach *n* : a passenger airliner offering service at less than first-class rates usu. with curtailed accommodations (as in space per passenger)

air command *n* : a unit of the highest echelon in the U. S. Air Force usu. composed of two or more air forces

air commodore *n* : an officer in the British Royal Air Force equivalent in rank to a brigadier in the army

air condenser *n* : a surface condenser in which steam or other vapor is cooled by contact with air-cooled surfaces

air-condition \'ₑ,ₑ\ *vt* [back-formation fr. *air conditioning*] : to equip with an apparatus for washing, humidifying, dehumidifying, and controlling the temperature of air ⟨*air-condition* a building⟩; *also* : to subject (air) to the process of washing, humidifying, and dehumidifying — **air-conditioned** *adj* — **air conditioning** *n* -s

air-conditioner *n* : one that air-conditions

air controller *n* : a military officer responsible for coordinating and directing close-support attacks of combat aircraft against enemy ground forces and installations

air controlman *n, pl* **air controlmen** : a petty officer in the U.S. Navy having as a specialty the control and coordination of air traffic on airfields, seadromes, and carriers

air-cool \'ₑ,ₑ\ *vt* [back-formation fr. *air-cooled* & *air cooling*] : to cool by means of air; *specif* : to cool the cylinder or cylinders of (an internal-combustion engine) by air without the use of any intermediate medium (as water or oil) — **air-cooled** *adj* — **air cooling** *n*

air-cooled storage *n* : COMMON STORAGE

air-core \'ₑ,ₑ\ *also* **air-cored** \'ₑ,ₑd\ *adj* : having no magnetic material (as iron) in its magnetic circuit — used esp. of certain coils, solenoids, or transformers

air cover *n* : a screen of fighter aircraft provided for a ground, sea, or air unit for protection esp. against enemy aircraft

aircraft \'ₑ,ₑ\ *n* [2*air* + *craft* (vessel)] : a weight-carrying machine or structure for flight in or navigation of the air that is designed to be supported by the air either by the buoyancy of the structure or by the dynamic action of the air against its surfaces — used of airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders but chiefly of airplanes or aerostats

aircraft carrier *n* : a warship equipped with a flight deck on which airplanes can be launched and landed and with a hangar deck for servicing airplanes

aircraft division *n* : a subdivision of a squadron of U.S. naval aircraft containing usu. from four to six planes

aircraft observer *n* : a person holding a rating in the U. S. Air Force for any aircrew position except that of pilot

aircraft section *n* : a subdivision of U.S. naval aircraft containing usu. two planes of the same type

air-crafts-man \-f(t)smən\ *also* **air-craft-man** \-f(t)mən\ *n, pl* **aircraftsmen** *also* **aircraftmen** *chiefly Brit* : an airplane mechanic who is a noncommissioned member of an air-force ground crew

aircraft station *n* : a radio transmitting station aboard an aircraft — compare AERONAUTICAL STATION

air-crafts-wom-an \-f(t)s-ˌ-\ *also* **air-craft-wom-an** \-f(t)-ˌ-\ *n, pl* **aircraftswoman** *also* **aircraftwomen** *chiefly Brit* : a woman who is a noncommissioned member of the air force

aircrew \'ₑ,ₑ\ *n* : the crew manning an aircraft

air-crew-man \-mən\ *n, pl* **aircrewmen** : a member of an aircrew often as distinguished from the pilot or other officers

air crossing *n* : a passage in a mine by which one airway crosses another — compare OVERCAST, UNDERCAST

air cushion *n* **1** : an airtight inflatable cushion **2** : a mechanical device using confined air for arresting motion without shock

air cylinder *n* : a cylinder in which air is compressed by a piston, in which compressed air is stored, or in which a piston is driven by air pressure

air defense *n* : the means, techniques, and organizations devoted to preventing or minimizing the effects of attack by enemy aircraft or guided missiles

Air-dent \'ₑ,dent\ *trademark* — used for an instrument designed to grind tooth surfaces by means of a jet of carbon dioxide carrying abrasive powder under pressure

air division *n* : a unit of that echelon of the U. S. Air Force that is higher than a wing and lower than an air force and is composed of a headquarters and usu. from two to five wings

airdock \'ₑ,ₑ\ *n* : HANGAR

air drainage *n* : AERIAL DRAINAGE

air-drau-lic \(ˌ)ₑ'drȯlik\ *adj* [2*air* + hy*draulic*] : combining pneumatic and hydraulic operation ⟨an ~ machine employing both air and oil in the same pressure enclosure⟩

air drill *n* : a drill driven by compressed air

air-drome \'ₑ,drōm\ *n* [alter. (influenced by 2*air*) of *aerodrome*] : AIRPORT

air-drop \'ₑ,ₑ\ *vt* : to drop (troops or supplies) from an airplane in flight by parachute or by gliding

dale *n* -s *often cap A* [fr. *Airedale*, valley of the Aire river, Yorkshire, England] : a large terrier with hard and wiry coat of a breed supposedly produced by crossing the black-and-tan terrier, bullterrier, and otterhound, being about 22 inches high, weighing from 35 to 45 pounds, and having a coat black or dark-grizzled on back and sides and tan elsewhere

air ejector *n* **1** : a device that removes air and other gases from steam condensers through the suction action of a stream jet **2** : a small jet pump (as a filter pump)

air embolism *n* : obstruction of the circulation by air that has gained entrance to veins usu. through wounds — compare AEROEMBOLISM

air engine *n* **1** : an engine built like a steam engine but driven by compressed air **2** : HOT-AIR ENGINE

air entrainment *n* : the incorporation in concrete or mortar of minute air bubbles (as by addition of soap or grease) to increase resilience and resistance to wear and weathering

air equivalent *n* : the absorbency of a layer of material in terms of the thickness of a layer of air that would have the same absorbency for the same radiation

airer *comparative of* AIR

airest *superlative of* AIR

air explorer *n* : a boy at least 14 years old who is enrolled in the air exploring program of the Boy Scouts of America

air express *n* [fr. *Air Express*, a service mark] : package-transport service using airlines but distinct from airfreight because of special scheduling, handling, billing, pickup, and delivery; *also* : the packages so shipped

airfield \'ₑ,ₑ\ *n* **1** : the landing field of an airport **2** : AIRPORT

air fleet *n* : a group or assemblage of aircraft (as of military aircraft under a single command); *also* : the military aircraft of a nation

air float *n* : an air vesicle

airflow \'ₑ,ₑ\ *n* : the motion of air relative to the surface of a body immersed in it (as the wind passing an obstruction or the streamline flow of air around parts of an airplane in flight)

Airfoam \'ₑ,ₑ\ *trademark* — used for a fine-grained sponge-rubber cushioning material

airfoil \'ₑ,ₑ\ *n* [2*air* + *foil*] : a body (as an airplane wing or propeller blade) designed to provide a desired reaction force when in motion relative to the surrounding air

air force *n* **1** : one of the armed services of a state analogous to or part of the military and naval services and having the primary missions of gaining control of the air, interdicting the enemy lines of communication, supporting surface forces (as by bombing and strafing), and accomplishing strategic bombing objectives **2** : a unit of that echelon of the U.S. Air Force that is higher than an air division and lower than an air command and is usu. composed of two or more air divisions

air force blue *often cap A&F* : an ultramarine blue

airframe \'ₑ,ₑ\ *n* [*aircraft* + *frame*] : the complete structure of an aircraft (as an airplane or rocket) without the power plant

1airfreight \'ₑ,ₑ\ *n* : forwarding service by air for freight in volume : freight forwarded by a cargo-carrying airplane; *also* : the money charged or paid for this service

2airfreight \"\ *vt* [1*airfreight*] : to ship by airfreight

airfreighter \'ₑ,ₑ\ *n* **1** : an aircraft for transporting freight **2** : a carrier operating airfreight service

air furnace *n* : a furnace that depends on a natural draft (as a reverberatory furnace) and not on blast

air gap *n* **1** : an air-filled gap in a magnetic or electric circuit (as the space between the field-magnet poles and the armature in a dynamo or motor) **2** : WIND GAP **3** : the vertical distance between the point where water enters a plumbing fixture (as a tub) and the level at which it would overflow

air gas *n* **1** : a combustible gas made by charging air with the vapor of some volatile hydrocarbon mixture (as gasoline) and used for lighting and heating **2** : a producer gas consisting chiefly of carbon monoxide and nitrogen and made by blowing air into a producer

air gauge *n* **1** : a gauge for measuring air pressure **2** : a comparator in which the rate of escape of air between the surface under test (as that of a gun bore) and one of known curvature nearly fitting it (as that of a spindle inserted in the bore) is used as a measure of the difference between the two

airglow \'ₑ,ₑ\ *n* : light that is observed esp. during the night, that originates in the high atmosphere, and that is associated with photochemical reactions of gases caused by solar radiation

air-graph \'ₑ,graf, -äf\ *n* -s [*air* + telegr*aph*] *Brit* : V-MAIL

air group *n* : the two or more squadrons composing all of an aircraft carrier's airplanes

air gun *n* **1** : a gun from which a projectile is propelled by compressed air **2** : AIR HAMMER; *esp* : one held in the hand like a pistol and controlled by a trigger **3** : AIRBRUSH

air gunner *n* : AERIAL GUNNER

air hammer *n* : a portable tool in which a chisel, rivet set, or other tool is driven percussively by compressed air — called also *pneumatic hammer*

air harbor *n* : a landing place for seaplanes

air-hardening steel *n* : an alloy steel that can be hardened by cooling from a temperature higher than the transformation range either in air or by quenching in a liquid — called also *self-hardening steel*

airhead \'ₑ,ₑ\ *n* [2*air* + *-head* (as in *beachhead*)] **1** : an area in hostile territory secured usu. by airborne troops for further use in bringing in troops and materiel by air **2** : an advance air base

air hoist *n* : a hoist operated by compressed air

air hole *n* **1 a** : a hole to admit or discharge air **b** : water not frozen over esp. because of a spring or current in a river or pond **2** : a discontinuity produced in a foundry casting by a bubble of gas : BLOWHOLE **3** : AIR POCKET 1

air horn *n* **1** : a carburetor main air intake **2** : a pneumatic horn (as on a motor vehicle or diesel locomotive)

air hostess *n* : a stewardess on an airplane

air hunger *n* : deep labored breathing at an increased or decreased rate (as in acidosis and other conditions)

airier *comparative of* AIRY

airiest *superlative of* AIRY

air-i-fied \'a(ə)rəˌfīd, 'er-\ *adj* **1** : fashioned in an airy style **2** : affecting airs

airig *pl of* AIRE

air-i-ly \-rəlē, -lī\ *adv* : in an airy manner : JAUNTILY, LIGHTLY, THINLY ⟨dismissed the idea ~⟩ ⟨~ graceful⟩

air-i-ness \-ēnəs, -rin-\ *n* -ES : the quality or state of being airy : SPRIGHTLINESS, DELICACY

airing *n* -s [fr. gerund of 4*air*] **1** : exposure to air or heat for drying or freshening : VENTILATION ⟨give the clothes an ~⟩ ⟨this room needs an ~⟩ **2** : exposure to or exercise in the open air esp. to promote health or fitness ⟨relief that this backyard had turned out to be as good a place for John's ~s as it had —Marcia Davenport⟩ ⟨she must take the dogs for an ~ —Arnold Bennett⟩ **3** : exposure to public view or notice ⟨tolerant of his father's incessant ~ of his views —I.C. Douglas⟩ ⟨to get a congressional ~ soon —*Newsweek*⟩ **4** : a radio or television broadcast ⟨series that have been booked for regular weekly ~s —Saul Carson⟩

air injection *n* : the injection of atomized fuel oil into the combustion chamber of a diesel engine by means of a jet of compressed air — compare SOLID INJECTION

or shoot often after wounding or girdl... in a m... medium (as sphagnum or soil) until roots have ...ned, th... raph or shoot then being severed to form an ind... ...dent p... t — compare MARCOTTAGE

airle-penny \'er(ə)l,-\ *n* [older Sc *arl... ...ny*, ir... *...is* (altst. of *arles*) + *penny* — more at ARLES] : ...its

air-less \'a(ə)(ə)rləs, 'e(ə)r-, 'a(ə)l-, 'el... *adj* **1** : ...cking air **2** : lacking fresh air or movement of a... dusty ...attic⟩

air letter *n* **1** : an airmail letter **2** : ...tter sh... esp. for airmail

air lift *n* : a pumping device consisting ... two di... ent-sized pipes, one within or adjacent to the o... comp... ed air or gas being forced down through the s... t pipe ...using the fluid which is to be pumped to rise th... gh the ...ger

1airlift \'ₑ,ₑ\ *n* **1** : a supply line opera... by airc... **2** : air transportation esp. as improvised apart... m regu... schedules

2airlift \"\ *vt* [1*airlift*] : to transport ... eams o... n airlift

air line *n* **1** : a straight line through... air ... ween two points that disregards irregularities of ... interve... ground or space : BEELINE; *also* : a great-circle ... betwee... wo points on the earth's surface **2** : a pipe or ... fused ... upply air under pressure (as to a pneumatic to... of to a... er under water) **3** *usu* **airline** \'ₑ,ₑ\ : an esta... ed sys... of aerial transportation, its equipment, or the ... nizatio... wning or operating it

airline hostess *n* : AIR HOSTESS

airliner \'ₑ,ₑ\ *n* : an aircraft belongi... o or o... ting over an airline

air load *n* : the aerodynamic load on a... ...ving a... il

air lock *n* **1** : an air space with two air... t doors ... openings for permitting entrance to or exit from ... aled-of... ace under pressure (as a ship's stokehole) or va... m: as ... an intermediate chamber between the outer air... the w... ing chamber of a pneumatic caisson **b** : the ... mber in... electron microscope between outer air and in... vacuum ... **2** : the entrance chamber to a gas-proof shelter ... a stop... e of flow (as in a pumping device) caused by a... ing in ... art where liquid ought to circulate — compare AIR LOCK

air-lock \'ₑ,ₑ\ *vt* [*air lock*] : to stop ... low) b... air lock

air locking *n* : materials (as weather str... ng) and ...vices used in building construction for making e... sed sp... airtight

air log *n* : an instrument that records ... distanc... aveled by an aircraft relative to the air throu... which ... oves, the average true airspeed being comput... from ... distance traveled and the time elapsed

1airmail \'ₑ,ₑ\ *n* [2*air* + *mail*] **1** : th... stem o... nsporting mail by aircraft **2** : mail transported ... o be t... ported by air **3** : an airmail stamp

2airmail \'ₑ,ₑ\ *adj* : relating to, for m... ith, or ...ended for airmail ⟨~ service⟩ ⟨~ stamp⟩ ⟨~ l...⟩

3airmail \'ₑ,ₑ\ *vt* : to send by airmai...

airmail field *n* : an airport having a t... er offic... or sorting, distributing, dispatching, and transfe... g airm... *also* : the office at such airport — abbr. *A.M.F.*

air-man \'ₑ-mən, -ˌman, -ˌmaa(ə)n\ ... *l* airm... **1** : BRATTICER **2** : an icehouse worker who ... eshens ... water in the cores of partially frozen blocks of ... to remo... impurities and make the ice clear **3** : one en... d in t... operation, navigation, or maintenance of airc... as a... n enlisted man or woman in the U.S. Air Force ... *specif* : ... of any of four ranks below a staff sergeant **b** ... enlist... an in the U.S. Navy who performs general du... conce... l with the operation of aircraft **c** : a civilian or ... itary p... n who is a pilot or is associated with aviation

airman basic *n* : an enlisted man o... lowes... nk in the air force

air-man-ship \-ˌmənˌship\ *n* : skill i... loting ... navigating an aircraft

air map *n* : a map made up of a seri... f photo... phs taken from an aircraft

airmark \'ₑ,ₑ\ *vt* : to mark out (as a ... n) with ... ound location signs visible from the air as an ... to aer... navigation — **airmarker** \'ₑ,ₑ\ *n*

air marshal *n* : an officer of the B... h Roy... Air Force equivalent in rank to a lieutenant g... al in t... rmy

air mass *n* : a body of air extending h... reds o... ousands of miles horizontally and sometimes as ... as th... ratosphere and maintaining during transcont... tal or... ansoceanic movements approximately uniform c... itions o... emperature and humidity at any given level ⟨a po... contine... l *air mass*⟩

air mass weather *n* : weather within ... ir mas... distinction from that occurring at its front

air mile *n* : the basic unit of distanc... air na... tion equal in the U.S. before 1946 to the statut... le of 5... feet, from 1946 to 1954 to the British nautica... le of 6... feet, and since 1959 to the international nau... mile o... 076.11549 feet

air-mind-ed \'ₑ,ₑ\ *adj* : interested ... r favo... y disposed toward aviation

air mine *n* : AERIAL MINE

air monkey *n* [*air*-brake + (*grease*)*monkey*] ... air-brake repairman

air motor *n* : a turbine motor power... y com... sed air

air observation *n* : observation from ... aircra... *specif* : such observation of artillery fire

air officer *n* : a naval officer who i... s the ... department of an aircraft carrier and is responsi... for all ... raft opera-tions

airpark \'ₑ,ₑ\ *n* : a small airport

air philately *n* : AEROPHILATELY

air photograph *n* : AERIAL PHOTOGRA... — **air p...tography** *n*

air pistol *n* : a pistol that uses comp... ed air ... propel shot or a slug

1air-plane \'ₑˌplān\ *n* [alter. (influen... by 2*air*) of *aeroplane*, prob. fr. LGk *aeroplanos* wanderin... n air, ... Gk *aer-* + *planos* wandering, fr. *planasthai* to w... er — m... at PLANET] **1** : a fixed-wing aircraft heavier tha... r that ... driven by a screw propeller or by a high-velocity ... and su... rted by the dynamic reaction of the air against it... ngs — c... monly used of a landplane as distinguished fro... seapla... see MONOPLANE, BIPLANE **2** : a piece of pap... olded i... ree dimensions to be thrown (as by childr... and m... *to swoop* briefly through the air **3** : pinoch... which ... rtners may exchange certain cards

2airplane \"\ *vi* : to fly, glide, or soa... or as i... an airplane : travel by airplane ⟨*airplaning* acro... e com... nt⟩

airplane cloth *or* **airplane fabric** ... : a c... n or linen fabric of firm plain weave doped ... se on ... plane parts **2** : a shirting fabric resembling air... cloth

airplane hostess *n* : AIR HOSTESS

airplane spin *n* : a professional-wre... g man... r in which the opponent is picked up in a cr... and-he... hold, lifted onto the back, whirled about in the ... nd thr... forward to the mat

air plant *n* **1** : EPIPHYTE **2** : any ... several ... nts of the genus *Kalanchoe* (esp. *K. pinnata*) t... propag... new plants from the leaves — called also *life pl...*

air plot *n* : the room on an aircraft ... er fro... which all air operations are directed

air plug *n* : a removable plug screw... nto a ... rtight manhole or scuttle cover

air pocket *n* **1** : a condition of the a... sphere ... local down current or an abrupt change of win... locity ... e direction of travel that causes an airplane to ... sudden... **2** : an air-

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - E/S Long Green Pike, 580' N of the c/l of Hydes Road (13035 Long Green Pike) 11th Election District 6th Councilmanic District

Robert J. Smith
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-1-SPHX
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) is permitted under the special exception requirements for an airport in an R.C. 2 zone, and a special exception to approve the use of the subject property as an airport (private grass landing strip), to include the landing of a helicopter, as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified, and was represented by G. Warren Mix, Esquire. Also appearing on behalf of the Petition were: Joseph J. Riedlbauer, Calvin Carr, Betty Carr Grant, Lawrence Dulin, Michael DiRuggierio, Abraham Kline, Nicole Kline and Howard J. Kline. Michael Millemann, Esquire, appeared and testified on behalf of the Protestants. Appearing as Protestants in the matter were: Philip Klein, William Anderson, Melvin McDonald, Thomas Engelke, and Martin Wirtz. The following individuals appeared and signed as "speakers": Nancy L. Boyce, Ed Ilgenfritz, Denise Shapiro, Robert Oehrli, Dr. Walter Hepner, Nancy Hastings, Katherine Tyler, R. Bayly Buck, Richard Shapiro, Esquire, Daniel Denham, Elizabeth Hartline, and Elizabeth Lambert. Appearing on behalf of People's Counsel was Phyllis Freidman, Esquire.

CERTIFICATE OF POSTING
Date 8/3/89
By Robert Williams

Testimony indicated that the subject property, known as 13035 Long Green Pike, consists of 40.148 acres more or less zoned R.C. 2 and is improved with a single family dwelling, attached garage and in-ground swimming pool. Testimony and evidence produced indicated that Petitioner is desirous of constructing a "helistop/heliport" adjacent to a grass landing strip on the subject property zoned R.C. 2 as more particularly described on Petitioner's Exhibit 1. Petitioner testified he and his flight instructor have landed and taken off in a helicopter from the subject site on more than one occasion.

The threshold issue regarding the requested special hearing is whether the term "airport", as that term is employed in the Baltimore County Zoning Regulations (B.C.Z.R.), is sufficiently broad in scope to provide, by special exception, the landing and taking off of a helicopter in an R.C. 2 zone. Section 101 of the B.C.Z.R. defines separately the following: airport; helicopter; helicopter operation; heliport, Type I, heliport, Type II and helistop. While an airport is permitted by special exception in the R.C. 2 zone, pursuant to Section 1A01.2C of the B.C.Z.R., neither a heliport, Types I or II, nor a helistop are permitted, either as of right or by special exception. Counsel for Petitioner argued at great length, albeit unconvincingly, that the term "airport", which he more or less broadly defined as an area of land set aside for the taking-off and landing of aircraft, incorporates a helistop/heliport for purposes of the B.C.Z.R. Petitioner's argument fails since the B.C.Z.R. specifically defines helicopter operation and the use of same in its definition of heliport/helistop. A cursory examination of the B.C.Z.R. will glean the drafters' clear intent regarding the specific placement of airports, heliports and helistops within the various zones of Baltimore County. For

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Date 8/3/89
By

MICROFILMED

example, in the D.R. zone, helistops are permitted as a special exception and airports are excluded. In the B.L. zone, a helistop is permitted as of right; a heliport, Type II, by special exception; and airports are excluded. The C.T. zone permits only a heliport, Type I and II by special exception. In the M.R. zone, a heliport, Type II is permitted if located at least 200 feet from a residential zone; a helistop is permitted without such restriction. The R.C. regulations contain like specificity regarding the placement of airports, helistops and heliports within the R.C. zones. The R.C. 4 and R.C. 5 zones prohibit the subject uses either as of right or by special exception where the R.C. 3 zone permits airports and helistops by special exception. The subject zone, R.C. 2, permits an airport by special exception, but excludes both helistops and heliports both as of right and by special exception.

In Creswell vs. Baltimore Aviation Service, Inc., 257, Md. 712 (1970), (regarding an airport owner's Petition requesting a zoning reclassification), the Court ruled "there cannot be a scintilla of doubt that in Baltimore County, as generally, there cannot be a grant of a special exception unless the zoning statutes provide that the conditional use sought is permissible in the zone in which the land involved is situated..." In view of the specificity the drafters afforded the regulations regarding the inclusion or exclusion of airports, heliports and helistops within particular zones, it is the Deputy Zoning Commissioner's opinion, based on the legislative history, case law, and clear language of the pertinent zoning regulations, that neither a heliport, helistop, or as called by Petitioner, a "helipad" is permitted by special exception or otherwise in an R.C. 2 zone, nor is the operation of a helicopter a permitted primary,

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Date 8/31/82
By Kathi Weidenhammer

accessory, conditional or temporary use in the R.C. 2 zone by special exception or in conjunction with an airport (grass landing strip).

Petitioner's Counsel argued that even if the request for Special Hearing was denied, Petitioner's request for Special Exception for an airport (private grass landing strip) in an R.C. 2 zone should be granted. Mr. Smith was the only witness called to testify that Petitioner's proposed use was as an airport and/or that an airport was appropriate. Testimony indicated that Petitioner did not prepare the site plan marked Petitioner's Exhibit 1, and demonstrated that he was otherwise unfamiliar with its content. He was unable to lucidly describe the specifications of the proposed landing strip, aircraft landing and departure patterns from the landing strip, minimum runway and aircraft requirements in view of the surrounding topography, runway requirements relative to aircraft weight, existing aircraft traffic in the area, and/or types of aircraft the site could accommodate, if any. Mr. Smith candidly admitted that aside from approximately 40 hours of helicopter flight lessons, he has never owned an airplane, has no experience flying an airplane, and no knowledge or expertise regarding the performance capabilities of airplanes. Petitioner failed to produce any testimony evidencing that Petitioner's Exhibit 1 was a site plan for landing of any aircraft other than a helicopter. Petitioner failed to produce any study regarding the subject site's viability to safely accommodate an airport. The Protestants contend the special exception request was a feeble attempt by Petitioner to use the site for the landing of a helicopter which is not permitted either as of right or by special exception on the property as presently zoned.

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Date 9/3/89
By Kathi Melhuen

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and

requirements set forth in Section 502.1 of the B.C.Z.R. When requesting a special exception, the Petitioner must show that the proposed use will be conducted without real detriment to the neighborhood and will not adversely affect the public interest. The facts and circumstances must show that the proposed use at the particular location described by Petitioner's Exhibit 1 will have no adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

As Mr. Smith was not qualified to render an expert opinion regarding the suitability of the subject site to safely accommodate an airport, and in view of the fact that no other testimony or evidence was received which would support a finding granting the relief requested, the Petitioner has not met his burden of showing that the proposed use meets the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. As such, no testimony from the Protestants was taken. For the reasons set forth herein, the relief requested in the special hearing and special exception should be denied.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the Petitions for Special Hearing and Special Exception should be denied.

ORDER RECEIVED FOR FILING
Date 8/3/89
By Beth Schellman

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 3rd day of August, 1989 that the Petition for Special Hearing for a finding that the landing and taking off of a helicopter (on a private grass landing strip) is permitted under the special exception requirements for an airport in an R.C. 2 zone, and the Petition for Special Exception to approve the use of the subject property as an airport (private grass landing strip) to include the landing of a helicop-

ter, as more particularly described in Petitioner's Exhibit 1, be and are hereby DENIED; and,

IT IS FURTHER ORDERED that Petitioner shall cease permitting the landing and taking-off of helicopters from the subject property known as 13035 Long Green Pike, as more particularly described in Petitioner's Exhibit 1.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 8/23/89
By Robert Haines

WHEREAS, the county health officer and the director of public works have found it necessary, for the protection of the public health, that the sanitary sewer system of Baltimore County be extended in Bishops and Charlee Lanes in the Vicinity of Catonsville, First Election District, to serve existing housing units in the area; and

WHEREAS, pursuant to the authority contained in section 32-22.1 of the 1966 Cumulative Supplement to the Baltimore County Code, 1958, the county is authorized to construct such extensions of said system without meeting the requirement that such project be self-supporting, provided the County Council of Baltimore County, Maryland, approve said extension by Resolution duly adopted; and

WHEREAS, the County Council deems it necessary, for the protection of the public health that said sewer extension be constructed as aforesaid; now, therefore

SECTION 1. *Be it resolved by the County Council of Baltimore County, Maryland,* That it hereby approves the extension of the sanitary sewer system of Baltimore County, Maryland, in Bishops and Charlee Lanes in the vicinity of Catonsville, First Election District.

SECTION 2. *And be it further resolved,* That this Resolution is hereby declared to be an emergency measure affecting the public health, safety or welfare, and, having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.

Enacted: October 2, 1967.

BILL No. 85

AN ACT, to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for animal facilities, agricultural uses, antique shops, residential art salons, helicopter landing facilities, setbacks and permitted uses in industrial zones, and time limits on special-exception uses, by: amendment Section 101, entitled "Definitions"; repealing Subsection 200.12 and enacting in lieu thereof new Subsections 200.12a and 200.12b; repealing and re-enacting, with amendments, Subsection 200.15, Sections 203 and 206, Subsections 209.1, 209.3, 212.1, 212.3, 215.1, 215.5, 230.1, and 230.9, Para-

graph 230.12.a, Subsections 230.13, 233.2, 233.4, 236.2, 236.4, 241.1, 248.1 and 248.2, Paragraph 248.4.a, and Sections 253, 255, 256 and 258; amending Section 270; enacting new Sections 402B and 402C; repealing and re-enacting, with amendments, Section 404; enacting new Sections 420 and 421; and repealing and re-enacting, with amendments Subsection 502.3; all being provisions of said Baltimore County Zoning Regulations, 1955, as amended.

WHEREAS, the amendments to the Zoning Regulations which are contained in this Bill have been formulated in accordance with the procedures specified in Sections 23-20 and 23-21 of the 1966 Cumulative Supplement to the Baltimore County Code, 1958, and the several public hearings required by said sections have been held in accordance therewith; now, therefore:

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* That Section 101 of the Baltimore County Zoning Regulations, entitled "Definitions," be and it is hereby amended by deleting therefrom the term, "Farming:", and the definition therefor, "Commercial Agricultural uses in general, and specifically crop, dairy, stock and poultry farming; commercial greenhouses on 3 acres or more.", and by adding thereto in alphabetical order the following terms and definitions:

Animal Boarding Place: Any building, other structure, or land, or any portion thereof, which is used, intended to be used, or arranged for the boarding, breeding or other care of animals for profit, but excluding a farm, kennel, pet shop, veterinarian's office or veterinarium.

Animal Boarding Place, Class A: An animal boarding place exclusively for dogs, cats, birds, and/or other household pets.

Animal Boarding Place, Class B: Any other animal boarding place not excluded under the general definition or "Animal Boarding Place," above.

Farm: 3 acres or more of land, and any improvements thereon, used primarily for commercial agriculture, including, but not limited to: crop, dairy, stock and poultry farming; horse breeding, training and stabling; and commercial greenhousing, flower farms and nurseries, whether wholesale or retail, excluding a limited-acreage wholesale flower farm.

Farm (Limited-Acreage Wholesale Flower Farm): A limited-acreage wholesale flower farm is less than 3 acres of land, and any improvements thereon, used primarily for growing flowers and small plants and the wholesale distribution thereof.

Helicopter: Any rotary-wing aircraft which depends principally for its support and motion in the air on the lift generated by one or more power-driven rotors rotating on substantially vertical axes.

Helicopter Operation: A landing and take-off by a helicopter.

Heliport, Type I: Any area of land, water or structural surface which meets the design standards of the Federal Aviation Agency and has been authorized by the Maryland State Aviation Commission to be used for scheduled operations by helicopter carriers certified by the Civil Aeronautics Board.

Heliport, Type II: Any area of land, water or structural surface which has been authorized by the Maryland State Aviation Commission to be used for nonscheduled but regular helicopter operations, and which does not serve for major support operations. As used herein, the term "major support operations" means "maintenance other than fueling; cargo loading; or any accessory operations using 2500 square feet or more of floor area."

Helistop: Any area of land, water, or structural surface which is located at least 500 feet from any property line, which has been authorized by the Director of Public Safety to be used for helicopter operations, which is not a heliport, and which does not serve for major support operations (see definition for "Heliport, Type II"); OR any area of land, water or structural service which is located closer than 500 feet to a property line, which has been authorized by the Director of Public Safety to be used for not more than 15 helicopter operations per month, which is not a heliport, and which does not serve for major support operations.

Kennel: Any building, other structure or land, or any portion thereof, which is used, intended to be used, or arranged for the housing of more than three dogs, not counting puppies less than four months old, for purposes of show, hunting, breeding, or sale, or as pets, excluding a farm or pet shop.

Pet Shop: A store for the sale of dogs, cats, birds, tropical fish, and/or other domesticated pets, and related supplies and equipment.

Residential Art Salon: A portion of a dwelling unit used for the exhibition and sale of original works of art. For the purposes of these Regulations, an "original work of art" shall include a numbered reproduction from a series of no more than 50, which reproduction is individually signed by the artist.

Veterinarian: A person licensed to engage in the practice of veterinary medicine.

Veterinarian's Office: An office which is maintained by a veterinarian for the treatment of animals, and in which no animal is kept overnight.

Veterinarium: Any building or portion thereof which is used, intended to be used, or arranged primarily for treatment of animals by a veterinarian, where overnight care is allowed, and where all areas used for treatment or housing of animals are odor-proofed and sound-proofed.

SECTION 2. *And be it further enacted,* That subsection 200.12 be and it is hereby repealed and that new subsections 200.12a and 200.12b be and they are hereby enacted in lieu thereof as follows:

200.12a—Farm and Limited-acreage wholesale flower farm, in accordance with Section 404.

200.12b—Animal boarding place, Class A and Kennel, in accordance with Section 421.

SECTION 3. *And be it further enacted,* That subsection 200.15, Sections 203 and 206, Subsections 209.1, 209.3, 212.1, 212.3, 215.1, 215.5, 230.1, and 230.9, Paragraph 230.12.a, Subsections 230.13, 233.2, 233.4, 236.2, 236.4, 241.1, 248.1, and 248.2, Paragraph 248.4.a, and Sections 253, 255, 256 and 258 be and they are hereby repealed and re-enacted with amendments as follows:

200.15—Special Exceptions; The following use when permitted as Special Exceptions (see Sections 270 and 502):

Airport;

Animal boarding place, Class B;

Antique shop, outside the Metropolitan District Boundaries (see Section 402B);

Boarding or rooming houses;

Board yard;

Cemetery (see Section 401);

Commercial beach, with *provision* of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and board rental;

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational and educational activities; off-street parking areas shall be provided to such

extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Conservatory, music and the arts;

Convalescent home;

Conversion of a dwelling into a tea room or restaurant as conditioned in Section 402.

Excavations, controlled (see Section 403) ;

Funeral establishment;

Golf course, country club or other outdoor recreation clubs; also quasi-public camps including day camps, but no such uses shall be located on less than five acres and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Golf driving range, miniature golf, and baseball batting range;

Helistop;

Hospital, Class B (see Section 407) ;

Laboratory, if on a site of 15 acres or more (see Section 418.4) ;

Marina;

Poultry, commercial killing of, but only on a farm (see Section 404) ;

Private colleges, nursery or dancing schools, dormitories, and fraternity and sorority houses, but excluding business and trade schools;

Public utility uses other than those noted in Section 200.11 (see Section 411) ;

Race track, commercial;

Radio studio;

Research Institute, other than those permitted under Section 200.5 (see Section 418.3) ;

Residential art salon, outside the Metropolitan District Boundaries (see Section 402C) ;

Riding stable, commercial;

Sanitary landfill (see Section 412) ;

Shooting range;

Television studio;

Theatre, drive-in;

Tourist home;

Trailer park;

Veterinarian's office;

Veterinarium;

Volunteer fire company;

Wireless transmitting and receiving structure, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission shall be considered an accessory structure, or an accessory use if attached to another structure, and, as such, is permitted without a special exception, provided:

(a) that if it is an accessory structure, it shall be subject to the provisions of Section 400; and further,

(b) that, if it is a rigid-structure antenna, it shall be no higher than 50 feet above grade level and no supporting structure thereof shall be closer than 10 feet to any property line; and, further,

(c) that, it does not extend closer to the street on which the lot fronts than the front building line.

Section 203—USE REGULATIONS

The following uses only are permitted:

203.1—Uses permitted and as limited in R-40 Zone, except that animal boarding place, Class A and kennel are permitted only as special exceptions.

203.2—Special Exceptions—Same as in R-40 Zone, Section 200.15, except airports, antique shops, and residential art salons, which are not permitted, and except that animal boarding place, Class A and kennel are permitted as special exceptions (see Sections 270 and 402)

Section 206—USE REGULATIONS

The following uses only are permitted:

206.1—Uses permitted and as limited in R-40 Zone, except that animal boarding place, Class A and kennel are permitted only as special exceptions.

206.2—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Animal boarding place, Class A;

Animal boarding place, Class B;

Boarding or rooming houses;

Boat yard;

Cemetery;

Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and boat rental;

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Conservatory, music and arts;

Convalescent home;

Excavations, controlled (see Section 403);

Funeral establishment;

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Helistop;

Hospital, Class B (see Section 407);

Kennel;

Laboratory, if on a site of 10 acres or more (see Section 418.4);

Marina;

Poultry, commercial killing of, but only on a farm (see Sections 404.2 and 404.6);

Private colleges, nursery or dancing schools, dormitories, fraternity and sorority houses, but excluding business and trade schools;

Public Utility uses other than those noted in Section 200.11 (see Section 411);

Radio studio;

Research Institute, other than those permitted under Section 200.5 (see Section 418.3);

Television studio;

Tourist home;

Trailer Park, conditioned as in Section 414;

Veterinarian's office;

Veterinarium;

Volunteer fire company;

Wireless transmitting and receiving structure, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio or operator's license issued by the Federal Communications Commission shall be considered an accessory structure, or an accessory use if attached to another structure, and, as such, is permitted without a special exception, provided:

(a) that, if it is an accessory structure, it shall be subject to the provisions of Section 400; and further,

(b) that, if it is a rigid-structure antenna, it shall be no higher than 50 feet above grade level and no supporting structure thereof shall be closer than 10 feet to any property line; and, further,

(c) that, it does not extend closer to the street on which the lot fronts than the front building line.

209.1—Uses permitted and as limited in R.40 Zone except that animal boarding place, Class A and kennel are permitted only as special exceptions.

209.3—*Special Exceptions*—Same as R.10 Zone, except animal boarding place, Class B, sanitary land fills, and trailer parks, which are not permitted, and except that antique shops and residential art salons are permitted as special exceptions *outside the Metropolitan* District (see Sections 402B and 402C).

212.1—Uses permitted and as limited in R.6 Zone except that *Animal boarding place*, Class A and Kennel are prohibited.

212.3—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502) :

Boarding or rooming houses;

Conservatory, music and the arts;

Convalescent home;

Excavations, controlled (see Section 403) ;

Helistop;

Hospital, Class B (see Section 407) ;

Poultry, commercial killing of, but only on a farm (see Sections 404.2 and 404.6) ;

Private colleges, nursery or dancing schools, dormitories, fraternity and sorority houses, but excluding business and trade schools;

Public utility uses *other than* those noted in Section 200.11 (see Section 411) ;

Wireless transmitting and receiving structure, except that a *radio antenna in conjunction* with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications *Commission shall be considered* an accessory structure, or an accessory use if attached to another structure, and, as such, is permitted without a special exception, provided:

(a) that, if it is an accessory structure, it shall be subject to the provisions of Section 400; and further,

(b) *that, if it is* a rigid-structure antenna, it shall be no higher than 50 feet above grade level and no supporting structure thereof shall be closer than 10 feet to any property line; *and, further*

(c) that, it does not extend closer to the street on which the lot fronts than the front building line.

215.1—Uses permitted and as limited in R.6 Zone, except that Animal boarding place, Class A and Kennel are prohibited.

215.5—Special Exceptions—*the following uses when permitted* as Special Exceptions (see Sections 270 and 502) ;

Boarding or rooming houses;

Boat yard;

Commercial beach, with provision of adequate parking area; and permitting dressing facilities, snack bar, picnic area, and boat rental;

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Conservatory, music and the arts;

Convalescent home;

Elevator apartment, buildings *or office buildings, including* accessory business uses for the convenience of its tenants and as conditioned in Section (402A) 402.4;

Excavations, controlled (see Section 403) ;

Funeral establishment;

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Helistop;

Hospital, Class B (see Section 407) ;

Marina;

Offices and office buildings;

Private Colleges, nursery or dancing schools, dormitories, fraternity and sorority houses, but excluding business and trade schools;

Public utility uses other than those noted in Section 200.11 (see Section 411) ;

Wireless transmitting and receiving structure, except that a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission shall be considered an accessory structure, or an accessory use if attached to another structure, and, as such, is permitted without a special exception, provided:

(a) that, if it is an accessory structure, it shall be subject to the provisions of Section 400; and further,

(b) that, if it is a rigid-structure antenna, it shall be no higher than 50 feet above grade level and no supporting structure thereof shall be closer than 10 feet to any property line; and further,

(c) that, it does not extend closer to the street on which the lot fronts than the front building line.

230.1—Uses permitted and as limited in the residential zone immediately adjoining except that Animal boarding place, Class A is permitted only as a Special Exception and Kennel is prohibited.

230.9—Alcoholic beverage package store;

Antique Shop;

Automobile accessory shop;

Automobile parking lot;

Bakery, but goods baked on the premises must be sold only at retail on the premises;

Barber and beauty shops, establishments for chiropody and massage;

Billiard and pool rooms;

Bowling Alley;

Candy store, but goods made on the premises must be sold only at retail on the premises;

Clothing and accessory stores;

Dairy products store;

Department Store;

Dressmaking and millinery establishments;

Drug store;

Dry Cleaning establishment, Coin operated, or retail store plant, etc. (As regulated by the Baltimore County Building Code, Baltimore County Fire, Health and Police Regulations);

Dry Cleaning pick-up station;

Electrical contractors and appliance repair shop;

Florist;

Food Store;

Funeral Establishment;

Furniture and upholstery stores;

Garden shop, with associated outdoor sales area;

Gift Shop;

Hand laundry employing not more than 5 persons;

Hardward store;

Helistop;

Hobby Shop;

Household appliance store;

Jewelry store;

Laundromat or self-service laundry;

Laundry-pick-up station;

Parking lot;

Pet Shop;

Photographic studio;

Picnic grove;

Public utility service center;

Radio shop;

Radio studio;

Residential art salon;

Shoe repair shop;

Social clubs and fraternal organizations;

Sporting goods store;

Stationery store;

Swimming pool;

Tailor Shop;

Tavern;

Television shop;

Television studio;

Variety and dry goods store;

Veterinarian's office;

Veterinarium;

(230.12)

a. They shall be contained, except for signs, restaurants, swimming pools, outdoor sales or display areas, parking lots, helistops, or picnic groves within completely enclosed buildings;

230.13—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502) ;

Animal boarding place, Class A;

Automotive-service station; subject to the provisions of Section 405;

Boat yard;

Car wash;

Commercial beach; with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and boat rental;

Community building, swimming pool, or other structural or land used devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Drive-in restaurant;

Dry Cleaning Plant; (see Section 416) ;

Excavations, controlled (see Section 403) ;

Garage, service;

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Golf driving range, miniature golf, and baseball batting range;

Heliport, Type II;

Hotel;

Laboratory;

Living quarters in a commercial building;

Marina;

Motel or motor court;

Public utility uses other than those noted in Sections 200.11 and 230.9 (see Section 411);

Signs, outdoor advertising (see Sections 413.3 and 413.5);

Theatre, excluding drive-in;

Volunteer fire company;

Wireless transmitting and receiving structure.

233.2—Animal boarding place, Class A;

Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors;

Boat yard;

Bowling alleys;

Carpentry, electrical, plumbing, heating, sheetmetal, electroplating and painting shops;

Clothes cleaning and dyeing where not more than 2 units with combined capacity of not more than 50 pounds are employed;

Commercial beach, with provision of adequate parking area; and permitting dressing facilities, snack bar, picnic area, and boat rental;

Commercial recreation enterprises, including dance halls, skating rinks, and others which—in the judgment of the Zoning Commissioner—are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades;

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities, off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Garage, service;

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Hotel;

Machinery sales store;

Marina;

Night club;

Pawn shop;

Printing, lithographing, or publishing plant, employing not more than 25 persons;

Second-hand store;

Theatre, excluding drive-in;

Warehouses—sales and storage.

233.4—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502);

Automotive-service station, subject to the provisions of Section 405;

Bus terminal;

Car wash;

Drive-in restaurant;

Excavations, controlled (see Section 403);

Golf driving range, miniature golf, and baseball batting range;

Heliport, Type I;

Heliport, Type II;

Laboratory;

Living quarters in a commercial building;

Motel or motor court;

Public utility uses other than those noted in Sections 200.11 and 230.9 (see Section 411);

Signs, outdoor, advertising (see Sections 413.3, 413.5);

Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

236.2—Animal boarding place, Class A;

Animal boarding place, Class B;

Bottling establishment, soft drink;

Greenhouse;

Laboratory;

Motel or motor court;

Printing, lithographing, or publishing plant, employing over 25 persons;

Volunteer fire company.

236.4—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502);

Airport;

Amusement park;

Automotive-service station, subject to the provisions of Section 405;

Bus terminal;

Car wash;

Cemetery (see Section 401);

Contractor's equipment storage yard;

Drive-in restaurant;

Excavations, controlled (see Section 403);

Golf driving range, miniature golf, and baseball batting range;

Heliport, Type I;

Heliport, Type II;

Hospital Class B (see Section 407);

Living quarters in a commercial building;

Poultry, commercial killing of;

Public utility uses other than those noted in Sections 200.11, 230.9 and 236.3 (see Section 411);

Race track, commercial;

Riding stable, commercial;

Sanitary landfill;

Shooting range;

Signs—Outdoor Advertising—(see Sections 413.3 and 413.5);

Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code);

Theatre, drive-in;

Trailer park (see Section 414);

Truck terminal;

Used motor vehicle outdoor sales area, separated from sales agency building;

Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purpose of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

241.1—The following uses are permitted, provided their operations are entirely within enclosed buildings except where approval of the development plan indicates otherwise:

Assembly of electrical appliances, electronic instruments and devices, radios and phonographs;

Bakery;

Bank;

Bottling establishment, soft drink;

Cold storage plant;

Heliport, Type II, if located at least 200 feet from a residential zone;

Helistop;

Laboratory;

Manufacture, compounding, packaging, or treatment of candy, cosmetics, drugs, perfumes, and food products;

Manufacture, compounding, electroplating, assembling, machining or other comparable light processing or treatment of articles of merchandise from the following previously prepared materials: canvas, cellophane, cloth, cork, feathers, felt, fibre, fur, glass, horn, leather, paper, plastics, precious or semi-precious metals or stones, sheet metal (excluding large stampings such as motor vehicle fenders and bodies), light steel or other light metal mesh, pipe, rods, shapes, strips, wire, or similar component parts; sheels, textiles, tobacco, wax, wood and yarns;

Manufacture of musical instruments, precision instruments, clocks, watches, toys, novelties, wrought iron products, rubber or metal stamps, and other small moulded rubber products;

Office and office buildings;

Printing, lithographing, or publishing plant;

Public utility uses;

Research institute;

Warehouse, storage. (Inclusion of wholesale sales area permitted provided it is clearly incidental to the warehouse function).

248.1—Uses permitted in the M.R. Zone, except Heliport, Type II, which may be permitted only as a Special Exception;

248.2—Uses permitted and as limited in the R.40 Zone by Section 200.11, except that Animal boarding place, Class A and Kennel are prohibited;

(248.4)

a. The following uses:

Airstrips;

Automotive-service station, subject to the provisions of Section 405;

Boat yard (including marine railway) ;

Excavations, controlled (see Section 403) ;

Heliport, Type II;

Public Utility uses other than those noted in Section 200.11 excluding steam power plant;

Riding stable (commercial), golf driving range, miniature golf, baseball batting range; as interim income-producing uses;

Sanitary landfill;

Volunteer fire company;

Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception) ; provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

Section 253—USE REGULATIONS

The following uses only are permitted, subject to the provisions of Section 253.6:

253.1—Non-residential uses permitted and as limited in B.R. Zone, excluding: pet shop, residential art salon, drive-in theatres, funeral establishments, and the uses permitted in Sections 230.7 and 230.8. As used herein, the word "theatre" is not meant to exclude at tent theatre operated solely as a music fair for the presentation of musical comedies, operettas and legitimate dramatic productions, during a period not to exceed 120 days between the months of May and September, inclusive, which use is permitted.

253.2—Residential uses as follows:

Dwellings, one-family or two family on lots of record before March 30, 1955, but new subdivisions for residential development are prohibited;

Farm (see Section 404) ;

Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M.L. Zone.

253.3—Uses permitted in M.R. Zone.

253.4—The following (see also Section 255.1) :

Assembly of automobiles and airplanes;

Boat yard;

Bus terminal;

Carpet, rug cleaning;

Cleaning and dyeing;

Concrete products, including concrete and/or cinder block manufacture;

Contractor's equipment storage yard;

Creamery;

Enameling, japanning, lacquering, galvanizing and plating, when merely accessory to other permitted uses;

Excavations, controlled, exclusive of those embodying use of explosives (see Section 403);

Grain, processing of, provided equipment is installed for effecting precipitation and recovery of dust;

Heliport, Type I;

Heliport, Type II;

Ice, manufacture of;

Milk pasteurization and distributing stations;

Non-liquid fuel storage and sale (for requirements see Baltimore County Building Code);

Poultry, commercial killing of;

Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code);

Vegetable canning or packinghouse (see also Section 255.1).

253.5—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502);

Automotive-service station, subject to the provisions of Section 405;

Cemetery;

Excavations, controlled, when explosives are used (see Section 403);

Kennel;

Sanitary landfill (see Section 412) ;

Shooting range;

Signs, outdoor advertising (see Section 413.3) ;

Trailer Park (see Section 414) ;

Truck Terminal;

Wireless transmitting and receiving structure, except as a minor accessory or structure (which is permitted without a special exception) ; provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

253.6—Within 100 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 100 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission and/or the County, there shall be permitted only passenger-automobile accessory parking and those uses permitted in M.R. Zone, as limited by the use regulations in Section 241.

Section 255—AREA REGULATIONS.

255.1—The area regulations in M.L. Zone shall be the same as those in B. R. Zone unless such B. R. Zone regulations conflict with the provisions of Section 255.2.

255.2—Within 100 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 100 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission and/or the County, the front, side, and rear yards shall be as required in M.R. Zone (see Sections 243.1, 243.2 and 243.3).

Section 256—USE REGULATIONS

The following uses only are permitted, subject to the provisions of Section 256.5:

256.1—Uses permitted in M.R. Zone, Section 241.1 and in Section 253.4 of the M.L. Zone;

Animal boarding place, Class A;

Animal boarding place, Class B;

Boat Yard;

Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and boat rental;

Community building swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;

Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;

Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M. H. Zone;

Marina;

Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code);

Veterinarian's office;

Veterinarium;

Volunteer fire company.

256.2—The following uses when located at least 300 feet from any residence zone or 200 feet from any business zone:

Bag cleaning;

Bituminous concrete mixing plant;

Brewing and distilling of beer, ale or liquor, malt manufacture;

Chemical fertilizer manufacture;

Enameling, japanning, lacquering, galvanizing, and plating;

Excavations, controlled, exclusive of those embodying use of explosives (see Section 403);

Gravel, processing of;

Hot rolling mills;

Manufacture of airplanes, automobiles, trailers, trucks, railway cars, locomotives, and other vehicles;

Manufacture of felt and shoddy provided equipment is installed for effective precipitation and recovery of dust; wool pulling and scouring;

Manufacture of pickles, sauerkraut, vinegar, yeast, soda and soda compounds;

Manufacture of structural clay products, babbitt metal and other nonferrous alloys;

Manufacture or processing of meat products, except slaughter houses;

Processing, fabricating, and assembling of metals, including foundries, forging and casting shops, structural steel or pipe works, large stamping shops;

Railroad classification yards and round house;

Sand, processing of;

Sanitary landfill;

Shipbuilding and repair;

Steam power plants;

Stone, crushing and processing of;

Testing of components or equipment manufactured or used in conjunction with heavy manufacturing or assembly;

Truck terminal.

256.3—Any other industrial or manufacturing use, except those listed in Section 256.4, when located at least 1000 feet from any residential zone and at least 500 feet from any B.L., B.M., or M.R. Zone.

256.4—Sepcial Exceptions—the following uses only when permitted as Special Exceptions (see Sections 270 and 502);

Automotive-service station, subject to the provisions of Section 405;

Cemetery;

Excavations, controlled, when explosives are used (see Section 403);

Explosives;

Heavy chemical manufacture;

Junk Yard;

Kennel;

Oil refinery;

Organic fertilizer manufacture;

Shooting range;

Signs, outdoor advertising (see Section 413.3);

Slaughterhouse;

Trailer Park (see Section 414);

Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

256.5—Within 150 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 150 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission and/or the County, there shall be permitted only passenger-automobile parking and those uses permitted in M.R. Zone, as limited by the use regulations in Section 241, except that mineral aggregate excavated on-site may remain or be placed within 50 feet of such boundary or right of way, regardless of any requirements for greater distance.

Section 258—AREA REGULATIONS

258.1—The area regulations in M.H. Zone shall be the same as those in B.R. Zone, unless such B.R. Zone regulations conflict with the provisions of Section 258.2.

258.2—Within 150 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 150 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission and/or the County, the front, side, and rear yards shall be as required in M.R. Zone. (See Subsections 243.1, 243.2, and 243.3.)

SECTION 4. *And be it further enacted,* That Section 270 be and it is hereby amended by deleting the entries for "Heliport" and

"Kennel" and by adding thereto in alphabetical order the following:

	(R.40)	(R.20)	(R.10)	(R.6)	(R.G.)	(R.A.)	(B.L.)	(B.M.)	(B.R.)	(M.L.)	(M.H.)	(M.L.R.)
Animal boarding place, Class A	–	S.E.	S.E.	S.E	x	x	S.E.	–	–	–	–	x
Animal boarding place, Class B	S.E	S.E.	S.E.	x	x	x	x	x	–	–	–	x
Antique shop	S.E.	x	x	S.E.	x	x	–	–	–	–	x	x
Heliport Type I	x	x	x	x	x	x	x	S.E.	S.E.	–	–	–
Heliport Type II	x	x	x	x	x	x	S.E.	S.E.	S.E	–	–	S.E.
Helistop	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	–	–	–	–	–	–
Kennel	–	S.E.	S.E	S.E.	x	x	x	x	–	S.E.	S.E.	x
Pet Shop	x	x	x	x	x	x	–	–	–	x	x	x
Residential art salon	S E.	x	x	S.E.	x	x	–	–	–	x	x	x
Veterinarian's office	S.E.	S.E.	S.E.	S.E.	x	x	–	–	–	–	–	x
Veterinarium	S.E.	S.E.	S.E.	S.E.	x	x	–	–	–	–	–	x

SECTION 5. *And be it further enacted,* That Article 4 be and it is hereby amended by adding new Sections 402B and 402C, immediately following Section 402.4, as follows:

Section 402B—ANTIQUE SHOPS

An antique shop may be permitted as a Special Exception in an R.6 or R.40 Zone only outside the Metropolitan District on a lot not less than one acre in size, provided further that:

a. There shall be no display of merchandise visible from any public street; and

b. One sign in addition to those permitted under Section 413.1 may be displayed. Such sign shall be limited to the name of the business, shall be single-faced, stationary, and non-illuminated, and shall not exceed five square feet in area.

Section 402C—RESIDENTIAL ART SALON

A residential art salon may be permitted as a Special Exception in an R.6 or R.40 Zone only outside the Metropolitan District on a lot not less than one acre in size, provided that:

a. There shall be no display of merchandise visible from any public street;

b. One sign in addition to those permitted under Section 413.1 may be displayed. Such sign shall be limited to the name of the establishment or its proprietor, shall be single-faced, stationary, and non-illuminated, and shall not exceed 5 square feet in area;

c. Offstreet parking spaces shall be as *provided in Section 409*, except that irrespective of any conflicting provisions of Section 409, there shall be offstreet parking for at least ten cars (screened so as not to be visible from any public street) ; and

d. Hours of operation shall be not earlier than 10:00 A.M. and not later than 10:00 P.M. daily.

SECTION 6. *And be it further enacted,* that Section 404 be and it is hereby repealed and re-enacted with amendments as follows:

Section 404—FARM AND LIMITED-ACREAGE WHOLESALE FLOWER FARM

404.1—Limited acreage wholesale flower farms shall be subject to the following requirements:

a. Internal roadways shall be located at least 25 feet from any property line other than a street right-of-way line;

b. Greenhouses, potting sheds, and accessory structures shall be located at least 50 feet from any property line, including any right-of-way line;

c. Loading or unloading of vehicles shall take place at least 100 feet from any property line other than a right-of-way line, and at least 50 feet from a right-of-way line, except that loading or unloading of vehicles may take place between 75 and 100 feet from any property line when there is a structure between the location where such activities take place and the property line involved, which structure screens such activities from view at the property line and except that such activities may take place up to 50 feet from any property line where such activities are carried on entirely within an enclosed structure specified in Section 404.1.b above.

404.2—All accessory buildings except farmers' roadside stands shall be governed by the same area requirements as those applicable to a principal building in the zone in which the farm is located.

404.3—Commercial reduction of inedible animal or vegetable matter and commercial slaughtering, except killing of poultry produced on the premises, are prohibited.

404.4—Commercial piggeries (hog raising for other than family use) are permitted only on a farm of at least 10 acres, and no

hogs shall be permitted within 150 feet of land zoned or used for residential purposes.

404.5—Manure must be stored in places removed at least 150 feet from all boundary lines of the lot.

404.6—Farmers' roadside stands must be set back at least 35 feet from the nearer edge of the street pavement.

SECTION 7. *And be it further enacted,* That Article 4 be and it is hereby amended by adding new Sections 420 and 421, immediately following Section 419, as follows:

Section 420—HELICOPTER OPERATIONS

420.1—Notwithstanding other provisions of these regulations to the contrary, certain helicopter operations shall be permitted as provided under this Section 420.

420.2—Temporary use may be made of an area for helicopter flights for promotional activities, providing that such area shall be at least 500 feet from any occupied residence and that use permits shall be first procured from the Director of Public Safety and the Zoning Commissioner and that such permits shall be limited as to time as specified by the Zoning Commissioner.

420.3—Helicopters may be used to move equipment and supplies at construction sites, provided that a permit for such use is first obtained from the Director of Public Safety.

420.4—Helicopters may make landings on public utility rights of way and, with the owners' consent, on land adjacent thereto for purposes of inspection or repairs of public utility facilities.

420.5—No special exception shall be required to permit either a Type I or Type II heliport if such use is located: at least 1000 feet from any property line; in an R.6 or R.40 Zone; and beyond the urban-rural demarcation line.

420.6—Any helicopter operation caused by emergency is permitted at any time in any zone, in accordance with current regulations of the Federal Aviation Agency.

Section 421—ANIMAL BOARDING PLACE, KENNEL, PET SHOP, VETERINARIAN'S OFFICE, VETERINARIUM

421.1—Where an animal boarding place or kennel is allowed in a residential zone, either as a Special Exception or as a permitted use, no part of any such use shall be located within 200 feet of the nearest property line.

421.2—Where an animal boarding place, kennel, or pet shop is allowed in a business or industrial zone, either as a Special Exception or as a permitted use, no part of such use shall be located within 200 feet of the nearest residential zone.

421.3—Where a veterinarian's office or a veterinarium is allowed in a residential zone as a Special Exception, it shall be located only on a lot having an area of two acres or more, and no part of any such use shall be located within 100 feet of the nearest property line.

SECTION 8. *And be it further enacted,* That subsection 502.3 be and it is hereby repealed and re-enacted with amendments as follows:

502.3—A Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any Special Exception, shall fix within the aforegoing limits, the period of time for its utilization. Any party to the proceedings may, by so specifying, appeal from either the order of the Zoning Commissioner or of the County Board of Appeals as the case may be, solely as to the reasonableness of the period of time allowed or, alternatively, may have such question determined in conjunction with any appeal from the grant or refusal of the application for a Special Exception. After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same.

A Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence.

Notwithstanding the above provisions, in any case where a Special Exception in effect on or after July 1, 1965 cannot be utilized within the MAXIMUM allowable time because of inadequacy or unavailability of public sewer or water facilities, the Zoning Commissioner, ~~upon written recommendation by both the Director of Public Works and the Director of Planning, may extend such time to a date~~

~~not more than six months after such facilities are deemed to be adequate and available by the Director of Public Works.~~ SHALL EXTEND SUCH TIME FOR UTILIZATION TO A DATE EIGHTEEN MONTHS AFTER SUCH FACILITIES BECOME ADEQUATE AND AVAILABLE, AS EVIDENCED BY THE ABILITY TO OBTAIN A PUBLIC WORKS AGREEMENT PERMITTING EXERCISE OF THE SPECIAL EXCEPTION. A COPY OF THE EXTENSION ORDER SHALL BE SENT BY THE ZONING COMMISSIONER TO THE DIRECTOR OF PUBLIC WORKS, WHO SHALL GIVE CERTIFIED OR REGISTERED MAIL NOTICE WHEN SUCH PUBLIC WORKS AGREEMENT IS OBTAINABLE, TO THE PARTY, AND FOR THE PROPERTY, NAMED IN THE EXTENSION ORDER AT THE ADDRESS SHOWN IN SAID ORDER, EXCEPT THAT THE PARTY NAMED IN THE EXTENSION ORDER, BY CERTIFIED OR REGISTERED MAIL NOTICE TO THE DIRECTOR OF PUBLIC WORKS AND THE ZONING COMMISSIONER, MAY CHANGE THE NAME OF THE PARTY TO RECEIVE SUCH NOTICE FROM THE PUBLIC WORKS DIRECTOR, OR THE ADDRESS TO WHICH SAID NOTICE IS TO BE SENT, OR BOTH. THE DATE ON WHICH THE NOTICE IS SENT BY THE DIRECTOR OF PUBLIC WORKS TO THE LAST PARTY OF RECORD WITH HIM, AT THE LAST ADDRESS FURNISHED, SHALL BE THE COMMENCEMENT DATE FOR THE RUNNING OF THE EIGHTEEN MONTH EXTENSION PERIOD IN WHICH THERE MUST BE UTILIZATION OF THE SPECIAL EXCEPTION.

ANYONE HAVING A SPECIAL EXCEPTION FOR AN AUTOMOTIVE SERVICE STATION SHALL HAVE SUCH EXCEPTION AUTOMATICALLY EXTENDED FOR A PERIOD OF FIVE (5) YEARS AFTER SAID PROPERTY IS DESIGNATED A DISTRICT IN ACCORDANCE WITH THE AUTOMOTIVE SERVICE STATIONS REGULATIONS OF BALTIMORE COUNTY.

~~SECTION 9. And be it further enacted that this Ordinance is hereby declared to be an emergency measure affecting the public health, safety or welfare, and, having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.~~

SECTION 9. AND BE IT FURTHER ENACTED, THAT THIS ACT SHALL TAKE EFFECT FORTY-FIVE DAYS AFTER ITS ENACTMENT.

Enacted: October 6, 1967.

BILL No. 87

AN ACT, to regulate the housing of animals offered for sale, or kept on the premises of a commercial establishment, to provide for the health and safety of such animals, and to prohibit the sale of sick or diseased animals, by adding new sections 3-36 through 3-39 to the Baltimore County Code, 1958, Title "Animals" to be under a new Article III, entitled "Housing and Sale of Animals."

WHEREAS, a kennel license is not required under existing law for dogs kept at veterinary hospitals, boarding houses or pet shops; and

WHEREAS, the Dog License Commission has no power or authority over the sale of sick or diseased animals or the sanitary condition of animal hospitals, boarding houses or pet shops; and

WHEREAS, there is a need for further health regulations in regard to said establishments and others where animals are offered for sale; now, therefore

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that a new article to be known as "Article III. Housing and Sale of Animals" be and it is hereby added to the Baltimore County Code, 1958, title "Animals" and that new sections 3-36 through 3-39 be and they are hereby added to said Code under said new article, all to read as follows:

Article III. Housing and Sale of Animals.

Sec. 3-36. Definitions

(a) The term "animals" shall mean any dogs, cats or other felines, monkeys, rabbits, birds, reptiles, rodents or creatures OTHER THAN HORSES, not otherwise prohibited by law, being offered for sale, or located upon the premises of a commercial establishment.

(b) the term "person" means any person, firm, partnership, corporation or association offering for sale any animal in Baltimore County, Maryland or housing any animal ~~on commercial premises~~ IN PET SHOPS OR SIMILAR ESTABLISHMENTS WITHIN SAID COUNTY.

Sec. 3-37. Keeping, Raising and Sheltering of Animals.

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Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

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ab·a·lo·ne \ˌabəˈlōnē, -ˈlōnˌ\ *n* -s [AmerSp *abulón*] **1 :** a gastropod mollusk of the genus *Haliotis* that clings to rocks tenaciously with a broad muscular foot and that has a nacre-lined shell of a flattened, oval, slightly spiral form perforated with a row of apertures for the escape of the water from the gills and covering the animal like a roof **2 :** the edible flesh of certain large abalones



shell of abalone

ab·am·pere \(ˌ)aˈbamˌpi(ə)r, -aam-, -ēə *also* ˌ-ˌ-ˈ-\ *n* -s [ISV ²*ab-* + *ampere*] **:** the cgs electromagnetic unit of electric current equaling 10 amperes that flows in a circular path of one centimeter radius and produces a magnetic field of 2 π oersteds at the center of the circle — compare AB- table

¹aban·don \əˈbandən, -aand-\ *vt* **abandoned; abandoned; abandoning** \-andənin, *rapid sometimes* -anin\ **abandons** [ME *abandounen*, fr. MF *abandoner*, fr. *abandon*, n., surrender, abandonment, fr. *a bandon* in one's power, at one's discretion (in the phrase *metre a bandon* to put under someone's jurisdiction or at one's mercy), fr. *a* at, to (fr. L *ad* to) + *banon*, *bandon* power, authority, discretion, of Gmc origin; akin to OHG *ban* command, prohibition, authority — more at AT, BAN] **1 :** to cease to assert or exercise an interest, right, or title to esp. with the intent of never again resuming or reasserting it **:** YIELD, RELINQUISH ⟨~*ed* the estates when he inherited them —Charles Dickens⟩ **2 :** to give up (as a position, a ship) by leaving, withdrawing, ceasing to inhabit, to keep, or to operate often because unable to withstand threatening dangers or encroachments ⟨the site was ~*ed* after one year because of the number of rattlesnakes — *Amer. Guide Series: Calif.*⟩; *specif* **:** to bail out of (an aircraft about to crash) **3 :** to forsake or desert esp. in spite of an allegiance, duty, or responsibility ⟨endure the ignominy of his ~*ing* her —D.H.Lawrence⟩ **:** withdraw one's protection, support, or help from ⟨a faithful member of the Democratic party, ~*ing* it only once —W.W.Pierson⟩ **4** *obs* **:** to drive or cast out **:** BANISH, EXPEL, REJECT ⟨being all this time ~*ed* from your bed —Shak.⟩ **5 :** to give (oneself) over to or yield (oneself) to without check, restraint, or control ⟨the girl ~*ed* herself without restraint to a delicious wave of voluptuous contentment —J.C.Powys⟩ **6 :** to turn away from, give over, or permit to cease or lapse: as **a :** to desist from maintaining, adhering to, or following ⟨aristocratic families ~*ed* paganism for Christianity —Will Durant⟩ **b :** to desist from practicing, doing, using ⟨they ~*ed* their native speech and adopted the French tongue —T.B.Macaulay⟩ **c :** to turn from or relinquish (some course or action) ⟨he ~*ed* the project with a sigh —Rudyard Kipling⟩ **7 :** to surrender to the insurer the insured's interest in (insured property) and to claim payment for a total loss sometimes permitted only when damage constitutes constructive total loss **syn** see RELINQUISH

²aban·don \", *F* ábäⁿdōⁿ\ *n, pl* **abandons** \-ənz,-ōⁿz(z)\ [F, fr. OF] **:** a yielding to natural impulses **:** freedom from constraint ⟨with childish ~ she gave herself over to grief —Sherwood Anderson⟩ **:** carefree ease or freedom often with disregard for consequences **:** ENTHUSIASM, EXUBERANCE ⟨smashed public property and burned private houses with an ever more ardent ~ —Rose Macaulay⟩

aban·doned \əˈbandənd, -aand-\ *adj* [ME *abandouned*, fr. past part. of *abandounen* to abandon] **1 :** given up **:** DESERTED, FORSAKEN ⟨an ~ child⟩ ⟨an ~ house⟩ **2 :** SELF-ABANDONED **:** given over to vice **:** free from moral restraint ⟨an ~ villain⟩ **3 :** showing abandon **:** free from constraint ⟨an ~ sadness born of grief —Liam O'Flaherty⟩ **4** *of a geological formation* **:** no longer affected by the geologic agent that produced it ⟨an ~ valley⟩ — **aban·doned·ly** \-nd(ə)lē, -i\ *adv*

aban·don·ee \ə,ˈdanˈē\ *n* -s **:** one that holds or claims abandoned property; *specif* **:** the person (as the insurer in marine insurance) to whom property or rights are relinquished

aban·don·ment \əˈdənmənt\ *n* -s [F *abandonnement*, fr. *abandonner* to abandon (fr. OF *abandoner*) + *-ment* — more at ABANDON] **1 a :** the act of abandoning **:** RELINQUISHMENT, RENUNCIATION ⟨such freedom meant the ~ of many long-cherished phrases —I.M.Price⟩ **b** (1) **:** desertion of a spouse with the intention of creating a permanent separation (2) **:** desertion of a child by its parents **c** (1) **:** such relinquishment by an inventor of his right to secure a patent as will constitute a dedication of the invention to public use (2) **:** an author's relinquishment to the public domain of his copyright **d :** relinquishment by a nonuser for a specified period (as of an easement) **e :** the act of the insured in surrendering all rights to damaged or lost property to the insurer as a total loss **f :** refusal to accept from a delivering carrier a shipment so damaged in transit as to be worthless **g :** permission sought by or granted to a carrier by a state or federal agency to cease operation of all or part of a route or service **2 :** the quality or state of being abandoned **:** freedom from restraint **:** SELF-SURRENDER ⟨in a spirit of utter ~ he carols his simple strain —John Burroughs⟩

aba·ñe·eme \ə,bänyəˈāmē\ *n* -s *usu cap* [Guarani] **:** the southern dialect of the Tupi-Guarani Indians

aban·ic \əˈbanik\ *adj, usu cap* [prob. fr. Ojibwa *Ab-boin-ug* Dakota (Sioux), lit., roasters; fr. their habit of torturing enemies] **:** SIOUAN

ab·ar·thro·sis \ˌa,bärˈthrōsəs\ *n, pl* **abarthro·ses** \-ˌsēz\ [NL, fr. ¹*ab-* + *arthrosis*] **:** DIARTHROSIS

¹abas *or* **abassi** *var of* ABBASI

²abas *pl of* ABA

à bas \(ˌ)aˈbä, (ˌ)äˈbä, *F* ábä\ [F] **:** down with ⟨*à bas* the profiteers⟩

abase \əˈbās\ *vt* -ED/-ING/-S [ME *abessen*, *abassen*, fr. MF *abaisser*, fr. (assumed) VL *abbassiare*, fr. L *ad-* + (assumed) VL *bassiare* to lower, fr. (assumed) VL *bassus* low (whence ML *bassus* fat, short, low)] **1** *archaic* **:** LOWER, DEPRESS **:** cast down ⟨~ the eye⟩ **2 :** to lower or reduce in rank, office, prestige, or esteem **:** HUMBLE ⟨whosoever exalteth himself shall be *abased* —Lk 14:11 (AV)⟩ **:** DEGRADE

abased \əˈbāst\ *adj* **1 :** lowered esp. in rank, office, prestige, or esteem **:** HUMBLED ⟨I shrink ~ and yet aspire to Thee —William Cowper⟩ **2** *heraldry* **a :** borne lower than usual ⟨an ~ fess⟩ — opposed to *enhanced* **b :** turned downward ⟨the ~ tips of a bird's wings⟩ — **abas·ed·ly** \-sādlē, -i\ *adv*

abase·ment \əˈbāsmənt\ *n* -s **1 :** the act of abasing ⟨these may be used for the adornment of life but he believes them more often misused for its ~ —John Baillie⟩ **2 :** the quality or state of being abased ⟨each confession would bring her into an attitude of ~ —H.L.Mencken⟩

abash \əˈbash, -ˈaa(ə)-,-ˈai-\ *vb* -ED/-ING/-ES [ME *abaisen*, *abaishen*, *abashen*, fr. (assumed) MF *abaisser* to be astonished, alter. (influenced by *abaisser* to abase) of *esbaiss-*, stem of *esbair* to be astonished, fr. *es-* (fr. L *ex-*) + *bair* to yawn, gape, bark — more at BAY] *vt* **:** to destroy the self-possession of **:** confuse or put to shame (as by arousing suddenly a feeling of guilt or inferiority) **:** DISCONCERT, DISCOMFIT ⟨a man whom no check could ~ —T.B.Macaulay⟩ ~ *vi, obs* **:** to lose self-possession **syn** see EMBARRASS

aba·shev \əˈbäshəf\ *adj, cap* [Russ] **:** belonging to a Bronze Age culture of the Chuvash Republic in the east central Soviet Union

abash·less \əˈbashləs\ *adj* **:** UNABASHED — **abash·less·ly** *adv*

abash·ment \əˈbashmənt\ *n* -s [ME *abaishment*, *abashment*, fr. MF *abaissement* astonishment, alter. (influenced by *abaissement* abasing) of *esbaissement*, fr. *esbaiss-* + *-ment*] **:** the quality or state of being abashed

: do away with ⟨~ a nuisance⟩ ⟨~ an action⟩ **b :** NULLIFY **:** make void ⟨~ a writ⟩ **2** *obs* **:** to lower in status **:** HUMBLE **3 a :** to reduce or lessen in degree or intensity **:** DIMINISH, MODERATE ⟨may . . . ~ their zeal and give up their hopes of world conquest —Elmer Davis⟩ **b :** to reduce in value ⟨~ a tax⟩ ⟨the legacies were *abated* pro rata to pay debts⟩ **4 :** DEDUCT, OMIT ⟨~ part of a price⟩ **5 :** to beat down, cut away, or otherwise lower, so as to leave a figure in relief (as in metalwork or stonecutting) **6 :** DEPRIVE ⟨she hath *abated* me of half my train —Shak.⟩ **7** *obs* **:** to turn or dull the edge or point of **:** BLUNT ⟨~*s* my sword's keen edge —Thomas Heywood⟩ ~ *vi* **1 :** to decrease in force, intensity, or violence **:** LESSEN, SUBSIDE ⟨wait for a storm to ~⟩ ⟨the fear of immediate war has measurably *abated*⟩ **2 a :** to become defeated or become null or void (as of a writ or appeal) **b :** to decrease in amount or value ⟨the legacies *abated* proportionately⟩ **syn** see ABOLISH, DECREASE

²abate \ˈ"\ *vi* -ED/-ING/-S [AF *abatre*, alter. of *enbatre*, fr. OF *en-* + *batre* to beat] *law* **:** to enter without right upon a tenement after the death of the last possessor and before the heir or devisee takes possession

¹abate·ment \əˈ"mənt\ *n* -s [ME, fr. AF, fr. *abatre* to abate + MF *-ment* — more at ABATE] *law* **:** the action of one that abates — compare ²ABATE

²abatement \ˈ"\ *n* -s [MF, fr. *abatre* to throw down + *-ment* — more at ABATE] **1 :** the act or process of abating or the state of being abated ⟨laws intended to speed up smoke ~⟩ ⟨the ~, if not the complete disappearance, of some long-standing mutual irritations —*New Yorker*⟩ **2** *heraldry* **:** any of various bearings emblematic of dishonor, degradation, or disgrace which were described by former writers on heraldry but never actually used **3 :** an amount abated **:** DECREASE, DEDUCTION; *esp* **:** a deduction from the full amount of a tax — **in abatement** *law* **:** seeking termination of the proceedings of an action by reason of some formal defect (as misnomer) ⟨a plea *in abatement*⟩

ab·a·tis *or* **ab·at·tis** \ˈabəˌtē, -ədˈēs; əˈbad-ē, -adˈēs\ *n, pl* **abatis** \-ēz\ *or* **abatises** \-əsəz\ *or* **abattis** *or* **abattises** [F, fr. *abattre* to fell, reduce — more at ABATE] **:** a defensive obstacle usu. formed by felled trees whose butts are secured towards the place defended with the often sharpened branches directed outwards against the enemy but sometimes made of live small trees bent down and often reinforced with barbed wire

ab·a·tised *or* **ab·at·tised** \-ēd,-əst\ *adj* **:** having an abatis

abat-jour \ˌäˌbäˈzhu̇(ə)r, *F* ábäzhüür\ *n, pl* **abat-jours** \-ú(ə)rz, -üür\ [F, fr. *abattre* to throw down + *jour* day, daylight, fr. (assumed) VL *diurnus*, fr. L, daily — more at ABATE, DIURNAL] **1 :** a device for deflecting daylight downward as it enters a window (as a sloping soffit of a lintel or a movable screen) **2 :** SKYLIGHT

¹aba·tor \əˈbād-ə(r), -ātə-\ *n* -s [²*abate* + *-or*] *law* **:** one that abates in a tenement

²abator \ˈ"\ *n* -s [¹*abate* + *-or*] *law* **:** one that abates a nuisance

abat-sons \ˌäˌbäˈsōⁿ, *F* ábásōⁿ\ *n, pl* **abat-sons** \-ōⁿz, *F* -ōⁿ\ [F, fr. *abattre* + *sons*, pl. of *son* sound — more at SOUND] **:** a device for throwing sound downward (as louver boards in a belfry)

a battery \ˈāˌ-\ *n, usu cap A* **:** a battery used to heat the filaments or cathode heaters of electron tubes — called also *filament battery*; compare B BATTERY

ab-at-toir \ˈabəˌtwär, -twä(r,-t(w)ȯ(ə)r,-t(w)ȯ(ə), ˌ"ˈ"\ *n* -s [F, fr. *abattre* to slaughter + *-oir* -ory (fr. L *-orium*) — more at ABATE] **:** SLAUGHTERHOUSE

abat-vent \ˌäˌbäˈväⁿ, *F* ábáväⁿ\ *n, pl* **abat-vents** \-äⁿz, *F* -äⁿ\ [F, fr. *abattre* to throw down + *vent* wind, fr. L *ventus* — more at ABATE, WIND] **1 :** a series of sloping boards used (as in a belfry light) to break the wind without obstructing the passage of air or sound **2 :** a sloping roof (as of a penthouse) **3 :** a metal chimney cap

abat-voix \ˌäˌbävˈwä, *F* ábávwá *or* -wä\ *n, pl* **abat-voix** \-wäz, *F* -wá *or* -wä\ [F, fr. *abattre* + *voix* voice, fr. OF *vois* — more at VOICE] **:** a device for reflecting sound (as the sounding board over a pulpit or rostrum)

ab-ax·i·al \(ˌ)aˌbaksēəl\ *also* **ab-ax·ile** \-səl,-ˌsīl\ *adj* [¹*ab-* + *axial* or *axile*] **:** situated outside of or facing away from the axis (as of an organ or organism) **:** DORSAL — opposed to *adaxial*

abaya *var of* ABA

abb \ˈab, ˈaa(ə)b\ *n* -s [(assumed) ME, fr. OE *āb*, *āweb*, *ōweb* — more at WOOF] **1 a :** coarse wool from the inferior parts (as the skirtings and edges) of a fleece **b :** a warp yarn made of abb wool **2** *Brit* **:** a filling pick in weaving

Abb *abbr* abbess; abbey; abbot

¹abba *var of* ABA

²ab·ba \ˈabə, aˈbä\ *n* -s *often cap* [ME, fr. LL, fr. Gk, fr. Aram *abbā*] **:** FATHER — a title of honor given variously to the Deity in the New Testament, to bishops and patriarchs in many Eastern churches, and to Jewish scholars in the Talmudic period

ab·ba·cy \ˈabəsē, -i\ *n* -ES [alter. of ME *abbatie*, fr. LL *abbatia* — more at ABBEY] **:** the office, estate, jurisdiction, or term of tenure of an abbot

ab·bad·id \ˈabədəd, -(ˌ)did\ *n* -s *cap* [*'Abbād* ibn-Muḥammad abu-'Amr †1042 founder of the dynasty + E *-id*] **:** a member of a Muslim dynasty that ruled at Seville from 1023 to 1091

ab·ba·si \əˈbäsē\ *or* **abas** \əˈbäs\ *also* **abas·si** \əˈbäsē\ *n, pl* **abbasis** *or* **abas** *also* **abassis** [Per *'abbāsī*, lit., of Abbās, fr. *Abbās* I †1628 shah of Persia] **1 :** a Persian silver coin first issued in the late 16th century **2 :** an old Persian unit of weight equivalent to about 0.8 pound **3 :** an Afghan yellow bronze coin equivalent to four shahi issued between 1921 and 1923 **4 :** an Afghan unit of value for postage stamps ⟨one-*abbasi* stamps⟩ ⟨two-*abbasi* stamps⟩

ab·bas·id \əˈbasəd, -ˈā-\ *n* -s *cap* [abu-al-*Abbas* †754 Islamic caliph, founder of the dynasty + E *-id*] **:** a member of a dynasty of caliphs that ruled the Islamic empire (750–1258) from Baghdad and claimed descent from Abbas, the uncle of Muhammad

ab·ba·tial \əˈbāshəl, (ˌ)aˌb-\ *adj* [F, fr. LL *abbatialis*, fr. *abbatia* abbey + L *-ialis* -ial — more at ABBEY] **:** of or belonging to an abbot, abbess, or abbey

abbaye *archaic var of* ABBEY

ab·bé \aˈbā, *F* ábā\ *n, pl* **abbés** \-āz, *F* -ā\ [F, fr. LL *abbat-*, *abbas* — more at ABBOT] **:** a member of the secular clergy of France **:** anyone wearing or entitled to wear the dress of a secular ecclesiastic — used chiefly as a title

ab·be condenser \ˈabə-, ˈabē-\ *n, usu cap A* [after Ernst *Abbe* †1905 Ger. physicist] **:** an adjustable substage lens used as a condenser for a compound microscope

ab·be refractometer \ˈabə-, ˈabē-\ *n, usu cap A* [after Ernst *Abbe*] **:** a refractometer in which the critical angle for total reflection at the interface of a film of a liquid between two similar glass prisms is utilized in determining the index of refraction

ab·bess \ˈabəs\ *n* -ES [ME *abbesse*, fr. OF *abbesse*, *abaesse*, fr. LL *abbatissa*, fem. of *abbat-*, *abbas* abbot — more at ABBOT] **:** a woman who is the superior of a convent of nuns

ab·bet·din *or* **ab·beth·din** \ˌäv,bätˈdēn\ *n* -s *often cap* [Heb *abh-bēth-dīn*, fr. *abh* chief (of) + *bēth-dīn* court of law, fr. *bēth* house (of) + *dīn* judgment] *in the rabbinical tradition* **:** the vice-president of the Sanhedrin

ab·be·vill·i·an *also* **ab·be·vill·e·an** \(ˌ)abˈvilēən, ˈabəˈv-, -ēl-, -lyən\ *adj, usu cap* [*Abbeville*, town in Somme Dept., France + E *-ian* or *-an*] **:** of or belonging to the earliest epoch of the lower Paleolithic period characterized by the biface stone hand ax

of NL *abbas nullius*, short for *abbas nullius dioecesis*, abbot of no diocese] **:** an abbot who is exempt from diocesan control and under direct papal jurisdiction and who exercises the authority of an ordinary within the district in which his abbey is situated

abbot of misrule *usu cap A&M* [ME *abbot of mysreule*] **:** LORD OF MISRULE 1

abbot of unreason *usu cap A&U* [ME *abbot of unresoun*] **:** an elected leader in old Scottish popular revels — compare LORD OF MISRULE

abbot primate *n, pl* **abbot primates** *or* **abbots primate** **:** the representative head of all Benedictine congregations

ab·bot·ship \ˈ"ˌship\ *n* -s [ME, fr. *abbot* + *-ship*] **:** ABBACY

abbott-miller tube *n, usu cap A&M* **:** MILLER-ABBOTT TUBE

abbozzo *var of* ABOZZO

¹ab·bre·vi·ate \əˈbrēvēˌāt, aˈb-, *usu* -ad-+V\ *vt* -ED/ -ING/ -S [ME *abbreviaten*, fr. LL *abbreviatus*, past part. of *abbreviare* — more at ABRIDGE] **:** to make briefer **:** SHORTEN: **a :** to reduce the length of (as a book) by omitting some parts **:** ABRIDGE ⟨~ a novel for very young readers⟩ **b :** to shorten by bringing to an end earlier than that planned or expected **:** cut short ⟨the ceremony, held during the annual Alumni Day, was *abbreviated* by rain —*N. Y. Times*⟩ **c :** to reduce (as an object or a form) in size or complexity by contraction or simplification ⟨in all these systems there was more or less tendency to ~ the pictures, to contract them to a few strokes —A.L.Kroeber⟩ **d :** to reduce (as a word or phrase) to a shorter form intended to stand for the whole ⟨~ *building* as *bldg*⟩ ⟨*United States of America* is commonly *abbreviated* to *U.S.A.*⟩ — compare ABBREVIATION **syn** see SHORTEN

²ab·bre·vi·ate \-ēət,-ˌāt\ *adj* [LL *abbreviatus*] **:** SHORTENED **:** relatively short **:** ABBREVIATED

³ab·bre·vi·ate \-ˌāt\ *n* -s [LL *abbreviatus*, past part.] *Scots law* **:** ABRIDGMENT, ABSTRACT

abbreviated *adj* **1 :** made briefer **:** SHORTENED **2 :** relatively short **:** shorter than others of its kind regarded as normal or conventional ⟨no adornment except an ~ French tower —*Amer. Guide Series: Conn.*⟩ ⟨an ~ dinner dress —*Mademoiselle*⟩

abbreviated number *n* **:** a number from which significant figures are omitted beyond a certain point determined by the degree of approximation desired or of accuracy attainable ⟨as *5.667* for 5⅔ or *93,000,000* for the mean distance in miles to the sun⟩

ab·bre·vi·a·tion \əˌ"ˈāshən\ *n* -s [ME *abreviacioun*, fr. MF *abbreviation*, fr. LL *abbreviation-*, *abbreviatio*, fr. *abbreviatus* + L *-ion-*, *-io* -ion] **1 :** the act or result of abbreviating **:** reduction in length or content **:** ABRIDGMENT ⟨our law, which shrinks from any ~ of the span of life —B.N.Cardozo⟩ ⟨~, leading to the omission of essential explanation —*Economist*⟩ **2 a :** a shortened form of a written word or phrase used for brevity in place of the whole made commonly by omission of letters from one or more parts of the whole (as *abbr* for *abbreviation*, *amt* for *amount*, *bldg* for *building*, *doz* or *dz* for *dozen*, *recd* for *received*, *H.E.* for *His Eminence* and *His Excellency*, *N.Y.* for *New York*, *r.p.m.* or *RPM* for *revolutions per minute*) sometimes showing substitution or other alteration in the part or parts retained (as *bbl* for *barrel*, *cwt* for *hundredweight*, *oz* for *ounce*, *Xmas* for *Christmas*) and sometimes doubling of initial letters to show plural form (as *ff* for *folios*, *pp* for *pages*, *SS* for *Saints*) — often extended to include signs and symbols (as ÷ for *divided by*, & for *and*, $ for *dollar*); compare CONTRACTION, SIGN, SYMBOL **b :** a shortened form of a spoken word or phrase (as *Smithfield*, *auto* for *automobile*) **3 a :** a device used in a music score as a direction (as *pp*, *con 8 va*) **b :** a symbol used to shorten music notation by representing repeated notes or groups of notes **4 :** any convenient spoken or written short form or simple substitute for an understood or stipulated whole ⟨the phrase "civil rights" is an ~ for a whole complex of relationships —*Pres. Truman's Committee on Civil Rights*⟩ **5 :** loss in the course of evolution of the final stages of the ancestral ontogenetic pattern — compare ACCELERATION, FETALIZATION

ab·bre·vi·a·tor \əˌ"ˈād-ə(r), -ātə-\ *n* -s **:** one that abbreviates

ab·bre·vi·a·ture \-vēəˌchu̇(ə)r\ *n* -s [ML *abbreviatura*, fr. LL *abbreviatus* (past part. of *abbreviare* to abbreviate) + L *-ura* -ure — more at ABBREVIATE] **1** *obs* **:** ABBREVIATION **2 :** ABRIDGMENT, COMPENDIUM, ABSTRACT

abbs *pl of* ABB

abc \ˌā,bēˈsē, ˌābēˈsē\ *n, pl* **abc's** *or* **abcs** \-ˈsēz\ *usu cap A & B & C* **1 a :** ALPHABET ⟨before I knew my *ABC* —A.L. Guérard⟩ — usu. used in pl. ⟨said his *ABC's* over and over —Mark Derby⟩ **b :** the rudiments of reading, writing, and spelling — usu. used in pl. ⟨a worker learned in little more than his *ABC's* —H.A.Overstreet⟩ **2 :** ABECEDARIUS **3** *obs* **:** a primer containing the alphabet and teaching the elements of reading **4 a :** the rudiments of any field of knowledge or practice ⟨the *ABC* of piano playing —H.W.Van Loon⟩ **b :** the first or basic principle ⟨distrust of everybody became the *ABC* of ordinary prudence in daily life —Willi Frischauer⟩ **5** *Brit* **:** an alphabetical guidebook of railway stations and their train service

ABC *abbr* atomic, biological, and chemical

ab·cha·la·zal \ˌabkəˈlāzəl\ *adj* [¹*ab-* + *chalazal*] **:** located or facing away from the chalaza of a seed — compare CHALAZAL

ab·cou·lomb \(ˌ)abˈkü,lām, -lōm\ *n* -s [ISV ²*ab-* + *coulomb*] **:** the cgs electromagnetic unit quantity of electricity equal to 10 coulombs and being the charge that passes in one second through any cross section of a conductor carrying a steady current of one abampere — compare AB- table

abc soil \ˌā,bēˈsē-\ *n, usu cap A & B & C* **:** a soil that has a well-differentiated profile, the A-, B-, and C-horizons being well developed

abd *abbr* abdicated

ab·der·hal·den reaction \ˈabdə(r),häldən-\ *n, usu cap A* [trans. of G *Abderhaldensche reaktion*, after Emil *Abderhalden* †1950 Swiss chemist & physiologist] **:** the occurrence in body fluids of proteolytic enzymes specific for foreign proteins introduced into the body parenterally

ab·de·ri·an \(ˌ)abˈdirēən\ *adj, usu cap* [*Abdera*, city of ancient Thrace (fr. Gk *Abdēra*) + E *-ian*] **1 :** of or belonging to Abdera or to its inhabitants **2 :** FOOLISH ⟨~ laughter⟩

ab·de·rite \ˈabdəˌrīt\ *n* -s *usu cap* [L *Abderita*; *Abderites*, fr. Gk *Abdēritēs*, fr. *Abdēra*, whose inhabitants were reputedly stupid + Gk *-itēs* -ite] **1 :** a native or inhabitant of Abdera **2 :** SIMPLETON, SCOFFER

ab·di·ca·ble \ˈabdəkəbəl\ *adj* [*abdicate* + *-able*] **:** that may be abdicated ⟨~ responsibilities⟩

ab·di·cate \ˈabdəˌkāt, *usu* -ād-+V\ *vb* -ED/ -ING/ -S [L *abdicatus*, past part. of *abdicare*, fr. *ab-* ¹*ab-* + *dicare* to proclaim — more at DICTION] *vt* **1 :** DISOWN, DISINHERIT ⟨a father who ~*s* his son⟩ **2** *obs* **:** to separate (oneself) formally from or divest (oneself) of ⟨the ruler *abdicated* himself from the government⟩ **3 :** to cast off **:** DISCARD ⟨~ an opinion⟩ **4 :** to relinquish formally (as sovereign power) **:** RENOUNCE **:** lay down **:** SURRENDER ~ *vi* **:** to renounce a throne, high office, dignity, or function ⟨leadership that ~*s*⟩

ab·di·ca·tion \ˌabdəˈkāshən\ *n* -s [L *abdication-*, *abdicatio*, fr. *abdicatus* + *-ion-*, *-io* -ion] **:** act of abdicating **:** RENUNCIATION, SURRENDER

ab·di·ca·tor \ˈabdəˌkād-ə(r), -ātə-\ *n* -s **:** one that abdicates

ab·do·men \ˈabdəmən; abˈdōmən, əb-\ *n, pl* **abdo·mens** \-nz\ *also* **abdom·i·na** \abˈdämənə, əb-\ [MF & L; MF, fr. L; perh. akin to L *abdere* to conceal, fr. *ab-* ¹*ab-* + *-dere* to put — more at DO] **1 a :** the part of the body, excepting the back, between the thorax and the pelvis or in certain lower vertebrates between the cardiac and caudal regions **:** BELLY **b :** the cavity of this part of the trunk lined by the peritoneum

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SIXTH EDITION

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A.B.A. American Bar Association.

Ab; Abr. Abridgment.

Ab abusu ad usum non valet consequentia /æb əbyúwz(y)uw æd yúwzəm non vælət konsəkwénsh(iy)ə/. A conclusion as to the use of a thing from its abuse is invalid.

Abacist *or* **abacista** /æbəsístə/. A caster of accounts, an arithmetician.

Abaction /əbǽkshən/. A carrying away by violence.

Ab actis /æb ǽktəs/. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes. An officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. See *"Acta diurna"*. This, and the similarly formed epithets *à cancellis, à secretis, à libellis*, were also anciently the titles of a chancellor *(cancellarius)* in the early history of that office.

Abactor /æbǽktər/. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from a person who steals a single animal or beast. Also called *abigeus, q.v.*

Ab agendo /æb eyjéndow/. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

A.B.A.J. American Bar Association Journal.

Abalienate /əbéyliyənèyt/. To transfer interest or title.

Abalienatio /əbèyliyənéysh(iy)ow/. In Roman law, the perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio*, which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed.

Abalienation /æbèyliyənéyshən/. In the civil law, a making over of realty, or chattels to another by due course of law.

Abamita /əbámətə/. In the civil law, a great-great-grandfather's sister *(abavi soror)*. Called *amita maxima*.

Abandon. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. It includes the intention, and also the external act by which it is carried into effect.

Abandoned property. Property over which the owner has given up dominion and control with no intention of recovering it. *See also* Abandonment.

Abandonee. A party to whom a right or property is abandoned or relinquished by another. Term is applied to the insurers of vessels and cargoes.

Abandonment. The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it. State v. Bailey, 97 N.J.Super. 396, 235 A.2d 214, 216. The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. The voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. Dober v. Ukase Inv. Co., 139 Or. 626, 10 P.2d 356, 357. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

Term includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. Roebuck v. Mecosta County Road Commission, 59 Mich.App. 128, 229 N.W.2d 343, 345. Generally, "abandonment" can arise from a single act or from a series of acts. Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 16 S.E.2d 816, 821.

Time is not an essential element of act, although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment. Ullman ex rel. Eramo v. Payne, 127 Conn. 239, 16 A.2d 286, 287.

"Abandonment" differs from surrender in that surrender requires an agreement, and also from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited.

See also Desertion; Discharge; Release; Waiver.

Actions, in general. Failure to prosecute or bring action within statutorily prescribed period (*see* Limitations *(Statute of limitations)*); failure to object to or submit jury instructions (Fed.R. Civil P. 51); failure to demand jury trial (Fed.R. Civil P. 38).

Adverse possession. To destroy continuity of adverse claimant's possession, there must be an intent to relinquish claim of ownership as well as an act of relinquishment of possession and mere temporary absence is not sufficient. Bruch v. Benedict, 62 Wyo. 213, 165 P.2d 561.

Assignment of error. Failure to object at trial. Meyer v. Hendrix, 311 Ill.App. 605, 37 N.E.2d 445, 446. Error not presented in brief. Roubay v. United States, C.C.A. Cal., 115 F.2d 49, 50. Error not supported by point, argument or authority. Cone v. Ariss, 13 Wash.2d 650, 126 P.2d 591, 593. See Fed.R.Civil Proc. 46 (Exceptions unnecessary).

Children. Desertion or willful forsaking. Foregoing parental duties. Wright v. Fitzgibbons, 198 Miss. 471, 21 So.2d 709, 710. *See also* Desertion.

Contracts. To constitute "abandonment" by conduct, action relied on must be positive, decisive, unequivocal, and inconsistent with the existence of the contract. Abandonment is a matter of intent, Lohn v. Fletcher Oil Co., 38 Cal.App.2d 26, 100 P.2d 505, 507, and implies not

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only nonperformance, but an intent not to perform which may be inferred from acts which necessarily point to actual abandonment.

Copyright. "Abandonment" of a copyright turns on state of mind of copyright proprietor and occurs whenever he engages in some overt action which manifests his purpose to surrender his rights in the work and to allow the public to enjoy it. Rexnord, Inc. v. Modern Handling Systems, Inc., D.C.Del., 379 F.Supp. 1190, 1199.

Criminal acts. "Abandonment" can relieve one of criminal responsibility where criminal enterprise is cut short by change of heart, desertion of criminal purpose, change of behavior, and rising revulsion for harm intended, and must occur before criminal act charged is in the process of consummation or has become so inevitable that it cannot reasonably be delayed. Pyle v. State, Ind., 476 N.E.2d 124, 126. See Model Penal Code § 5.01(4) (renunciation of criminal purpose).

Easements. To establish "abandonment" of an easement created by deed, there must be some conduct on part of owner of servient estate adverse to and inconsistent with existence of easement and continuing for statutory period, or nonuser must be accompanied by unequivocal and decisive acts clearly indicating an intent on part of owner of easement to abandon use of it. Permanent cessation of use or enjoyment with no intention to resume or reclaim. Intention and completed act are both essential. A mere temporary or occasional obstruction or use of an easement by the servient owner is not an "abandonment". Gerber v. Appel, Mo.App., 164 S.W.2d 225,,228.

Ground for divorce. "Abandonment" as cause for divorce must be willful and intentional without intention of returning, and without consent of spouse abandoned. This ground is commonly termed "desertion" in state divorce statutes. *See also* Desertion.

Inventions. The giving up of rights by inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention. Electric Storage Battery Co. v. Shimadzu, Pa., 307 U.S. 5, 613, 616, 59 S.Ct. 675, 681, 83 L.Ed. 1071.

Leases in general. To constitute an "abandonment" of leased premises, there must be an absolute relinquishment of premises by tenant consisting of act and intention.

Mineral leases. "Abandonment" consists of an actual act of relinquishment, accompanied with the intent and purpose permanently to give up a claim and right of property. A distinction exists between "abandonment" and "surrender" which is the relinquishment of a thing or a property right thereto to another, which is not an essential element of abandonment. Distinction also exists between elements of "abandonment" and those of estoppel. Neither formal surrender of oil and gas lease nor release is necessary to effectuate "abandonment; for example, failing to start work under the lease for more than 40 years, Chapman v. Continental Oil Co., 149 Kan. 822, 89 P.2d 833, 834; breach of implied obligation to proceed with search and development of land with reasonable diligence, Wood v. Arkansas Fuel Oil Co., D.C. Ark., 40 F.Supp. 42, 45; no drilling on leased land for more than two years, and failure to pay rentals, Rehart v. Klossner, 48 Cal.App.2d 40, 119 P.2d 145, 147; drawing of casing from well with no intention of replacing it, have all been held to constitute "abandonment". But there must be an intention by lessee to relinquish leased premises, Carter Oil Co. v. Mitchell, C.C.A.Okl., 100 F.2d 945, 950, 951; or an intention not to drill, Carter Oil Co. v. Mitchell, C.C.A.Okl., 100 F.2d 945, 950, 951. And ceasing of operations is not alone sufficient. Fisher v. Dixon, 188 Okl. 7, 105 P.2d 776, 777.

Office. Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. It is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment; and whether an officer has abandoned an office depends on his overt acts rather than his declared intention. It implies nonuser, but nonuser does not, of itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved. McCall v. Cull, 51 Ariz. 237, 75 P.2d 696, 698.

Patents. There may be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, sell licenses, or otherwise make efforts to realize a personal advantage from his patent. Sandlin v. Johnson, C.C.A. Mo., 141 F.2d 660. A person may not be deprived of a patent as a result of the earlier work of another if that work has been abandoned, supplemented, or concealed. 35 U.S.C.A. § 102(g).

Property. "Abandoned property" in a legal sense is that to which owner has relinquished all right, title, claim, and possession, but without vesting it in any other person, and with no intention of not reclaiming it or resuming its ownership, possession or enjoyment in the future. Com. v. Carter, 236 Pa.Super. 376, 344 A.2d 899, 901. There must be concurrence of act and intent, that is, the act of leaving the premises or property vacant, so that it may be appropriated by the next comer, and the intention of not returning. Relinquishment of all title, possession, or claim; a virtual intentional throwing away of property. Ex parte Szczygiel, Sup., 51 N.Y.S.2d 699, 702.

ABANDONMENT

Rights in general. The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon. *See* Waiver.

Trademarks and trade names. There must be not only nonuser, but also an intent to abandon and to give up use of trademarks permanently. Neva-Wet Corporation of America v. Never Wet Processing Corporation, 277 N.Y. 163, 13 N.E.2d 755, 761.

Water rights. As applied to water rights may be defined to be an intentional relinquishment of a known right. It is not based on a time element, and mere nonuser will not establish "abandonment" for any less time, at least, than statutory period, controlling element in "abandonment" being matter of intent. Hammond v. Johnson, 94 Utah 20, 66 P.2d 894, 899. To desert or forsake right. The intent and an actual relinquishment must concur. Concurrence of relinquishment of possession, and intent not to resume it for beneficial use. Neither alone is sufficient. Osnes Livestock Co. v. Warren, 103 Mont. 284, 62 P.2d 206, 211.

Abandun, abandum, *or* **abandonum** /əbǽndən(əm)/. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa,* a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake,* as lost and gone.

Ab ante /æb ǽntiy/. Lat. Before; in advance. Thus, a legislature cannot agree *ab ante* to any modification or amendment to a law which a third person may make.

Ab antecedente /æb æntəsiydéntiy/. Lat. Beforehand; in advance.

Ab antiquo /æb æntáykwow/. From old times; from ancient time; of old; of an ancient date. 3 Bl.Comm. 95.

Abarnare /æbarnériy/. Lat. To discover and disclose to a magistrate any secret crime.

Ab assuetis non fit injuria /æb əswiytəs non fit injúriyə/. From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglects to insist on his right, he is deemed to have abandoned it.

Abatable nuisance. A nuisance which is practically susceptible of being suppressed, or extinguished, or rendered harmless, and whose continued existence is not authorized under the law. Fort Worth & Denver City Ry. Co. v. Muncy, Tex.Civ.App., 31 S.W.2d 491, 494.

Abatamentum /əbèytaméntəm/. L. Lat. In old English law, an abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir.

Abatare /æbətériy/. To abate.

Abate. To throw down, to beat down, destroy, quash. To do away with or nullify or lessen or diminish. In re Stevens' Estate, Cal.App., 150 P.2d 530, 534. To bring entirely down or demolish, to put an end to, to do away with, to nullify, to make void, Sparks Milling Co. v. Powell, 283 Ky. 669, 143 S.W.2d 75, 77. *See* also Abatement; Abatement of action.

Abatement. A reduction, a decrease, or a diminution. The suspension or cessation, in whole or in part, of a continuing charge, such as rent.

Legacies. A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. Uniform Probate Code, § 3–902. *See* Ademption, *infra,* as to specific legacies and devises.

Nuisance. See Nuisance.

Plea in abatement. See Plea.

Taxes. Diminution or decrease in the amount of tax imposed. Abatement of taxes relieves property of its share of the burdens of taxation after the assessment has been made and the tax levied. Sheppard v. Hidalgo County, 126 Tex. 550, 83 S.W.2d 649, 657.

Abatement of action. Abatement is an entire overthrow or destruction of the suit so that it is quashed and ended. Carver v. State, 217 Tenn. 482, 398 S.W.2d 719. *See* Dismissal; Vacate.

Pleas in abatement have been abolished by Fed.R. Civil P. 7(c); such being replaced by a motion to dismiss under Rule 41. In certain states however this plea still exists to attack jurisdiction, or service of process, or to allege that a prior action between the same parties concerning the same subject matter is pending.

Abator /əbéytər/. In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. In the law of torts, one who abates, prostrates, or destroys a nuisance.

Abatuda /æbətyúwdə/. Anything diminished. *Moneta abatuda* is money clipped or diminished in value.

Abavia /əbéviyə/. Lat. In the civil law, a great-great-grandmother.

Abavita /əbémətə/. A great-great-grandfather's sister. This is a misspelling for *abamita (q.v.).*

Abavunculus /æbəvə́ŋkyələs/. Lat. In the civil law, a great-great-grandmother's brother *(avavioe frater).* Called *avunculus maximus.*

Abavus /æbəvəs/. Lat. In the civil law, a great-great-grandfather.

Abbacinare /æbəsənériy/. To blind by placing a burning basin or red-hot irons before the eyes. A form of punishment in the Middle Ages. Also spelled "abacinare." The modern Italian is spelled with two b's, and means to blind. Abbacination. Blinding by placing burning basin or red-hot irons before the eyes.

Abbacy /æbəsiy/. The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. The rights and privileges of an abbot.

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Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

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upset in feelings : AGITATION, PERTURBATION (his trembling voice and flushed cheeks revealed his profound ~) 3 *obs* : derangement of health

dis-co-my-cete \,diskō'mī,sēt, -,mī'sēt\ *n, pl* **discomyce-tes** \-,mī'sēd-ēz\ [NL *Discomycetes*] : a fungus of the group Discomycetes

Discomycetes *n pl, cap* [NL, fr. *disc-* + *-mycetes*] *in some classifications* : a group of fungi of the class Ascomycetes in which the fruiting body is disklike or cup-shaped (as in Peziza) — **dis-co-my-ce-tous** \-,mī,sēd-əs, -,mī'sēd-əs\ *adj*

dis-co-nan-thae \,diskə'nan,thē\ *n pl, cap* [NL, fr. *disc-* + connective *-o-* + *-anthae* (fr. Gk *anthos* flower) — more at ANTHOLOGY] *in some classifications* : a division of Siphonophora comprising jellyfishes with a round flat many-chambered float (as members of the genera *Velella* and *Porpita*) — **dis-co-nan-thous** \,diskə'nan(t)thəs\ *adj*

¹dis-con-cert \,dis'kən(t)sə(r)t, -ən,sərt, -n,sēt, -n,sāt; 'dis,kən(t)sə(r)t; *usu* |d-+V\ *n* [*¹dis-* + *concert*] : lack of concert : the state of being disconcerted (there was a brief ~ of the whole gay company —E.A.Poe)

²dis-con-cert \,diskən'sərt|t, -'sēt, -'sāt|, *usu* |d-+V\ *vt* **-ED/-ING/-S** [obs. F *disconcerter*, alter. (influenced by L *dis-* *¹dis-*) of MF *desconcerter*, fr. *des-* *¹dis-* + *concerter* to concert — more at CONCERT] **1** : to break up the concert or arrangement of : throw into confusion : DISARRAY, UPSET, FRUSTRATE, DISTURB (*~ing* enemy plans by a sudden offensive) (confessed that the eerie howls *~ed* his slumbers —Rex Ingamells) **2** : to disturb the composure or shake the complacency of : RUFFLE, EMBARRASS (*~ed* his academic cronies by confessing that inspiration was most often induced in him by a pint of beer —Herbert Read) (in an interview with Washington, he succeeded chiefly in *~ing* that most just of men —A.L.Kroeber) **syn** see EMBARRASS

disconcerted *adj* : marked by loss of self-possession or composure : PERTURBED, EMBARRASSED (look at each other dumbly, quite ~ —G.B.Shaw) (was somewhat ~ to learn that her daughter was a suffragist —Margaret A. Barnes) : put out (was a little ~ not to find the missing book) — **disconcertedly** *adv* — **disconcertedness** *n* **-ES**

disconcerting *adj* : causing loss of composure or self-possession : DISTURBING, EMBARRASSING (this ~ stare often caused people to falter nervously in their speech —Jean Stafford) (a ~ habit of greeting friends ferociously and strangers charmingly —Herb Caen) — **dis-con-cert-ing-ly** *adv* — **disconcertingness** *n* **-ES**

dis-con-cer-tion \,diskən'sərshən, -ēsh-, -ēnsh-\ *n* **-S** : the action of disconcerting or state of being disconcerted : DISCOMPOSURE, PERTURBATION

dis-con-cert-ment \-'sərtmənt, -ēt-, -sət-\ *n* **-S** : DISCONCERTION

dis-confirm \,dis+\ *vt* [*¹dis-* + *confirm*] : to establish as untrue or invalid : DISPROVE (~ a philosophical assertion by appeal to sense experience) — opposed to *confirm*

dis-confirmation \,dis, dis+\ *n* : the act, process, or an instance of disconfirming

dis-con-form \,diskən'fō(ə)rm\ *adj* [*¹dis-* + *conform*] : not conformable — usu. used with *to*

dis-conformable \,dis+\ *adj* [*¹dis-* + *conformable*] **1** *archaic* : not conformable : DISAGREEING — used with *from* or *to* **2** : of or relating to a disconformity (~ contact of Middle Devonian on Middle Silurian limestones —C.O.Dunbar)

dis-conformity \,dis+\ *n* [*¹dis-* + *conformity*] **1** *archaic* : lack of conformity or correspondence : NONCONFORMITY — used with *to* or *with* **2** : a break in a sequence of sedimentary rocks all of which have approximately the same dip indicating an interruption in sedimentation generally by an interval of erosion — compare DIASTEM 3, UNCONFORMITY

dis-congruity \,dis+\ *n* [*¹dis-* + *congruity*] : INCONGRUITY

¹dis-connect \,dis+\ *vb* [*¹dis-* + *connect*] *vt* : to sever the connection of or between : DETACH (~ the fuse from a bomb) : SEPARATE, DISUNITE (~ church and state) ~ *vi* : to terminate a connection

²disconnect \"\ *n* **-S** [by shortening] : DISCONNECTING SWITCH

disconnected *adj* : not connected : DISUNITED (Congress . . . gives the impression of . . . a confusing sum of ~ local forces —Samuel Lubell) : lacking logical or organic connection : DISJOINTED (throwing down her pen after having written a few ~ lines —H.A.Overstreet) — **disconnectedly** *adv* — **disconnectedness** *n*

disconnecting switch *n* : a switch that isolates a circuit or one or more pieces of electrical apparatus after the current has been interrupted by other means

dis-connection \,dis+\ *n* [*dis-* + *connection*] : the act of disconnecting or state of being disconnected : SEPARATION, DETACHMENT (a curious feeling of loneliness or ~ from the busy crowds about him)

dis-con-nec-tor \"+\ *n* : DISCONNECTING SWITCH

dis-consider \,dis+\ *vt* [*¹dis-* + *consider*] : to deprive of consideration or esteem (it was the sort of exploit that *~ed* a young man for good with the more serious classes —R.L. Stevenson) : view without regard or respect (when humanity is *~ed* the public is not protected, nor is the professional code honored —*Spectator*)

¹dis-con-so-late \də'skänt(ə)lət, *'di,s-, usu* -dd-+V\ *adj* [ME *disconsolat*, fr. ML *disconsolatus*, fr. L *dis-* *¹dis-* + *consolatus*, past part. of *consolari* to console — more at CONSOLE] **1** : lacking consolation : deeply dejected and dispirited : hopelessly sad : being beyond consolation (a ~ parent) **2** : inspiring dejection : SADDENING, CHEERLESS (set up a wall . . . to shut off the ~ hills and the monotonous sea —M.R.Cohen) : indicating or suggestive of dejection (retired . . . with a ~ step —T.L.Peacock) **syn** see DOWNCAST

²disconsolate *vt* **-ED/-ING/-S** *obs* : to make disconsolate

dis-con-so-late-ly *adj* : in a disconsolate manner (gazed ~ at the smoking ruins of his house) (rows of cypresses standing ~ beside the brooding river)

dis-con-so-late-ness *n* **-ES** : the quality or state of being disconsolate : DEJECTION, DISPIRITEDNESS

dis-con-so-la-tion \dəˌskän(t)sə'lāshən, ˌdi,-\ *n* [*¹dis-* + *consolation*] : the state of being disconsolate

dis-consonant \dəs, (')dis+\ *adj* [*¹dis-* + *consonant*] : not agreeing : DISCORDANT, DISSIMILAR

¹dis-content \,dis+\ *adj* [*¹dis-* + *content* (adj.)] : DISCONTENTED — usu. used with *with* (~ with his prospects and station in life)

²discontent \"\ *n* : one who is discontented : one who has a grievance : MALCONTENT (his following had diminished to less than a dozen *~s*)

³discontent \"\ *vt* [*¹dis-* + *content* (v.)] : to inspire feelings of grievance or dissatisfaction in : make discontented : DISPLEASE (inflation . . . corrupted the civil service . . . , *~ed* and disheartened the soldiers —C.P.Fitzgerald)

⁴discontent \"\ *n* [*¹dis-* + *content* (n.)] : lack of contentment : a sense of grievance or thwarted aspirations or desires : DISSATISFACTION (abolitionists encouraged agitators to come south and stir up ~ —Helen B. Woodward) (unless such aid reaches down to the masses . . . , it will not be effective in preventing social *~s* —Dexter Perkins) : restless yearning or aspiration for improvement or perfection : inquietude of mind (though yet young, he had sunk into a groove extremely deep, and had apparently lost all divine ~ —Arnold Bennett)

discontented *adj* : DISSATISFIED, UNSATISFIED, MALCONTENT : uneasy in mind (hardly a ~ face to be seen —Thomas Gray) (~ with his position) — **discontentedly** *adv* — **discontentedness** *n* **-ES**

discontenting *adj* **1** : causing discontent : DISSATISFYING, DISPLEASING (a most ~ kind of activity) **2** *obs* : DISCONTENTED

dis-contentment \,dis+\ *n* : DISCONTENT

dis-continuance \,dis+\ *n* [ME *discontinuance*, fr. *¹dis-* + *continuance* continuance — more at CONTINUANCE] **1** : the act or an instance of discontinuing the use or practice of (there were no automobiles to cause a ~ of walking —Morris Fishbein) (an appeal for the ~ of the electoral college) : the state of being discontinued (~ of dueling had changed the pattern of German university life) : CESSATION, SHUTDOWN, CLOSURE (a ~ of bus service between the two towns) (the site of the state fair until its recent ~) (almost 40 percent of small business *~s* involve simply a change of ownership —*Nation's Business*) : INTERRUPTION (an intercourse renewed after many years' ~ —Jane Austen) **2** *obs* : temporary absence **3** [ME *discontinuance*, fr. AF, fr. MF *dis-*, *des-* *¹dis-* + *continuance* — more at CONTINUANCE] **a** : a breaking off or interruption of an estate upon an alienation made esp. by a tenant in tail of a larger estate than he was entitled to **b** : the termination of an action by the failure of the plaintiff to properly continue it or by the entry of a discontinuing order on his motion — compare DISMISS *vt* 4b **c** : the interruption of the proceedings in an action that follows where a party does not answer all the material allegations of the previous pleading and the opposite party fails to take judgment for the part unanswered

dis-continuation \"+\ *n* [MF, fr. ML *discontinuation-*, *discontinuatio*, fr. *discontinuatus* (past part. of *discontinuare*) + L *-ion-*, *-io* -ion] : DISCONTINUANCE

dis-continue \"+\ *vb* [ME *discontinuen*, fr. MF *discontinuer*, fr. ML *discontinuare*, fr. L *dis-* *¹dis-* + *continuare* to continue — more at CONTINUE] *vt* **1 a** : to break off : give up : TERMINATE (found it necessary to ~ her course in Spanish) (*discontinued* bus service between the two points) : end the operations or existence of (the school was *discontinued* after a sharp drop in enrollments) (*discontinued* the business after the death of his partner) : cease to use (*discontinued* the pattern after it proved unsatisfactory) **b** *obs* : to cease to attend, frequent, or occupy **c** : to break the continuity of : SEVER (in regard to the mountains it was contended that a gap does not ~ the general line of the range —*Encyc. Americana*) **d** (1) : to cease to publish (~ an unprofitable journal) (2) : to cease to subscribe to (~ the morning newspaper) **2** : to abandon or terminate by a discontinuance or by other legal action ~ *vi* : to cease to continue : come to an end; *specif* : to cease to be published (the magazine will ~ after the next issue) **syn** see STOP

dis-continuity \,dis, ,dis+\ *n* [ML *discontinuitas*, fr. *discontinuus* + L *-itas* *-ity*] **1** : lack of continuity or cohesion : disunion of parts (from chapter to chapter . . . there is a sense of ~, of failure on the author's part to "follow through" —Carlos Lynes) **2** : a break in continuity : GAP (microscopic *discontinuities* in the foil —N.A.Cooke) (conceived of the organic species as a hierarchy of creatures with comparatively large *discontinuities* between their ranks —S.F.Mason) **3** *math* : a point or value of the argument at which a function is not continuous **4** : the boundary between two layers within the earth which display different physical properties made known by analysis of earthquake records **5** : a rapid change in meteorological elements in a short distance or a short time

dis-continuous \,dis+\ *adj* [ML *discontinuus*, fr. L *dis-* *¹dis-* + *continuus* continuous — more at CONTINUOUS] **1** *obs* : causing discontinuity : GAPING (with ~ wound —John Milton) **2 a** : not continuous : marked by breaks or gaps (a ~ mosaic of better watered and settled territory, embedded . . . in wide expanses of arid or semiarid land —*Geog. Jour.*) (the boy received a very jumbled and ~ schooling —Louis Kronenberger) : not continued : DISCRETE, SEPARATE (here and there were conspicuous elevations . . . but they were ~ features, not useful as regional boundaries —R.H.Brown) : lacking logical or organic sequence or coherence (a series of ~ events) (the tone poem is gay and always entertaining, but a trifle ~) **b** *math* : having one or more discontinuities — used of a variable or a function **c** *of a linguistic form* : consisting of parts that are separated by other linguistic units of the same order or by parts of such units (as French *ne . . . pas* "not" in *je ne sais pas* "I do not know") (~ morphemes) (~ phonemes) — **discontinuously** *adv* — **discontinuousness** *n* **-ES**

discontinuous easement *n* : an easement or servitude that requires an act of man for its exercise or enjoyment (as a right of way or right to draw water) — compare CONTINUOUS EASEMENT

discontinuous phase *n* : DISPERSED PHASE

discontinuous variation *n, biol* : abrupt variation in which there are few or no intermediate forms

¹dis-convenience \,dis+\ *n* [ME, fr. LL *disconvenientia* fr. L *disconvenient-*, *disconveniens* (pres. part. of *disconvenire* to disagree, be inconsistent, fr. *dis-* *¹dis-* + *convenire* to come together, agree) + *-ia* *-y* — more at CONVENE] *dial* : INCONVENIENCE

²disconvenience \"\ *vt, dial* : INCONVENIENCE

dis-convenient \,dis+\ *adj* [*¹dis-* + *convenient*] *now dial* : INCONVENIENT

dis-co-phile \'diskəˌfīl\ *n* **-S** [*disc-* + *-phile*] : one who is devoted to the study and collecting of phonograph records

dis-coph-o-ra \dəˈskäf(ə)rə\ *or* **dis-coph-o-rae** \-fəˌrē\ *n pl, cap* [NL, fr. *disc-* + *-phora*, *-phorae*] *in some classifications* : a group of jellyfishes: **a** : a group coextensive with Scyphozoa **b** : a group coextensive with Discomedusae

dis-coph-o-rous \dəˈskäf(ə)rəs, (')diˈs-\ *adj* [in sense 1, fr. *disc-* + *-phorous*; in sense 2, fr. NL *Discophora* + E *-ous*] **1** *zool* : bearing a disk or disklike structure **2** : of or relating to the Discophora

dis-co-placenta \,diskōplə'sentə\ *n* [NL, fr. *disc-* + *placenta*] : a discoidal placenta — **dis-co-placental** \"+\ *adj* — **dis-co-placentalian** \"+\ *adj*

dis-co-placentalia \"+\ *n pl, cap* [NL, fr. *disc-* + *Placentalia*] : mammals having discoidal placentas

dis-cop-o-dous \dəˈskäpədəs, (')diˈs-\ *adj* [*disc-* + *-podous*] *zool* : having the foot disk-shaped

¹dis-cord \'diˌskȯrd, -ə(ə)d\ *n* **-S** [ME *descord*, *discorde*, partly fr. OF *descort* (fr. *descorder*); partly fr. OF *desconde*, fr. L *discordia*, fr. *discord-*, *discors* discordant + *-ia* *-y*] **1 a** (1) : lack of harmony or agreement between persons : DISUNITY, DISAGREEMENT, DISSENSION (must we fall into the jabber and babel of ~ while victory is still unattained —Sir Winston Churchill) (2) : CONFLICT, STRIFE (~ among the barons of the border country reached the point of daily raids, ambushes, and kidnappings) **b** : lack of harmony or agreement between things or ideas : CONTRAST, DIFFERENCE, OPPOSITION (the glaring ~ between the architecture of the two buildings) (the ~ between the idealist and materialist philosophies) **2 a** : a combination of musical sounds which strike the ear harshly due either to an unprepared dissonance or to an effect of false intonation or tuning **b** : the interval between two discordant notes; *also* : a discordant note **c** : DISSONANCE **3** : any harsh or unpleasant sound (the braying of automobile horns and other daily *~s* of city life)

syn STRIFE, CONFLICT, CONTENTION, DISSENSION, VARIANCE: DISCORD may indicate sustained inharmonious disagreement marked by quarreling, factiousness, antagonism (the meeting broke up in *discord*) (the *discord* among the brawling barons) (the controversies arising from this situation are bitter, and the *discord* is ominously apparent —H.A.Wagner) DISCORD indicates the fact of existent disharmony, perhaps pointless; STRIFE may designate competition in a hectic struggle for victory or supremacy (all must live together in harmony as good neighbors or in *strife* as bad neighbors —*Saturday Rev.*) (as the war drew to its end he, like Lincoln, sought to heal the wounds caused by internecine *strife* —H.A.Bridgman) CONFLICT indicates existence of opposition or rivalry with desire or impetus to victory or mastery but not necessarily with the surging activity associated with STRIFE (the medieval *conflicts* between England and France) (the age-old *conflict* between city and village —A.R.Williams) (the *conflict* of passion, temper, or appetite with the external duties —T.S.Eliot) (the union and *conflict* of two very different human impulses, the one urging men towards mysticism, the other urging them towards science —Bertrand Russell) CONTENTION may suggest bickering quarrelsome altercation in words; it usu. does not apply to physically active strife (*contention* about the new zoning laws) (*contention* between free trade and tariff groups) (the *contentions* and turmoils preceding Kentucky's admission into the Union —E.M.Coulter) DISSENSION is likely to stress the existence of disharmony and noisy truculent antipathy between groups, with or without strife (the party was split by internal *dissension* on religious, racial, and intellectual questions —*Amer. Guide Series: N. Y.*) (reports of internal *dissension* in Venezuela: a "moderate" group in the Venezuelan army threatened to revolt against the Gallegos government —*Current Biog.*) VARIANCE may indicate a clash of opinion, temperament, or character that make for strife, discord, or cold hostility (sectarian *variances* in the town had delayed the erection of a house of worship —*Amer. Guide Series: Vt.*) (the unwillingness of young men interested in the ministry to accept the required strict orthodoxy at *variance* wi tury viewpoints —*Current Biog.*)

¹dis-cord \", dəˈskȯ(ə)rd, -ˈskȯ(ə)d\ *vi* **-ED,** *cordere*, fr. OF *descorder*, *discorder*, fr. L *disco discors* discordant, at odds, fr. *dis-* *¹dis-* + more at HEART] : to be at variance : DISAGR of his disclosures ~ strongly with my pe —E.J.Wayland)

dis-cor-dance \dəˈskȯrdᵊn(t)s, ˈdi,s-, -ō(ə)d *cordance*, fr. MF *descordance*, fr. OF, fr. *d* **1** : the state or an instance of being dis harmony : DISAGREEMENT (the still unso Spaniard and Indians —P.E.James) : lack of : INCONGRUITY (the violence and ~ of hi Lewis) **2** : discord of sounds : DISSONANCE unconformity **b** : a discordant junction (a

dis-cor-dan-cy \dəˈskȯ(r)dᵊnsē, -sī\ *n* **-ES** DISPARITY (the maze of apparent *discords* —R.H.Popkin)

dis-cor-dant \dəˈskȯrdᵊnt, (')diˈs-, -ō(ə)d-\ fr. OF *discordant*, *descordant*, fr. L *discor* pres. part. of *discordare* to discord — s **1 a** : being at variance : DISAGREEING (view day ideas) : being at variance with each othe ANTAGONISTIC (the various dissevered and ~ society —W.J.Shepard) : not conforming wi (the ~ element in the picture was his face garb —John Buchan) **b** : marked by lack of agreement of its parts (a poetry that . . . is and ~ but negative in its emphasis —C.I.Glic by inner discord (a ~ family) : QUARRELS people) **2** : relating to a discord : DISS : HARSH, JARRING (I heard a horrid ~ cry, s a bray and a yell —George Borrow) : mak sounds (a ~ crowd . . . shouting and sing pole) **3** : lacking conformity or parallelis structure — used of geologic strata **4** *of r* respect to one or more particular character CORDANT — **dis-cor-dant-ly** *adv* — **dis-co**

discording *adj* [ME, fr. pres. part. of *disc* : DISCORDANT

¹dis-count \'diˌskau̇nt\ *n* **-S** [modif. (influ *¹count*) of F *décompte*, fr. OF *descont*, fr. abatement or reduction made from the gros of anything: as **a** (1) : a reduction from specific customer or class of customers — s (2) : a proportionate deduction from an ac made for cash or prompt payment — s **b** : a deduction made for interest in adva or purchasing a bill or note not due : payn interest upon money **2** : the rate of inter counting **3** : the act or an instance of disc bank funds in the ~ of bills of exchange) billiards of one point from the score of or point made by his opponent **5** : a deducti ance made (as for the specious element in a that qualifies the truth of an assertion) (w make very heavy ~, or even sometimes to conclusions altogether —G.G.Coulton) (a taken, timeliness remains a chief quality —F.L.Mott); *also* : an objectionable fea HINDRANCE (he does . . . mention smells and pleasant day —*Times Lit. Supp.*) — **at a di par** : below the nominal value (the bond : **2** : out of favor : poorly or lightly este visionaries were *at a discount* in this sober : with reservations (his continual compl taken . . . *at a discount* —Hilaire Belloc)

²dis-count \"*also* dəˈs-\ *vb* **-ED/-ING/-S** [mod fr. OF *desconter*, fr. ML *discomputare*, fr. L *putare* to reckon, compute — more at CO deduct esp. from an account, debt, or charg ment of (~ a bill for early payment) **b** : a discount : sell at a discount (dealers wer year's unsold models) **2** : to lend mone the discount or allowance for interest (b paper) **3 a** : to leave out of account : DI influence of Hawaii on the American hou the spectacle . . . of flapping shirttails p flora —T.H.Robsjohn-Gibbings) **b** : to in evaluating the significance or worth of : v : MINIMIZE, DISPARAGE, DEPRECIATE, UND offense as a pardonable action under the c mature judgment and long experience were- (never ~ the fellow's cunning and inge LESSEN (the value of his criticism was ~e of the subject) **c** (1) : to make a deductio truth or validity of : make allowance (as fo tion) in (he *~ed* seventy-five percent o —Gerald Beaumont) (~ some of the more made for the new drug) (2) : to view with DISBELIEVE (I ~ the story that the bra McCormick . . . because . . . she was an ar **d** : to anticipate or take into account (as present calculations or planning (mail cam organized groups whose opposition had —*Time*) (businessmen had already *~ed* the of the price increase) **4** : to give a disc ~ *vi* : **1** : to lend or make a practice of lend the discount (banks ~ for 60 or 90 days) ance (*~ing* for Richard's modesty —S.E.P

dis-count-able \'ˌau̇ntəbəl *or* ˌ'au̇nt-\ *adj* : discounted (a ~ note) (the evident bias of apart for discounting (within the ~ period

discount broker *n* : one who makes a busi commercial paper usu. as an agent

discount company *n* : a company that dis accounts receivable : COMMERCIAL CREDIT

discount day *n* : the weekday when a b

¹dis-countenance \dəs, (')dis+\ *vt* [*¹dis-* **1** : to put out of countenance : put to s CONCERT (the republic soon confirmed *discountenanced* its *few* friends —C.P.Fitzge to look with favor upon : use one's infl courage by evidence of disapproval (the *discountenanced* the teaching of reading working classes —Helen Sullivan)

²discountenance \"\ *n* [*¹dis-* + *countenance* discountenancing (American actions gave ~ to the Bolshevik and anarchist elemen

dis-count-er \'diˌskau̇ntə(r) *also* dəˈs-\ *n* counts; *specif* : the operator of a discount

discount house *n* **1** : a firm selling brau sumer durables) at a discount from list pr BROKER

discount market *n* : an open market i instruments (as acceptances, bills, and no — compare BANK DISCOUNT

discount rate *n* : the interest on an amou advance for a bank or other loan; also by central banks for advances and rediscou

discounts *pl of* DISCOUNT, *pres 3d sing of*

dis-cour-age \dəˈskə-ij, -kə-\ *vt* **-ED/-ING/-S** [MF *desconrager*, *descouroger*, fr. *des-* *¹dis-* + *corage* courage — more at deprive of courage or confidence : DISHE of the bastion greatly *discouraged* the be succession of failures *discouraged* the young seek to check, hinder, or deter by disfav by legislative enactment) : DETER, HIND feudal anarchy *discouraged* the growth of of the soil *discouraged* agriculture) **b** : to from some action : dampen or lessen the for some action (*discouraged* his son from career) (a table-high platform . . . with a souvenir snatchers —Green Peyton) ~ or heart (I don't ~ easily)

syn DISCOURAGE, DISHEARTEN, DISPIRIT, I implies loss of courage, confidence, and re the sapping effect of fear and doubt and

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SIXTH EDITION

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recorded in Registry of Deeds (or comparable recording body) or in other appropriate place for recording deeds to real estate.

Dischargeable claim. In bankruptcy, a claim which is barred by bankrupt's discharge if properly scheduled. See Bankruptcy Code § 727.

Disciplinary proceedings. Proceedings which are brought against attorney to secure his or her censure, suspension or disbarment for various acts of unprofessional conduct. Most states have procedural rules governing such proceedings including Disciplinary Rules for attorneys. *See* Code of Professional Responsibility; Disbarment; Disciplinary rules.

Disciplinary rules. Name of the Disciplinary Rules of the ABA Model Code of Professional Responsibility. They stated "the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." These rules have been superseded by the ABA Model Rules of Professional Conduct (*q.v.*).

Discipline. Instruction, comprehending the communication of knowledge and training to observe and act in accordance with rules and orders.

Correction, chastisement, punishment, penalty. To bring order upon or bring under control.

Disclaimer. The repudiation or renunciation of a claim or power vested in a person or which he had formerly alleged to be his. The refusal, or rejection of an estate or right offered to a person. The disavowal, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his. Also the declaration, or the instrument, by which such disclaimer is published.

The rejection, refusal, or renunciation of a claim, power, or property. I.R.C. § 2518 sets forth the conditions required to avoid gift tax consequences as the result of a disclaimer.

See also Refusal; Renunciation; Repudiation.

Estates. The act by which a party refuses to accept an estate which has been conveyed to him.

Patents. When the title and specifications of a patent do not agree, or when part of that which it covers is not strictly patentable, because neither new nor useful, the patentee is empowered, with leave of the court, to enter a disclaimer of any part of either the title or the specification, and the disclaimer is then deemed to be part of the letters patent or specification, so as to render them valid for the future.

Pleading. In common law pleading, a renunciation by the defendant of all claim to the subject of the demand made by the plaintiff's bill. *See also* Denial.

Qualified disclaimer. A refusal by a person to accept an interest in property. A qualified disclaimer must be in writing and must be received by the transferor not later than 9 months from the time the interest is created. Once the property is accepted and enjoyed by the individual, the property can not be disclaimed.

Warranty. Words or conduct which tend to negate or limit warranty in sale of goods and which in certain instances must be conspicuous and refer to specific warranty to be excluded. U.C.C. § 2–316.

"Disclaimer of warranties" is means of controlling liability of seller by reducing number of situations in which seller can be in breach of contract terms. Collins Radio Co. of Dallas, Tex. v. Bell, Okl.App., 623 P.2d 1039, 1049. *See also* Warranty.

Disclaimer clause. Device used to control seller's liability by reducing number of situations in which seller can be in breach of warranty. Lecates v. Hertrich Pontiac Buick Co., Del.Super., 515 A.2d 163, 171. *See e.g.* Warranty (*Limited warranty*).

Disclose. To bring into view by uncovering; to expose; to make known; to lay bare; to reveal to knowledge; to free from secrecy or ignorance, or make known. *See* Discovery.

Disclosure. Act of disclosing. Revelation; the impartation of that which is secret or not fully understood.

In patent law, the specification; the statement of the subject-matter of the invention, or the manner in which it operates.

In securities law, the revealing of certain financial and other information believed relevant to investors considering buying securities in some venture; the requirement that sufficient information be provided prospective investors so that they can make an intelligent evaluation of a security. *See* Prospectus.

Under Truth in Lending Act "disclosure" is a term of art which refers to the manner in which certain information (*e.g., total* cost of loan), deemed basic to an intelligent assessment of a credit transaction, shall be conveyed to the consumer. 15 U.S.C.A. § 1601 et seq. Doggett v. Ritter Finance Co. of Louisa, D.C.Va., 384 F.Supp. 150, 153. *See* Disclosure statement.

See Buried facts doctrine; Compulsory disclosure; Discovery; Freedom of Information Act; Full disclosure; Subpoena.

Disclosure by parties. Term sometimes used in law of deceit or fraud as to the obligation of parties to reveal fact which is material if its revelation is necessary because of the position of the parties to each other. *See also* Material fact.

Disclosure statement. The Federal Truth in Lending Act requires that the finance charge, annual percentage rate, number and amount of periodic payments, and other credit terms, be fully disclosed in consumer loan agreements. This is commonly done by means of a disclosure statement which accompanies or is made a part of the agreement. *See also* Truth in Lending Act.

Discommon /diskóman/. To deprive commonable lands of their commonable quality, by inclosing and appropriating or improving them.

Discontinuance /diskəntínyuwəns/. Ending, causing to cease, ceasing to use, giving up, leaving off. Refers to the termination or abandonment of a project, structure, highway, or the like.

VOLUME I

IN RE:	*	BEFORE HEARING OFFICER/
HELMORE FARM	*	DEPUTY ZONING COMMISSIONER
Special Hearing/ Special Exception	*	OF BALTIMORE COUNTY
	*	No. 98-294 SPHX
	*	April 6, 1998

* * * * * * *

The above-entitled matter came on for hearing before the Deputy Zoning Commissioner of Baltimore County at Baltimore County Courts Building, Room 407, Towson, Maryland 21204, at 9:05 a.m., April 6, 1998.

* * * * * * *

BEFORE:

TIMOTHY KOTROCO, Esquire
Deputy Zoning Commissioner

APPEARANCES:

G. MACY NELSON, Esquire
On behalf of Protestants

G. SCOTT BARHIGHT, Esquire
On Behalf of Petitioner

Reported by:

Susan E. Smith, CSR

TRANSCRIPT OF PROCEEDINGS

* * * * * *

MR. KOTROCO: Good morning, ladies and gentlemen. Let me have your attention. We might as well get started with the morning's hearing. My name is Timothy Kotroco. I'm the deputy zoning commissioner for Baltimore County, I've been assigned to hear this case.

This is case No. 98-294 SPHX. It's a special hearing on a special exception filed by the legal owner of the subject property, a Mr. Edgar Lucas. The petition was prepared and filed by Scott Barhight on behalf of Whiteford, Taylor & Preston.

The special hearing request is for a legal nonconforming use for an airport and/or a helicopter operation, and the special exception request is simply for an airport. Property is zoned RC-2, and it's located on the south side of Greenspring Valley Road north of Hillside Road.

Let me have counsel for the petitioner, if you would, identify yourself for the record.

MR. BARHIGHT: Good morning. Scott Barhight and

David Gildea, Whiteford, Taylor & Preston, on behalf of the petitioner.

MR. KOTROCO: I have your sign-in sheet. Have you had a chance to circulate a sign-in sheet?

MR. NELSON: Yes, sir. Macy Nelson for the protestants. I think my clients, the protestants, I think are in the line downstairs by the guard.

MR. KOTROCO: Do you want a few minutes?

MR. NELSON: I don't want to —

MR. BARHIGHT: We'd be happy to wait.

MR. NELSON: I wouldn't mind waiting a few minutes. I think they're hung up downstairs.

MR. KOTROCO: There were a number of them downstairs when I came in. Are there any preliminary matters we can take care of before they get here, or do you want to wait?

MR. NELSON: No, I think it's pretty straightforward. I think we can just jump into it. I appreciate that.

MR. KOTROCO: Is the court reporter here for what purpose?

MR. BARHIGHT: Just to be able to have an adequate transcription, if needed. Both parties can certainly have access to it. And we'll pay for her presence today, and if Mr. Nelson would like to have a copy, he can ask her. If at some point we decide to have a copy made, we can ask her as well.

MR. KOTROCO: Well, certainly it's more accurate than our method of doing it with audio tapes. Do you have any objection to her keeping the record?

MR. NELSON: Oh, no, no problem.

MR. KOTROCO: Then we'll have that be the primary record, and the tapes will be made anyway in case anybody wants to listen to them as a backup. Okay.

Then we'll sit tight for about five, ten minutes, give your folks a chance to come on up.

MR. NELSON: Appreciate that.

(The hearing was recessed at 9:07 a.m. and resumed at 9:20 a.m.)

MR. KOTROCO: Are you ready?

MR. NELSON: Yes, sir. Other people will be filtering in as we proceed, but I think we ought to get

going.

MR. KOTROCO: Fine. As I indicated earlier, my name is Timothy Kotroco. I'm the deputy zoning commissioner for Baltimore County. We had begun the hearing, however since the lines downstairs were rather long, we thought we'd give a couple extra minute for those who might not have gotten here yet.

I've already introduced the special hearing request and special exception, and both counsel have identified themselves for the record. Mr. Barhight, are you ready to proceed with your case?

MR. BARHIGHT: Yes, I am.

MR. KOTROCO: Are there any preliminary matters we need to discuss?

MR. NELSON: Do you expect a brief opening statement, or are we just going to jump into the testimony?

MR. KOTROCO: We can have openings, if you wish.

MR. NELSON: I'd like a brief one.

MR. KOTROCO: All right. Mr. Barhight, do you want anything?

MR. BARHIGHT: Sure. I'll make it very brief.

I'm here on behalf of Edgar Lucas and his son Dale Lucas who operate Helmore Farm, and which is located just west of Falls Road, just north of I-83 and 695. If you're familiar with the area, if you're coming from the city, I-83 either goes off to the east and up and around 695 and north, or you can take Falls Road straight, which ends at Joppa Road and Greenspring Valley Road. There's a light at Joppa, a light at Greenspring Valley. You might be familiar with the Greenspring Station, which is to the east. MacKenzie's offices are over here. There is a corn field just to the west. There is a small commercial venture here in the northwestern corner, and of course Falls Road proceeds north to Seminary Avenue and beyond.

We're on the west side, the second property west from Falls Road. Meadow Wood, Inc. owns the property on the southwestern corner, and then there is Helmore Farm.

You'll hear a lot of testimony with regard to the operation of Helmore Farm, and we believe more than adequate expert testimony that will show that the petition should be granted.

MR. KOTROCO: Okay.

MR. NELSON: Thank you, Mr. Kotroco. My opening will be a little bit more detailed. I hope that you don't object.

The application, the petition asserts that this is a special hearing to approve a legal nonconforming use for an airport and/or helicopter operation. The phrase helicopter operation, as best I can tell, does not appear in the Baltimore County zoning regulations. As this case unfolds, I think that we will start using the phrase helistop, which does appear in the Baltimore County zoning regulations. And that's the phrase I'm going to use in this case, because that's the applicable phrase, and that's the phrase for which there are rules that govern this case.

It's also a special exception for an airport. That's significant, because the evidence will show that the purpose is not for a fixed-wing aircraft but for a helicopter.

Both the claim for a nonconforming use and a claim for a special exception for a helistop require us to

look at the history of the zoning for this land. I want to take a few minutes to give you that history, and I have an advantage here for once. I have Jack Dillon. Of course you know Mr. Dillon, and he's been kind enough to create this history for me, which gives us real insight into the background. And it's this background that's going to allow you to rule, I suggest, that the claim for nonconforming use is baseless.

The evidence is that prior to 1944 there was no zoning for Baltimore County. In January of '45, the first set of the zoning regulations were adopted, and the land at issue here, what we call Helmore Farm, was zoned A Residence. And in 1945, an airport was not a permitted use, but you could get it by special exception at this site, at this land. No reference to helicopters.

Now, that state of affairs lasted until 1955 when a new set of regulations was adopted, and this same land, Helmore Farm, evolved into what was called then R-6. And the evidence is that under permitted uses, neither airport nor helistops, nor any reference to helicopters were listed under permitted uses, and neither was listed as a

special exception.

Now, in 1957, two years later, they changed the zoning. It became R-40, but no change in the rule with respect to whether it was permitted as a matter of right or by special exception. The prohibition against both continued.

That state of affairs continued until 1963, when the zoning was changed. The classification remained the same, but for the first time now the word "helistop" appears in the zoning regulations, 1963. And as of 1963, for this land, Helmore Farm, airports and helistops, airports and helistops, are permitted for the first time as a special exception, not as a matter of right but by special exception. That was 1963.

Then in 1970, this county adopted the DR zones, and this land became RDP. But the rules permitting airport and helistop by special exception continued. So during this era now, you could have an airport or helistop by special exception. Indeed, Mr. Berg, in 1978, applied for a special exception in the RC. Of course, '76, became RC-2. Mr. Berg in '78 applied for a helistop in RC-2

land, and the zoning commissioner granted the special exception -- this is 1978 -- granted the special exception for helistop but limited flights to 14 per month. That was 1978.

Well, there was a backlash to that decision, and in 1979, bill No. 178-79, 178-79 was adopted, was passed. And this was in a direct response to the Buzz Berg zoning commissioner decision case, where people said, and Mr. Dillon will testify about this because he participated, was present during these discussions, that people were of the view there should not be a helistop in the RC-2 zone, and the law was changed. That was 1979.

That's been the state affairs up to the present, which is to say no special exception for helistop in the RC-2. And there is authority from this office in a case in this very same zone addressing that, and that is the Smith opinion, 1989, RC-2, ruling you cannot, in categorical terms, no special exception for helistops in the RC-2 zone.

Now, with that background, the petitioner, for reasons that perhaps will be elucidated during the course

of this hearing, says to the principal player in this story, Mr. Martin Grass, you can land your helicopter on my property, allegedly for no fee. And in response to Mr. Grass's use of the petitioner's property for his helicopter, the county begins to issue zoning citations against Mr. Edgar M. Lucas, the owner of the property, the father of Mr. Lucas who is here as the representative of the petitioner today.

Violations were issued November 17, 1979 (sic), and I quote. This is the nature of the violation: Operation of a helistop in an RC-2 zone wherein the use is not permitted, either by right or special exception.

You'd think they would have stopped. But no, on January 8, 1998, the petitioner continues to let Mr. Martin Grass land his helicopter there, and more citations are issued. And this time they issue a penalty of $2,400 to the father of Mr. Dale Lucas, and on the same day write a letter to the attorney for the petitioner, dated January 8, 1998 -- this is from Lavette Bannerman, Code Inspections and Enforcement Officer. Baltimore County is requiring that all helistop operations cease immediately

at the subject property. The position of Baltimore County is clear, which is to say you cannot get a special exception for a helistop at this site in RC-2 land.

Well, the petitioner says to himself, all right, I need a fallback. What's my fallback? I'm going to lose this special exception. We are going to argue nonconforming use. Now, we all know the rules for nonconforming use. The petitioner has the burden to go back in time to when they could legally land a helicopter at the precise location they seek to land it now and say that we have used it every year, at least once, since then.

The only time they could have landed a helicopter at this site legally was prior to January 2, 1945. That was the last time they could do it legally without a special exception, and no time did they have a special exception. So during the era when it was permitted by special exception and when they were allegedly doing it, they were not doing it legally because they didn't have the right to do with a special exception. So they have the almost impossible burden of proving that they used a

helicopter at this site every year since 1944.

Now, there is no discovery in these proceedings. We all know that. But we sought, my clients sought an injunction in the circuit court, seeking to enjoin this illegal activity. And Mr. Dale Lucas took the stand, testified under oath, and I have his transcript right here. And I explored with him how frequently he used aircraft and helicopter allegedly at this site, because I'm think nonconforming use, I want to see what he has to say. Of course he's got of the burden of proving every year since 1944.

Question -- this is Mr. Lucas, me asking the question of Mr. Lucas under oath.

Question: Can you tell this Court, please, each year -- let me back up. He said that he first landed a plane there in 1972 and had no personal knowledge of any plane landing there prior to '72, hadn't witnessed it once prior to '72. So I'm asking now about '72 to the present.

Can you tell this Court, please, each year that an airplane landed at Helmore Farm since 1972?

Answer: I don't have a list of when planes or

helicopters landed, no. Just on an as-needed basis.

Question: So you will agree, sir, will you not, that you cannot testify under oath that a fixed-wing airplane landed each year between 1972 and the present?

Answer: Not with certainty, no.

Then I asked about the helicopter: Would you please tell this Court, under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present.

Answer: 1972, (then there's a coma), 1978. From '78, I don't know when until '89. There were years we landed in there, but there is some gaps in there. (Now he jumps to '89.) Now, I know in 1989 up to the current it's been every year, except that I don't know about 1993, if we landed there in 1993.

So if you take that sworn testimony and give it every benefit of the doubt, which you're not required to do because he's got the burden of proof, even the petitioner's representative has admitted under oath that they haven't landed or used this property for both aircraft and helicopter every year since '72, and they

have the impossible burden of going back to 1944.

So for all of those reasons, at the end of the case I'm going to ask this office to deny both the request for a nonconforming use and the request for a special exception. And we have testimony to present, and I'll see how the petitioner's case unfolds, and then we'll present the necessary testimony. Thank you, sir, for your time and attention.

MR. KOTROCO: Thank you, Mr. Nelson. Are you ready to call your first witness?

MR. BARHIGHT: Yes, I am. Thank you very much. Mr. Lucas, please?

MR. KOTROCO: Mr. Lucas, come up here to the witness box. Do you all want the witnesses sworn in?

MR. BARHIGHT: Please.

MR. KOTROCO: Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes.

MR. KOTROCO: All right. State your name and

address, please.

THE WITNESS: Dale Lucas, 901 Greenspring Valley Road. Mailing address, P.O. Box 1248, Brooklandville, Maryland 21022.

DALE LUCAS,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Good morning, Mr. Lucas. The address that you just gave, is that known as Helmore Farm?

A. Yes, it is.

Q. How do you spell Helmore?

A. H-E-L-M-O-R-E.

Q. How long have you resided there?

A. I have resided there since 1969.

Q. Tell us a little bit, if you will, about the specific location of Helmore Farm. During my opening statement I made some comments about its location, but what I say is not evidence, only what you say and the

other witnesses say is evidence. Can you please describe generally the location of Helmore Farm?

A. Helmore Farm is located in the east end of Greenspring Valley from Falls Road. As you travel west on Greenspring Valley Road, it's about 3/8 of a mile from the start of the farm located on the left. And the farm at the front, I guess, is probably 1,100 feet wide and extends back to Hillside Road from there.

Q. Are you familiar with the plan to accompany the zoning petition?

A. Yes.

Q. Helmore Farm?

A. Right.

Q. I'm pointing to Greenspring Valley Road. Your property fronts on Greenspring Valley Road?

A. Yes.

Q. And I'm pointing now to Hillside Road, which seems to be parallel, approximately, to Greenspring Valley Road?

A. Right. It goes back to about 30 feet from Hillside. There's an old railroad right-of-way that went

through there, and we go back to that railroad right-of-way.

Q. Are you familiar with the intersection of Greenspring Valley Road and Falls Road?

A. Yes.

Q. You must use it pretty frequently?

A. Several times a day.

Q. Can you generally describe the activities and the buildings and commercial activities on the east side of Falls Road at that location? Just generally, what's there?

A. To the east of Falls Road you have what is known as Greenspring Station, which is an area of intense office development in there. They've got one, I think it's a five-story building that's in there that's just offices. They've got another building that is taken over by Johns Hopkins Hospital as a satellite operation for Johns Hopkins.

You have Joey Chiu's restaurant, Mercantile Bank. There is a major tennis barn there. There is a liquor store operation and a couple other office complexes in

there. Just to the south of them, the southeast corner, you have the Maryland State roads research and testing lab there. You've got a big salt dome to the other side of the road from there where the salt trucks load salt and stuff for their winter operations and stuff. And then you have the Meadow Wood property as you go to the west from there, which is just an open farming field. There is no facilities there at all.

Q. Let me drop back. This vicinity map shows Joppa Road intersecting with Falls Road.

A. Right.

Q. Relative to Joppa Road in terms of north versus south, where is the State Highway Administration facility?

A. It's the southeast corner of Joppa Road and Falls Road, where the extension of 83, the Exit 23 from the Beltway up to Falls Road, where it meets.

Q. As it relates to Falls Road and 83, east versus west, where is the salt dome facility?

A. The salt dome is to the west of the extension of 83 up to Falls Road.

Q. What's located at the northwestern corner of

Falls and Greenspring Valley Road?

A. That's the Montessori School, which is the old Emerson dairy farm.

Q. Is there any commercial activity at that corner?

A. There is also an office complex there. Locally they refer to it as the castle, but Gramophone is in there, and some real estate offices I think are still in there.

Q. What's the nature of the current use of what's known as Meadow Wood, which is immediately east of you, west of Falls Road?

A. Really just a dirt farm. They raise crops.

Q. Are you familiar generally with the vicinity?

A. Yes.

Q. How would you describe the areas west of your property along Greenspring Valley Road?

A. Well, it's residential until you get over to Villa Julie College, which is right in the middle of the valley, and that's a rapidly expanding college that used to be just a little community college in the center of the valley, but now it's become a major almost university type

facility.

Q. In the Greenspring Valley are there agricultural operations?

A. Yes. There are several horse farms, and there is one cattle farm that's being developed now right next to Villa Julie. And other than that, the farming operations generally don't farm their own property, they lease it out to a big contract farmer. We are one of the ones that does operate our own facilities.

Q. And just generally speaking, as to those agricultural operations -- I believe you mentioned a couple of horse farms and a cattle operation?

A. Right.

Q. As to the crop farming, can you generally describe the crop farming in the area?

A. Like I said, generally it's contract farmers come in that are from outside the area, and they lease the ground and grow soybeans, winter wheat, corn, things like that.

Q. Let's direct your attention to Helmore Farm and ask you, if you wouldn't mind, to identify two

photographs. I hand you two photographs. Are you familiar with those photographs?
A. Yes.
Q. Did you take those photographs?
A. Yes, I did.
Q. And approximately when did you take those photographs?
A. I took these photographs approximately two weeks ago.
MR. BARHIGHT: With the zoning commissioner's permission, I'd like for you to approach the bench and point out some of the features on the photographs, if that would be all right.
MR. NELSON: Do you mind if I --
MR. BARHIGHT: First, for identification purposes, I'd like to have introduced the two photographs as Petitioner's Exhibit No. 1A and B.
MR. KOTROCO: Whose helicopter did you use to take these out of?
THE WITNESS: Jim Platt (phonetic).
MR. KOTROCO: Did you take them yourself? I'll

mark this 1A, and you want this 1B?
THE WITNESS: I've used Jim for photographic work for several years.
MR. KOTROCO: Okay.
(Petitioner's Exhibits 1A and 1B were marked by Mr. Kotroco.)
MR. BARHIGHT: Let's let Mr. Nelson see these as well.
Q. Looking at Petitioner's Exhibit No. 1A, could you please identify the location of the farm?
A. The farm goes from this tree line here over to this road that comes in here, and then down this side here. That's the front part of it. And this is Greenspring Valley Road here, and this is my father's house and swimming pool and garage over here.
Q. What other major structures, other buildings, are on the farm property?
A. Can I refer to the other photo?
Q. Please. You referenced Petitioner's Exhibit 1B in that answer?
A. Right. In the other photo you can see that here

is the farm up in here, my father's house up in front of the farm. Then as you come down the road, there is his garage. Here are the three employee houses here. There's a bank barn that's been converted to offices. This is our main shop. This is the main barn where we do our layups and stuff. This is our yearling barn. These are turnout sheds into the front field. This is my house right here, and this is the turnout shed into the bottom field, and this is where the airstrip is, in the bottom field right here.
Q. With reference to --
A. And this corner is where the helicopter lands.
MR. BARHIGHT: So we can orient the zoning commissioner, Mr. Kotroco, can you see the entirety of this plan?
MR. KOTROCO: Except for the bottom portion of it. It's okay, I can follow along on mine as he testifies.
Q. Mr. Lucas, if I could ask you to approach the plan as well.
MR. BARHIGHT: And I'd like to have this marked

for identification purposes as Petitioner's Exhibit No. 3. Mr. Matis, during his testimony, will obviously introduce it into the record through his testimony. Mr. Lucas did not prepare this. Mr. Matis did. But if we could refer to it as Petitioner's Exhibit No. 3.
MR. KOTROCO: What's going to be 2?
MR. BARHIGHT: I'm sorry, 2. I'm counting 1, 2, 3, as if there was already a 2.
MR. KOTROCO: We have 1A and 1B. We'll make that 2.
(Petitioner's Exhibit No. 2 was marked by Mr. Kotroco.)
MR. BARHIGHT: Thank you. Somebody is paying attention.
MR. KOTROCO: That's what I get paid for, Mr. Barhight.
Q. Mr. Lucas, using what has been marked for identification purposes as Petitioner's Exhibit No. 2, could you please generally locate Falls Road and Greenspring Valley Road?
A. Falls Road is right here, east side, and

Greenspring Valley Road to the north side of the property.
Q. Is your property identified in any way in terms of a color on the plan?
A. Yes. It's the darker green color versus the light lime green color.
Q. And with reference to the photographs, you identified a number of structures. Are those structures shown on the plan as well?
A. Yes, they are.
Q. And how are they depicted? What colors are they?
A. They're depicted in like an orange yellow color.
Q. Does a portion of Jones Falls traverse your property?
A. Yes, it does.
Q. Is that shown on the plan as well?
A. Yes, it is.
Q. Is there a wooded area in the general vicinity of Jones Falls?
A. Yes, there is, and that's shown also.
Q. Is that depicted in any different color on the plan?

A. It's a darker green.
Q. Okay. And is there a depiction of the area of the airstrip?
A. Yes, there is.
Q. And could you generally describe that for the zoning commissioner, point that out.
A. It's an area in the bottom field, approximately centered on the bottom field. It's 140 to 150 feet wide, extending the whole length of the field, which is 1,200 feet.
Q. Is there an area within the airstrip and the airport area that also is used for the landing and taking off of helicopters?
A. Right. The bottom catch pen to the west south corner of the field is an area where we use for doing blacksmith work on horses. We pull them in there instead of having to take them back to the barn. That's also where we land the helicopter.
Q. You can go ahead and take a seat for the moment.
A. Yes.
Q. Thank you.

MR. BARHIGHT: I'd like to go ahead and introduce Petitioner's Exhibit 1A and 1B. I believe they have been properly authenticated.
MR. KOTROCO: Any objection to the aerial photographs?
MR. NELSON: No.
MR. KOTROCO: They will be accepted into evidence.
MR. BARHIGHT: Mr. Lucas, let's focus a little bit more on Helmore Farm. Could you please explain the operation of Helmore Farm for the zoning commissioner?
A. Okay. Helmore Farm is an operation that was developed by my father. In 1958 he got into the horse business. Before that it was primarily just a dirt farm.
Since then the farm has developed in scope of its operation. It developed to the point where he expanded years ago to Howard County where we had Helmore Farm annex out there. That was approximately 129 acres. And then in I think it was 1989 we sold that operation, because the scope of the business had changed where everything was shifting to Kentucky, and the sale of yearlings at that

point, and we could not compete here in Maryland.
We had a stallion that was good enough to go down there. He had just sired a champion. His name was Northern Joe. So we did a deal with Spendthrift Farm down there, sent him down there to stand as a stallion, and traded some shares in him for shares in other commercial stallions. We started breeding our mares there and purchased a farm in Paris, Kentucky, which is adjacent to Stone Farm. And there was one farm between us and Claiborne where Nijinski and Secretariat stood.
And we eventually developed that operation into a 600-acre farm, and then we concentrated the breeding down there. And the farm in Maryland we used for raising primarily my father's horses, and doing layups there when they were injured at various times.
That changed with the tax law changes in '85 and '86. They did away with long-term capital gains and became -- passive investing constrictions came in. When those restraints came about, a lot of people got out of the horse business, so we concentrated on the operation in Maryland, and jumped back and redeveloped that, made major

improvements to it at that time. And then we shifted to concentrating on developing two-year-old and training partnerships.

The partnerships, at that time you could go into the two-year-old training sales and buy horses relatively inexpensively, and then get several people in the area to come in in a partnership. And they'd have not all their eggs in one basket, so to speak. They'd have parts of several horses. And then we would develop those horses and manage them for the racing partnerships.

Now, over time, since 19 -- there was an article in the January 16 edition of Thoroughbred Times in 1996. It showed that we had developed that business to such an extent that from '89 to that time, I was number one in the world in developing two-year-olds in training. What we had done is purchased two-year-olds and syndicated them. And we had done it at a rate of 39.1 percent stakes winners. The closest person to us in the world was only 20 percent. So we were the leader worldwide in developing this concept.

And as things have advanced in the last few

years, though, a lot of other people have caught on to this concept. The prices for what typically we could buy for $50,000 back in '95 now is costing in the neighborhood of $250,000. And what this has done is it has shifted our focus from being able to raise the money here locally to do this, to have to raise money from out-of-state sources, because there just isn't that kind of a fivefold jump in the availability of money that's here locally. So what we have done is tried to shift our focus to people from out of state into our partnerships.

I even tried to combine with Cot Campbell of Dogwood Stable, who developed Summer Squall and a lot of other good horses. And Cot just said that you can't develop anything in the Middle Atlantic area because you just don't have that kind of access to cash. You've got to do it in New York. And he said he'd take 12 square blocks of downtown New York versus the whole Middle Atlantic. And so we've started to develop clients in New York.

Now it's to the point where you can look at the Maryland business and see the problems, as the stallion

Rakeen (phonetic), who was brought from South Africa over to here to stand at Northview stud. He has just been repurchased and sent back to South Africa. They could not maintain him here. West By West, a stallion by Relaunch, he was syndicated by Northview. They couldn't fill his book at $7,500. He's in Kentucky. You can't get to him for $10,000 down there. The clientele is just not here.

So in order to survive, what we have tried to do is, like I say, bring in these out-of-state clients or work with new people in the industry, bring them in and get contact with them. But as you look around for people with corporate headquarters here, there aren't many in the state of Maryland. So what we need to do is make our operation accessible to the people in New York, and we need for them to be able to, on short notice or on short travel time, be able to get to our farm, look at the operation there, look at the stallions that we're trying to syndicate.

Right now we've got a Seeking the Gold colt named Seeking the Crown. We've got Tank that stands up at Corbett, which is right up the road from us. We have

several horses that we've developed to syndicate now. One of them is called Big Motor Scooter. He's getting ready to go into training. But without being in a situation where people can come in and see these horses and then, right down the road, come in and land at our operation, go to Pimlico where the main focus is the Triple Crown, get to the Derby, the Preakness, the Belmont --you market these horses you buy as two-year-olds as three-year-olds to make it into this series of races. And we just aren't accessible without having this kind of air access.

Q. Mr. Lucas, let me ask you some more questions about the horse farming activities at Helmore. I don't know a thing about thoroughbred racing. Are the horses that you're raising there horses that we see racing at some point in the Triple Crown races?

A. Right, yes.

Q. And those are called thoroughbreds?

A. Right.

Q. How many thoroughbred horses do you maintain now at Helmore Farm? How many are there today, if I went there and counted them?

A. I think it's 37.
Q. And what's the general range of the number of thoroughbred horses that you might find at Helmore Farm at any given time?
A. It will fluctuate during the year. The high this past year has been 42, and it would at times, with all the brood mares out and the two-year-olds going into training to the training center and then to the track, it could get down to 22, 20, 22.
Q. With regard to the operation, you said you're focusing on a particular segment of the market?
A. Right.
Q. Could you describe that again? Does that have to do with, you said, raising and training two-year-olds?
A. Well, buying two-year-olds at the sales. What we do, we have two different types of operations. One is where we have horses for clients that want to remain clients, as the Rosenbergs of Crown Central Petroleum. And I have purchased 13 mares for them. We have the brood mares, a lot of them in Kentucky. Some of them are at our farm. The ones that are at the farm are there to go

through their gestation period. We ship them up to Corbett generally to foal, and then they're bred to Maryland stallions, generating the Maryland breds for the program here.
The bulk of the mares, however, are in Kentucky. For the same reason we can't get the people here to support the higher-priced stallions, so we've got to go to them down in Kentucky. So we base the mares there, and then those foals, after they're weaned from the mares, we bring them back up to our operation so that we can hands-on see how they're developing. Our blacksmith works on them, does corrective procedures to keep them from getting all splay-legged and crooked. And then from there we break them at our farm, and then – we break them from September to November, and then we lay them up until sometime in February. The first ones go to the training center in Virginia then, and then we bring them into the racetrack anywhere from April 15 on into September.
And then that's one part of the operation. The other part of the operation is where we get together a bunch of people and we ask them to put up so much money.

And back when we could buy a decent horse for $50,000, typically you'd have a partnership that would go anywhere from $250,000 up to $500,000. And you'd have six, seven horses in there. And then you'd have your money for your training operation, insurance, and everything else, so it would be all up-front expenses paid.
Now, if you're going to get that many horses in, and the horses are the better horses in the sale, which we're trying to buy, are going to run $200,000, $250,000. You aren't going to find that many people willing to invest the increased amounts of money into the partnerships in Maryland.
Q. Let's turn our focus away from the actual operation of the horse farm and Helmore Farm and focus our attention now on the history of aircraft operations at Helmore Farm. You've already testified, I believe, in an earlier part of the direct examination with regard to the landing strip. Tell us about the landing strip. When was that created and what's the nature of the strip?
A. Well, the landing strip, Maury Paschal, who used to work for my father, used to be a pilot --

MR. NELSON: This is hearsay. He has no witness, no testimony – pardon me. The witness did not witness what he's about to describe. These events allegedly occurred before he even set foot on the farm. Well, he laughs. He's testified so under oath.
MR. KOTROCO: What's the basis of your knowledge? You learned from your father or –
THE WITNESS: Learned it from my father and also from Maury Paschal, in talking to him, and seeing his plane.
MR. NELSON: I object.
MR. KOTROCO: Do you want to respond, Mr. Barhight?
MR. BARHIGHT: These are administrative proceedings. We're trying to elicit the history of the aircraft operation from this witness. I'll be happy to back up and lay a further foundation, if that would be easier for you.
MR. KOTROCO: I don't think that's necessary. I'm going to overrule the objection. I'm going to give some leeway on the hearsay, which we always do in these

administrative hearings, and allow the witness to answer the question.

MR. NELSON: Let me just make one point, sir. I understand this is administrative, I understand all that. This is the critical issue in the case, and you're about to permit this witness to say my father told me this occurred, Maury Paschal told me this occurred. I'll establish on cross-examination that he wasn't even on the farm during the years this occurred. He never witnessed it himself. And then at the end of the day, my adversary will argue from this evidence to say his client is entitled to the nonconforming use. And so I think when you realize that it's the critical issue in the case, the normal rule that an administrative agency, that rules of evidence are more relaxed, I think needs to be examined.

MR. KOTROCO: I understand your position. At this time I'm going to overrule the objection. I'll allow him to give the answers. It may go to the weight that I give his testimony and what comes out on cross-examination.

MR. NELSON: Okay.

A. All right. Well, what my father has told me, phrase it that way, is that Maury Paschal, who I do know worked for my father --

Q. (MR. KOTROCO) How do you spell his name?

A. His last name is P-A-S-C-H-A-L. And it's Maury, not Marty. Okay. Maury worked for my father. He had a Tripacer that he owned and flew other types of airplanes. In 1955, Maury tried landing at the farm and found out the runway was too short in order to -- the distance he had was too short. There were power lines that ran through the bottom field to take electric down to an irrigation pump that was located in Jones Falls.

And so in '56 my father took out the power lines, ran power down to the pump underground. Then he also put in a higher well that was right back, in back of my father's house, and opened the field up. He also put in a drainage pipe to take the drainage area underground, and then created an area about 150 feet wide where Maury could come down through the whole field and create an airstrip.

Now, that situation was there up until in the mid '80s. I had Potts & Callahan come in.

Q. (MR. BARHIGHT) Let me go back and explore the 1956 time frame a little bit further. Have you had an opportunity to review the books and records of Helmore Farm?

A. Yes, right.

Q. And based upon that review, were you able to find any evidence of the capital expenditures for the changes?

A. Capital expenditures are in my father's capital books.

Q. And what year did that occur?

A. 1956.

Q. Okay. Now, to the best of your knowledge, were there any aircraft operations at Helmore Farm prior to 1956?

A. No, not to the best of my knowledge.

Q. And in 1956, there were capital expenditures made to create an airstrip at Helmore Farm?

A. Yes, right.

Q. Could you please approach?

A. Sure.

Q. And I want to make sure that the zoning

commissioner can see that area of the site plan that you're going to point to.

MR. BARHIGHT: Can you see this area?

MR. KOTROCO: Um-hmm.

Q. Step this way, and if you can point to the area where the capital improvements were made to create the airstrip at Helmore Farm.

A. Okay. Right through this area, here where you can see these peaks in here, it's like the low spot. There's a drainage area, a swale, that comes down through the barn. And right in here, from here across to here, approximately, is where we put in underground pipe so that the water would go underground and you'd have a flat surface to come across. And then that extended the length that you could land in, the whole 1,200 foot length of the field.

Q. The area that you were pointing to, is that in the area that's identified now as the special exception, special hearing area?

A. Yes, it is.

Q. Thank you. You were about to talk about the

1980s. What kind of aircraft operations occurred in the 1980s?

A. Well, back even before the 1980s, in 1972, and I think it was even into '71, the first time that I flew into the farm. And the first time we flew in there, Jan Bingham was with me, and he was flying the aircraft because we hadn't flown in there to that field with a 172 before. And we just touched and go'd in there, and then made one landing and then took off.

Then in '72, these -- Jan Bingham and Jeff Brinkerhoff were two instructors of mine, teaching me to fly out of College Park Airport, by the way. In '72 we started coming up on a regular basis and landing in the field. When we'd take off from College Park, it was someplace to go to to land, and then be there. And we'd go up and be at the farm until afternoon. He had an interest in the horses, and we'd go through what we were doing with them, just check on the operation, because I was down at College Park, going to school. And then we were flying fixed-wing and helicopters in there from that point.

Q. Now, so that the record is clear, did you personally pilot fixed-wing aircraft --

A. Yes.

Q. -- to this location?

A. Right.

Q. And about what years did that fixed-wing aircraft activity occur where you were the pilot?

A. '72 to '78.

Q. And you've already mentioned that there were some helicopter operations where you were actually the pilot?

A. Right.

Q. And can you tell us more about that, please?

A. Back in those days, it was just taking cross-country flights, someplace to go. Or also occasionally I'd take the helicopter. We'd go to the Eastern Shore. My father used to keep his yacht over there. He used to own a big cattle farm over there at Tolchester. And I knew several girls over in the area, and I'd take the helicopter, pick them up, bring them back for University of Maryland football games and stuff.

Q. (MR. KOTROCO) Trying to impress the ladies?

A. Oh, yeah, back in those crazy days.

Q. You all owned a helicopter?

A. No, we did not own it. These were helicopters that I got from College Park Airport. And the fixed-wing planes, we didn't own the planes either.

Q. (MR. BARHIGHT) To the best of your recollection, were there ever any aircraft, whether they are fixed-wing or helicopters, that were actually housed at Helmore Farm?

A. No. We never kept planes there. They would be there maybe -- oh, I think Dave Good had his plane on the ground for three, four days at a time one time.

Q. Bringing up past in the 1970s, into the '80s and '90s, what kind of operations occurred with aircraft, fixed-wing nature or helicopter, in the '80s, that you can recall?

A. In the '80s occasionally we would have to fly to the races, because we didn't have enough time. If you've got to train horses in the morning down at Laurel, and then get back here and then the first race starts in New York anywhere from 12:30 to 1:00, you just don't have enough time to get up there. So it would be times when

you would take a fixed-wing or helicopter up there.

Q. And you did that personally?

A. Yes.

Q. Did others associated with the farm do that as well?

A. Yes.

Q. Let's come up into the 1990s now. Tell us about the operations of any aircraft at Helmore Farm in the 1990s.

A. In the 1990s, I've got the one guy, a friend of mine that I used to ski race with, Dave Good, who owns Ski Accessories Corporation, he has flown in, I think, since '83, just come in like once a year, just to stop and visit with us. Or he has to go to Washington on occasion to do patent work down there, and he'll stop at the farm and leave the plane there and then take one of my cars and drive over.

And other than that, we've had planes come in to pick me up, to go to either Monmouth Park, we fly into Teterboro, or Aqueduct, Belmont, we fly into Kennedy and then take a taxi across, or somebody picks us up there.

Q. In most recent times, in the last year or so, have you made your farm available for a gentleman by the name of Mr. Grass?

A. Yes, I have.

Q. Could you please briefly describe the nature of those operations to the zoning commissioner?

A. Okay. When I first met Martin Grass, I was coming back from the racetrack, and I saw his helicopter landing over by his house over on Greenspring Avenue. And I just stopped and watched it come in and out. And I was talking with his driver, who had taken him from his house over to where they were taking off, and he was telling me that they had, you know, aspirations of maybe making a helisite there and being able to fly out of there.

And I said, Well, I don't know what's going to happen with your operation here with the zoning law, but if you have trouble here, I said, I've got a grass airstrip on my place that we've had for a long time. You can come over and fly out of there, if you want.

And he, at that point, I guess it was probably about ten days later, contacted me, asked me if he could

use it. And I said, Yeah, sure, come on over, you can fly out of here, it's no problem.

Q. Can you please briefly describe the nature of Mr. Grass's operation in detail? Approximately how many times a day would he use the facility?

A. Usually he goes out about 8:00 in the morning, and he'll usually come back around 6:30 at night. It could be anywhere from 5:30 to 7, but usually it's between 6 and 6:30.

Q. Do you have any children?

A. Yes.

Q. How old are they?

A. I've got three children: a 16-year-old boy, 13-year-old boy, and a 2-year-old girl.

Q. What is the reaction of your children to the usage of the helipad by --

MR. NELSON: Objection. I'm sorry, go ahead.

Q. -- of the helipad by Mr. Grass?

MR. NELSON: Objection.

MR. BARHIGHT: I'm not asking what they said; the reaction he has seen. This is all personal knowledge.

MR. KOTROCO: What's the basis of your objection?

MR. NELSON: I've heard this testimony before, and we're leading to hearsay testimony as to what the children have said.

MR. KOTROCO: Well, he just said he doesn't want him to say what they said, he wants, I guess, what his observations of the children were when the helicopter comes and goes.

MR. BARHIGHT: That's exactly right.

MR. KOTROCO: I'm not so sure --

MR. NELSON: I have no objection to that question, but I do object to hearsay testimony as to what the children said.

MR. BARHIGHT: I'm not asking him to say what the children said.

Q. (MR. KOTROCO) What observations have you made of the children as the helicopter comes and goes? Do they ooh and ahh?

A. Well, I mean, it comes and goes on a regular basis now. And, I mean, at first they were excited by it, and generally it's just become, it's just an everyday

occurrence now. It's the same as -- we have helicopters fly over every day, planes, jets fly over. We're right in the landing pattern for BWI. The state police helicopter flies over every day. And there's so many of them, you can't tell one from the other, basically, now.

And when it comes in, when it lands there, I mean, there may be a little increase in noise and the little girl, she wants to see it. But sometimes we can't even hear it coming, really, basically. And it makes a little more noise when it takes off, and she'll go running, You didn't tell me it was here, you know.

Q. Well, it's not stored on the property?

A. No, it's not stored.

Q. The pilot comes, lands on your property, waits for Mr. Grass, he gets on board, and then they take off?

A. Yes, sir.

Q. Does it continue to run the whole time that they're waiting for Mr. Grass?

A. Well, from the time it clears Falls Road and touches down, Mr. Grass is always there waiting for it. He gets in, and it clears Falls Road again, between three

and four minutes.
Q. Okay.
A. And a couple of occasions where they haven't been there, if he lands and they aren't there, he shuts it off immediately.
Q. So if he's late getting there, he'll shut it down and then start it back up?
A. Start it back up. But it comes right back up. It's not like the old ones where you have to have it running a while.
Q. (MR. BARHIGHT) Mr. Lucas, notwithstanding the most frequent operations at the farm that relate to Mr. Grass, okay, that resulted in some degree of interest in the public and the press, on a going-forward basis -- obviously we're here for a petition for nonconforming use and petition for special exception. Is it your intention, as the general manager of Helmore Farm, to continue aircraft operations and an airport at this location?
A. Absolutely, irregardless of Mr. Grass's flying in and out. We have to attract out-of-state clients to the business here in Maryland, or the small horse farm

operations are just going to go by the wayside. You can't maintain an existence on horses running for $5,000, $8,500 value. There just is no way you can make it. They don't earn enough income. You've got to concentrate on the stake horses, $25,000 and up, claiming horses. And these are the type of horses that a person like a Mr. Angelos is wanting to be involved in, Mr. Rosenberg. They're the local ones that we have gotten, but there aren't enough of them around to make a go. So what we have gotten is people like Mickey Steinberg, who is head of Sony Entertainments Construction. He built EuroDisney for Disneyland. And these are the type of people that we're getting now and have gotten now.
Q. (MR. KOTROCO) For the most part, they arrive by fixed-wing aircraft; is that right?
A. They would arrive -- well, Mickey, when he comes down, he'd leave from the PanAm building in New York and then fly right into the farm and then be there.
Q. By helicopter?
A. By helicopter, right. You can come right from the center of New York City right into the farm. And it takes about an hour and 25 minutes, I think it is.
Q. Okay. Prior to Mr. Grass landing at your operation, your farm, were you receiving complaints and so forth of the fixed-wing planes that used to come in and the helicopters?
A. No, no. It was intermittent. It could be months apart. Somebody would see it and say, you know, it's there, but, you know, like I say, the noise is no more significant than what happens every day, you know, a dozen times a day. So it's nothing to make it stand out.
MR. KOTROCO: Okay.
Q. (MR. BARHIGHT) Mr. Lucas, with regard to your proposed operation on a going-forward basis for the airport, are there any restrictions that you're suggesting to the zoning commissioner?
A. Yes.
Q. Could I ask you to stand down again?
A. Sure.
Q. And are those restrictions identified in special notes shown on Petitioner's Exhibit No. 2?
A. Yes, they are.

Q. Could you please turn and just please briefly describe those eight conditions to the zoning commissioner?
A. Okay. Well, what we have done is say that these are restrictions that --
MR. KOTROCO: Let me interrupt you for just one moment. As I've indicated, I'm keeping an auditory transcript also with these tapes, so from time to time I have to put a new one in the recorder. Okay, go ahead.
MR. BARHIGHT: So you can follow along, this is a revised plan that has the notes on it. It's been identified as Petitioner's Exhibit No. 2.
Q. Mr. Lucas, are the notes that you're going to describe already identified on what has been marked for identification purposes as Petitioner's Exhibit No. 2?
A. Yes, they are.
Q. Why don't you go ahead and describe each of those.
A. Okay. There will be, No. 1, There will be no fueling of aircraft at the airport. There will be no aircraft storage at the airport for more than 14

consecutive days. There will be no aircraft repair at this airport, except emergency repair. There will be no sale of aircraft at the airport. The hours of taking off and landing aircraft will be between 7 a.m. and 10 p.m. The airport operation shall not exceed 65 LDN acoustical criteria. The airport use shall be limited to no more than eight fixed-wing aircraft events per day and eight helicopter events per day. An event consists of landing, idling, take-off and fly-by. The airport shall meet the Zoning Commissioner's Policy Manual, ZCPM, Section 420.1, page 4-85, in regard to helipad construction and safety standards approved May 13, 1993.

Q. Now, you're not an acoustician, are you?

A. No.

Q. So you can't testify about what 65 LDN means?

A. No.

Q. Are we going to have an expert to provide that detail?

A. Yes. Kevin Miller.

Q. And I assume that you're not an airport expert or civil engineering expert as relates to airports?

A. No, I'm not.

Q. And you can't describe in detail the construction and safety standard requirements in the Zoning Commissioner Policy Manual?

A. No, I cannot.

Q. Are we going to have an expert testify about that detail?

A. Yes, we are.

Q. You can go ahead.

Q. (MR. KOTROCO) Do you have nighttime landings at the farm?

A. Nighttime in the sense that sometimes they're after dark, but generally daytime operation is described as 7 to 10 year-round.

Q. Well, on the airstrip, that's not lighted, is it?

A. No, it's not.

Q. Have you had fixed-wing aircraft come in at *night*?

A. Yes, we have. They have their own lights, and they can see basically where they're coming in.

Q. Just from the lights on the plane –

A. Lights on the plane light it up.

Q. -- is enough to light up the field for them to know where to land?

A. Right.

Q. And some have done that?

A. Yes. Dave has done that. I know at least two occasions where he's done that.

Q. The helipad or the area where the helicopter would land, is that lit up in any fashion?

A. It is not lit up now.

Q. Is it proposed to be lighted?

A. Yes. We're proposed to meet any requirements they want to put upon us.

Q. Okay.

MR. BARHIGHT: And to proffer, there are witnesses that are going to testify about that in great detail. The Zoning Commissioner Policy Manual has some requirements about lighting, marking, and we'll get into all that detail. Mr. Lucas doesn't have personal knowledge of those details.

MR. KOTROCO: Okay.

Q. (MR. BARHIGHT) Mr. Lucas, I believe you already explained why you want the airport use, so I won't ask you that question. Again, do you believe the airport use will there have any detrimental impacts at all on your thoroughbred horse farm?

A. Absolutely not. As a matter of fact, when the two gentlemen from Planning and Development came out to see for themselves what was going on, they were standing there as the helicopter came in. And if you can see in the one photo where the helicopter pad is, and then to the left of that, or the north of it, right by the turnout shed, that's where the horses come in to feed every day. The horses were in there eating in the morning, and they didn't even pick their heads up from their feed containers to even pay any attention to what was going on. As a matter of fact, in the summertime, they'll try to run under it because it will blow the flies off them. So they kind of like it.

Q. When you say under it, you mean an aircraft, a helicopter or a fixed-wing aircraft?

A. A helicopter I was talking about.

Q. Excuse me one moment. You said somebody from Planning and Zoning came out?
A. Right.
Q. Do you recall the name of the individual that came out and saw the operation?
A. Well, one was Jeff and --
THE WITNESS: Dave, you were there. What was --
Q. He can't tell you. If you recall. That's okay.
A. Jeff was one of the guys, and I don't remember the other guy's name.
MR. BARHIGHT: Excuse me one moment, please.
Q. I forgot to ask a question in the beginning. How many acres are at Helmore Farm?
A. Well, we've just had it surveyed for -- and also for several other reasons, and there is a debate now, somewhere between 86 and 88, maybe as many as 89 acres.
Q. So approximately 86 to 89 acres?
A. Right.
MR. BARHIGHT: No other questions of this witness at this time.
Q. (MR. KOTROCO) How much has been set aside for

the special exception request, how many acres? Either of you can answer.
MR. BARHIGHT: Mr. Matis knows. If you'll wait just a moment, I'll proffer that. 45 acres, plus or minus.
MR. KOTROCO: Any other questions, Mr. Barhight?
MR. BARHIGHT: None during direct examination. Thank you very much.
Q. Mr. Lucas, from your testimony -- I'm going to ask a couple of questions, and then Mr. Nelson will have an opportunity to ask some questions. From your testimony, I gather your business is dependent on the airstrip to bring businessmen and colleagues in and out of your farm?
A. Increasingly so, yes.
Q. And to your knowledge, other than the historical usage of the property always having the airstrip and using it for fixed-wing and helicopter landings, you never really came in for an official hearing or an official approval to get that usage?
A. No. And one reason in particular is, okay,

nobody ever said anything about it. We didn't know that there was a requirement, because there was also an airstrip up in Worthington Valley at St. John's farm that had been built by Mr. Vanderbilt when he used to fly down from New York to the Sagamore Farm operation. And there was another one up in Butler. And nobody had ever said anything about them having requirements.
And I even ran Sagamore for awhile, and we had clients flying into St. John's airstrip there, and nobody ever requested anything be done with that. And specifically when we went into the ag preservation trust program, I asked them, I said, What kind of restrictions are placed on us? And they said, Well, basically anything that you're doing right now, you can continue to do.
And I said, Then how about if there's something I want to do we aren't doing now? They said, Well, then you need to tell us about it, and we'll put it on the documents. And so I requested that I have the right, in the wooded area on the other side of Jones Falls, to put in an aquaculture center and build ponds or even buildings back there to handle the growing of fish, which was kind

of emerging at the time. So we noted that. But they said anything you're currently doing, you don't have to do anything with, because it's already in your operation.
MR. KOTROCO: Okay. Mr. Nelson, cross-examination?
CROSS EXAMINATION
BY MR. NELSON:
Q. Mr. Lucas, help me here with some basic facts.
A. Okay.
Q. Do I understand you to say, sir, that the strip where you landed the plane between 1972 and 1978 is not the same location as the holding pen where you now permit Mr. Grass to land his helicopter?
A. It's the same area. We have two different directions we can go in. That's why --
Q. My question, sir, was not whether it was the same area, but whether it's the same land.
A. Yes, it is the same land. If you'll let me answer the question --
Q. Is it the same pot?
A. -- I'll tell you how. Okay. Through the center

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of the airstrip there's 1,200 feet, the length of the airstrip. That's all the way across the bottom field. Okay. If you go corner to corner, obviously you increase the length. That is why in 1986, I think it is, we had Potts & Callahan come in and extend the pipe all the way across the bottom part of the field, so that we could take off corner to corner. And so that is right in the corner where we go on a diagonal to take off across the field.

Q. My question, sir, it's true, is it not, that you have a fence surrounding a holding pen where Mr. Grass now lands his helicopter?

A. That's correct. That's the catch pen area for doing the blacksmith work on the horses contained in that bottom field.

Q. Now, do you intend to land your airplane within that catch pen, sir?

A. No, we do not, because across the center of the field now the trees have gotten to such a height at the end of the field on that end --

Q. On which end, sir?

A. On the west end -- that when the planes come in

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and out, they've got to take off before the area where that catch pen is.

Q. Now, we can agree, sir, can we not, that you have no personal knowledge, meaning you didn't witness with your own eyes, a plane landing at Helmore Farm prior to 1972?

A. In '71, the one I came in with Jan flying the plane, yes. That was just one time.

Q. Prior to that?

A. Prior to that, no.

Q. All right. And you will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at Helmore Farm?

A. No.

Q. With respect to the helicopter, it's true, is it not, that you can't say under oath that a helicopter has landed there every year since 1989?

A. Every year, except '93 I'm not sure. And I've contacted Jim Platt to fly in and out of there for 15 years to pick up people, and he doesn't have records that would let him know one way or the other.

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Q. So I understand you to say, sir, that you cannot say that a helicopter has landed there every year since 1989; is that right?

A. That's correct.

Q. Now, you suggested to Commissioner Kotroco in response to his inquiry, Well, you never sought formal approval to land an airplane or helicopter at your site, did you, sir, prior to this proceeding? you said no, and the implication was that you thought it was appropriate; is that right?

A. Yes.

Q. Now, you mentioned the ag program, I believe?

A. That's correct.

Q. Did you tell the ag program that you had an airstrip at the farm?

A. Absolutely.

Q. You did. Did you have your property appraised in order to submit the land to the ag program?

A. Yes, we did.

Q. Did you list on those appraisals or communicate to your appraiser the improvements to your property?

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A. We listed the physical building improvements to the property, yes.

Q. Did you list the airstrip?

A. An airstrip is not a building, considered an improvement to the property.

Q. If we were to look at the appraisals -- of which there are three, are there not?

A. Yes, I think there are.

Q. -- would we see the word "airstrip" there?

A. No, because it's same thing as the field. It is a grass airstrip.

Q. Would we see the phrase "helicopter operation"?

A. It's not an improvement.

Q. My question, sir, is if we read those three appraisals, would we see that phrase?

A. No.

Q. Would we see the word "helistop" anywhere in those three appraisals?

A. No, you would not.

Q. Now, you mentioned -- one moment, please. You mentioned that some people from the Office of Planning and

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Zoning came to your farm; is that right?
A. That's correct.
Q. And one was a man whose first name was Jeff; is that right?
A. That's correct.
Q. That would have been summer of 1997?
A. Yes. Well, no, that was just a few weeks ago.
Q. A few weeks ago?
A. Right.
Q. Now, let's talk for a moment about the syndicates.
A. Right.
Q. Is Mr. Rosenberg a member of your syndicate?
A. He has been. Currently he's got so many of his own horses, he's not in the partnerships right now.
Q. Is he from Baltimore?
A. Yes, he is.
Q. Now, when he comes to visit your farm, or when he used to come and visit your farm, would he fly in a plane and land on the bottom field of your property, or would he get in the car and drive to Greenspring Valley Road?

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A. He gets in a car and drives. He lives right down the street.
Q. All right. So we can agree, can we not, that Mr. Rosenberg wouldn't not join your syndicate if you did not have the airstrip?
A. Obviously not, living on the same street in the same neighborhood.
Q. Is Mr. Angelos a member of a syndicate now?
A. Not any of our syndicates, but he is a member of -- wait a minute. I'm not sure that he is out of any partnerships with anybody else. He may have all of his own horses now.
Q. But we can agree that Mr. Angelos, if he were to join your syndicate or if he wanted to look at your operation, would not find it necessary to fly in a plane to your bottom field?
A. No. Being a local person, no.
Q. How many members --
A. But I can tell you that if he goes up to New York for the Wood Memorial, that he may fly out of our farm to go up there to that race.

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Q. You would let him do that?
A. Yes.
Q. Has he ever done that?
A. He has not done that yet, no.
Q. Now, your syndicate program started in 1989?
A. '89, right.
Q. And you've had tremendous success, at least through '96.
A. Right.
Q. Now, since '89, what's the largest number of members of the syndicate you've had?
A. Since '89?
Q. Any one time, not total. But how big a syndicate is it?
A. We have had 20, 25 people in one syndicate.
Q. And in the last two years, what's the largest number of members of a syndicate that you've had?
A. Six. That's how dramatically the numbers have declined of available people due to the increase in the price of horses.
Q. Of those six members in the last few years, how

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many are residents, meaning how many live in the state of Maryland?
A. In the last how many years?
Q. Say three years.
A. In the last three years, let's see, currently we've got six people in that time period, or seven, that would be out-of-state residents. The rest would all be in state.
Q. How many are in state?
A. In state, if you're going back that far --
Q. Three years I'm going back.
A. Three years, probably 12.
Q. All right. How many members of your syndicate do you have now?
A. Now?
Q. As we speak.
A. Right now, in Big Motor Scooter there is --
Q. I didn't limit it to a particular horse --
A. -- four people.
Q. -- but in all your syndicates.
A. Well, he's the only racing syndicate we've got

going now.
Q. I didn't know that.
A. Right. And then breeding syndicate, brood mare Camaland (phonetic), there are four people in on that.
Q. So a total of eight?
A. Some of them are the same on both horses.
Q. Of that group of people you just identified, how many live, reside, not work, in the state of Maryland?
A. Half of them, four of them.
Q. Who are they?
A. Let's see. Bobby Kirchner, Leonard Farbman. Jim Hall lives in Washington. Bobby Kirchner, Bobby and Al Kirchner. They split a unit. More of them are out-of-state than I thought.
Q. How about Mr. Grass, is he a member of your syndicate?
A. Mr. Grass is a member of some -- well, it's a partnership between he and my father on valued horses. He owns 25 percent of eight different horses with my father.
Q. So Martin Grass owns 25 percent of eight horses owned by your father?

A. Right.
Q. When did that business relationship begin, Mr. Lucas?
A. Last year, in October.
Q. October 1997?
A. Right.
Q. How much did he invest in those eight horses?
MR. BARHIGHT: Objection.
MR. KOTROCO: What's the relevance of that?
MR. NELSON: Bias. This man has just come to this court and told you that I need this operation because I'm going down. I've now learned, contrary to his prior testimony, that Mr. Grass has invested in eight of these horses. I'm entitled to find out how much money Mr. Grass has invested.
MR. BARHIGHT: I certainly have to object to the invective. It's not contrary to any of his prior testimony.
THE WITNESS: Absolutely not.
MR. NELSON: I disagree.
MR. BARHIGHT: And if I may be heard, I allowed

you to speak freely without being interrupted, and I'd ask for the same courtesy.
And obviously irrelevant to dollar amount that might be involved in any of these transactions. The relevance relates to only whether they are in or out of state, and the direct examination testimony with regard to whether they might need to have the opportunity to fly in and out. The dollar amounts are clearly irrelevant to these proceedings.
MR. NELSON: The witness spent 15 minutes describing the price of a horse in 1989, $50,000, skyrocketing to two to two-fifty in 1996, how that has changed the whole dynamic of his business. It ties into that, it ties into the whole motivation of this proceeding.
I will proffer to the Court that two weeks after Mr. Grass invested in this syndicate, he landed for the first time at this farm, according to the zoning violation.
MR. BARHIGHT: Objection. Thanks, but you're not allowed to testify. I object.

MR. NELSON: Well, I'll proffer --
MR. KOTROCO: I understand that. It doesn't matter how much he invested. The fact of the matter is two weeks after he did invest, you're indicating that he started landing. He didn't ask how much Rosenberg or any of the others invested. I don't know why it's relevant to find out how much Mr. Grass has invested. I know he's landing his helicopter there.
MR. NELSON: It goes to bias, sir.
MR. KOTROCO: I think you've established there is a partnership between Mr. Grass and Mr. Lucas's father on eight horses, and I think that's enough to show, if you're alleging a bias, and that's enough to show it. Whether he's invested a million dollars or $10,000, the relationship is there, and I don't think the dollar amount is particularly relevant. So I'll sustain Mr. Barhight's objection to the question.
Q. Mr. Lucas, you told us about this conversation you had when you bumped into Mr. Lucas (sic) one day and you said to him you can land at my operation. Do you recall that?

A. Right.
Q. Was that in October or earlier?
A. Earlier.
Q. So it was after that conversation where you invited him to your operation that he elected to invest in eight of these horses, 25 percent?
A. It was considerably after the first time he landed there.
Q. That wasn't my question. The investment was before or after he landed?
A. After.
Q. When was the first time he landed?
A. I don't have an exact date. I don't know.
Q. But you do know that he invested in the horses in October 1997?
A. Right. I think the first time was back in July, I guess.
Q. (MR. KOTROCO) Do you have notes that would refresh your recollection of that?
A. No, I don't, no, as to the first time.
THE WITNESS: Susan or Doug, do you know when the

first time was he came in there?
MR. NELSON: I object.
MR. KOTROCO: I'll sustain the objection. If you don't know, it's okay. Just say you don't know.
A. It was back in the summer.
MR. NELSON: One moment, please. Mr. Kotroco, may I have just 30 seconds to confer with my clients, please?
MR. KOTROCO: Take your time.
THE WITNESS: Could I talk to my attorney for a second?
MR. KOTROCO: No.
MR. BARHIGHT: No.
MR. KOTROCO: Not until you're done testifying.
THE WITNESS: Okay.
MR. NELSON: That's all I have of this witness.
MR. KOTROCO: Let me ask a couple of questions, Mr. Lucas.
THE WITNESS: Yes, sir.
Q. Where is Mr. Grass's helicopter stored?
A. At Baltimore-Washington International airport.

Q. So his private pilot will come from BWI to your farm, pick him up, and take him to his business?
A. Right, take him to Harrisburg.
Q. Does the pilot utilize the exact same flight patterns in and out of your property?
A. He is using the same flight plan now. What we've tried to do is devise a flight plan that causes the least amount of impact on the surrounding community. And we think we've done that, using acoustical equipment and, you know, looking at it that way.
MR. KOTROCO: Speaking of acoustical equipment, don't bang your hand on that microphone.
Q. Okay. The flight now, did you have to put a flight plan on record with the FAA, or anything, for your particular operation?
A. We have filed with the FAA, and it's currently undergoing review. We should have the stuff back pretty soon, if everything is okay.
Q. Is that for your fixed-wings plus the helicopter also?
A. Yes, it is.

Q. For everything?
A. Right.
Q. Bud you'd never done that in the past?
A. Right. This is the first time we knew it had to be done, so we immediately started to get everything done that needs to be done. So we're trying to be in full compliance.
Q. So anybody, if I had a private airstrip in my backyard, technically you're supposed to the put something on record what the FAA to let them know what you're doing?
A. Right, take off and landing patterns, which I just recently found out.
MR. KOTROCO: Mr. Barhight, do you have any other witnesses who are going to talk about flight patterns and so forth? You do, other than Mr. Lucas?
MR. BARHIGHT: Yes.
MR. KOTROCO: Okay. We'll wait and hear from those folks then.
Mr. Nelson, any other questions based on my couple of questions?
MR. NELSON: Yes.

Q. (MR. NELSON) Mr. Lucas, when did you submit the documentation to the FAA?
A. I think it was February, the middle of February.
Q. Of '98?
A. Of '98 is when some went in, some went in before that.
Q. I beg pardon?
A. The last batch of stuff all went in in the middle of February, I think, like the 22nd or something.
Q. When is the first time you began that process?
A. Began it?
Q. Yes.
A. As soon as we found out that there was something like that that could be required.
Q. When was that?
A. That was shortly before that. We didn't know that anything was really required at that point.
Q. '98? '97?
A. '98. I think it was in January I think we found out that stuff like that might need to be required, so we started submitting all of that.

Q. Did you submit anything to the Maryland Aviation Administration?
A. I don't know if we have or not.
Q. Let me ask you, who is doing that work for you?
A. Well, Mr. Lamb, airport consultant, is doing some of it, and some of it has been done by pilots.
Q. Now, are Mr. Lamb and the pilots going to testify? If so, I'll leave this for another --
A. Mr. Lamb is going to testify, yes.
Q. Does Mr. Lamb have knowledge of these facts?
A. Yes, he does.
Q. Then I'll explore it with Mr. Lamb.
MR. KOTROCO: Any redirect?
MR. BARHIGHT: Just one, quickly, so there wasn't any question. My notes weren't quite clear.
Q. (MR. BARHIGHT) Approximately when did Mr. Grass start landing his helicopter?
A. I think it was back in July, end part of July.
Q. Of what year?
A. Of '97.
Q. And approximately when did you offer the airstrip for his use?

A. At that point.
MR. BARHIGHT: Okay. No other questions.
MR. KOTROCO: Okay. You may step down.
THE WITNESS: Okay.
MR. KOTROCO: Next witness?
MR. BARHIGHT: Mr. Lamb.
MR. KOTROCO: Come on up and raise your right hand, please.
Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?
THE WITNESS: I do.
MR. KOTROCO: Have a seat and state your name and your address for the record.
THE WITNESS: Charles Lamb. I work with Delta Airport Consultants, 733 White Pine Road, Richmond, Virginia.

CHARLES LAMB,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was

examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:
Q. For Mr. Nelson's benefit, can you state again where you work?
A. I work with Delta Airport Consultants.
Q. Mr. Lamb, can you please briefly explain your educational background?
A. Graduated with an undergraduate agree from North Carolina State University, with honors, in 1976. Obtained my master's from Virginia Tech in 1981.
Q. What was the nature of the degree that you got from North Carolina State?
A. That was a degree in civil engineering.
Q. And the nature of the master's of engineering degree?
A. That was also in civil engineering. My paper was on air transportation planning.
Q. Do you have any children?
A. Five.
Q. What do you tell them that you do all day?

A. Design airports.
Q. (MR. KOTROCO) You design airports?
A. Yes, sir.
Q. (MR. BARHIGHT) Okay. And is it fair to characterize you as an airport engineer?
A. Yes, it is.
Q. Do you have any registrations as a civil engineer in any states?
A. I'm registered as a Professional Engineer in Maryland, have been since 1981. Registered in 13 other states.
Q. Would you please briefly explain your professional experience after you've gotten out of school, in airport engineering and designing airports?
A. Well, through school I was a professional pilot. After school I started, for three years I worked for the Virginia Department of Aviation doing airport design, planning, environmental work. At that time, in 1979, I joined the firm I'm currently with as an airport engineer. Since then I've become a principal in the firm, and now vice-president and chief financial officer of the company.

Q. Could you please briefly describe your activities day-to-day?
A. Day-to-day, I have 35 people that I supervise. Approximately half of them are engineers. Day-to-day is airport design, planning, environmental work.
Q. What is the nature of the consulting work that Delta Airport Consultants does, just generally?
A. We are an airport engineering firm. That's all we do. We do airport master planning, airport design, and environmental work.
Q. Ever worked on any Maryland airports?
A. Yes. In fact, our second client was Easton, Maryland. We're still doing work there. Working at Carroll County; Salisbury; Hagerstown; Frederick, Maryland, to name some of them.
Q. (MR. KOTROCO) For the municipalities? You do work for the city governments, as well as individuals?
A. Primarily for municipalities or airport authorities, airport commissions.
Q. (MR. BARHIGHT) It might seem obvious, but I'll ask the question anyway. As an airport designer, what are

the kind of issues that you concern yourself? What are the things that you do in order to properly design an airport?
A. FAA design standards, safety requirements, environmental factors, aircraft operations.
Q. And you're familiar with all those on a day-to-day basis?
A. Work with them on day-in, day-out basis.
Q. Have you ever testified previously before any board, commission, or court as an expert in airport engineering or airport design?
A. Yes, I have.
Q. Could you please briefly describe those occurrences to Mr. Kotroco.
A. I've testified in Easton on several zoning hearings. I've testified on a number of cases in Virginia, also in Lancaster, Pennsylvania.
Q. Are you also a pilot?
A. Yes, I am.
Q. Are you licensed to fly both fixed-wing and helicopter aircraft?

A. Both fixed wing and helicopter, yes.
Q. Are you also a flight instructor?
A. Yes.
Q. And what kind of aircraft are you allowed to instruct?
A. I've got my multi-engine and instrument and single engine instructor's certificate.
Q. Does that only relate to fixed wing?
A. Yes, it does.
MR. BARHIGHT: I'd like to offer Mr. Lamb as an expert in the field of airport engineering and airport design.
MR. KOTROCO: Any voir dire?
MR. NELSON: I'll reserve it for my main direct. But I have no objection to qualifications.
MR. KOTROCO: I'll accept him as an expert in airport engineering and design.
MR. BARHIGHT: And airport design, please.
MR. KOTROCO: Okay.
Q. Mr. Lamb, are you familiar with the subject site?
A. Yes. I've visited it twice.

Q. Have you had an opportunity to review the grounds?
A. Yes, I have.
Q. And how have you viewed the site, in what ways?
A. I've walked the site, I've driven to the site on March 31. I've also flew in, in a helicopter, on March 16, so I got an aerial view of the site, also, and the surrounding areas.
Q. That's my next question. Are you familiar at all with the surrounding area?
A. Yes, from those observations.
Q. What else did you review, other than just looking at the area with your own eyes?
A. Brought some engineering instruments to confirm approach slopes, dimensions, position of the airport.
Q. Have you reviewed any maps or any other aerial photographs?
A. Yes. I've reviewed the government 7 1/2 minute quadrangle sheet, reviewed the plat of the property that's been prepared showing the airfield. I've also reviewed some local highway maps of the area.

Q. Have you had an opportunity to review the plan that's identified on the board as Petitioner's Exhibit No. 2?
A. Yes, I have.
Q. Are you familiar with the proposed restrictions that have been identified by Mr. Lucas?
A. Yes, I am.
Q. Are you familiar with the Zoning Commissioner Policy Manual, Section 420.1, page 4-85, that relates to the helipad construction and safety standards?
A. Yes, I have reviewed that.
Q. Are there any FAA requirements or restrictions that you've had an opportunity to review with regard to this case?
A. I've reviewed the FAA's advisory circular for airport design standards, 150 5300-13, and it also references advisory circular 150 5300 90-2A for heliport design.
Q. What is an aircraft?
A. Aircraft is a --
MR. NELSON: I object.

MR. KOTROCO: Basis?
MR. NELSON: Well, I don't know, but I can predict he's going to say an aircraft is a fixed-wing airplane and a helicopter. This is a legal issue, a central issue in the case. I guarantee you the witness will say that, and it's not proper.
MR. KOTROCO: I'm going to sustain the objection. You can ask him if it's defined in the zoning regulations. I mean, I don't know where he's getting the definition from.
Q. In your field, what is an aircraft?
MR. NELSON: I object.
MR. BARHIGHT: I'm not asking him for a legal conclusion, I'm asking in his field, when the word aircraft is used, what does it mean.
MR. KOTROCO: I'll allow that.
A. According to ICAO and the FAA's pilot controller handbook, the definition of an aircraft is any machine that can derive support in the atmosphere from the reaction of air, other than the reaction of the air against the earth's surface.

Q. Okay.
A. So it's a very broad term.
Q. Does that include fixed wing?
A. Yes, it does.
Q. Does that include helicopter?
A. Yes, it does.
Q. Can you please briefly describe the proposed airport operation at Helmore Farm?
A. It's a restricted use, privately owned, private use airport that can accommodate a limited subset of the smaller, single-engine aircraft.
Q. Okay. Could you please go to the board and identify the flight path and the landing area for fixed-wing aircraft.
MR. BARHIGHT: And the witness has been referring to Petitioner's Exhibit No. 2.
A. Typically, the pilot would enter on a downwind, on a 45-degree angle, by a left downwind about a half mile from the landing strip, turn a base, then turn final approach, and land on the facility.
For takeoff, you would normally take off, go

straight out, or take off and make a left-hand, 45-degree turn. That could be -- the pattern could be either Runway 8 or Runway 26 to either end of the facility.

Q. What does that mean? You say Runway 8 or Runway 26. What does that mean?

A. Typically you'll name the runways by their magnetic headings, so you can tell while you're in the air whether you're lined up with the correct strip or not.

Q. So does 8 and 26 relate to a mark on the compass?

A. Yes. 80 degrees and 260 degrees, roughly.

Q. While you're there, could you please identify the flight path and landing area for the helicopter operation?

A. From my observation and also when I flew in, we arrived from the east, and aimed for the airfield, and then parked in this corralled area right over here.

Q. Okay. Was that area fenced off?

A. Yes, it was.

Q. Could you please identify the FAA requirements with regard to this site and describe whether we meet those requirements?

A. For a privately-owned, private use facility, they

have some guidelines. Their only requirement is going to be air space. This facility, with some recommended modifications, will in fact meet and exceed FAA's suggested guidelines.

Q. Could you give us a general idea of what those guidelines are?

A. They are going to be looking for approach, at least one approach into and out of the facility, with 8-to-1 clear slope, 8 foot horizontal, 1 foot vertical. They're going to want some type of wind indicating instrument, such as a windsock would be a preferred type, on direction to landing.

Typically, although not required, it would be preferred to have a paved pad that is at least one and a half times the length of the skid on the aircraft for that. If you're going to land at night, they would like some type of lighting. Now, that could be floodlighting, street lighting, or edge lighting, the FAA for that. And also standard markings.

Q. You're familiar with the site as it exists today?

A. Yes.

Q. Could you please describe what improvements, if any, will need to be done to the existing site to meet the FAA requirements as you've described them?

A. None have to be made to meet FAA's requirements. To meet their suggested guidelines, they would recommend paving a takeoff, touchdown and takeoff pad. They would recommend installing a windsock. Their guidelines would suggest marking it in accordance with standard FAA guidelines, lighting it in accordance with standard FAA guidelines, building a pad. We'd also recommend expanding out the fenced area to about a 200-by-200-foot area.

Q. Approximately what is the size of the fenced area today?

A. About 160 feet by about 160 feet.

Q. You'd like it to be expanded approximately 40 feet in either direction?

A. Yes.

Q. Why is that?

A. Just to give the helicopters some more room to operate in and out of there, if in fact that is the aiming point that they are going to pick for landing at the

airstrip.

Q. Are you familiar with the Baltimore County requirements that are identified in the Zoning Commissioner's Policy Manual?

A. Yes. I have reviewed those.

Q. And could you please briefly describe to the zoning commissioner the nature of those requirements? I know they're detailed and they're a couple of pages, but what's the nature of those requirements?

A. They're not identical to the FAA's requirements, but they parallel, same type of issues: want two approaches coming in and out, want a concrete pad for the helicopter to touch down on, want it to have lighting and markings, want it to have a concrete pad for the aircraft to land on.

Q. With the recommended improvements that you've identified, will it meet the Zoning Commissioner's Policy Manual requirements?

A. Yes.

Q. Are there any special requirements, of which you're aware, in the Zoning Commissioner's Policy Manual,

that relate to aircraft operations, other than the helipad? In other words, are there any other extra requirements for fixed-wing operations, that you're aware of?

A. Not that I'm aware of.

Q. Okay. As an expert in the field of airport engineering and airport design, do you have an opinion as to whether the proposed airport use at Helmore Farm would have a detrimental impact on the surrounding area?

A. No, I do not feel it would have a detrimental impact on the surrounding area.

Q. Let me ask the question. Do you have an opinion about whether it would?

A. Yes.

Q. What is your opinion?

A. I do not feel it would have detrimental impact on the surrounding area.

Q. Can you please explain to the zoning commissioner why you have that opinion?

A. The facility now has an excellent approach in, excellent approach out. Very sparse agriculture use under

it, which is typically compatible. It's an excellent site for that type of operation. With the proposed improvements that are suggested, in my opinion, it's going to be an overbuilt site. It far exceeds customary or usual sites for a helicopter to take off and land.

Q. How about for the fixed-wing aircraft?

A. Limited. It's a turf strip, it's not all-weather. It's short, so only a subset of aircraft, like a J3 Cub, could come in and out of the facility. The type aircraft I flew up here today, for example, could not fly in and out of this facility. It's going to be mainly your slower 50 knot approach speed, single engine, piston type aircraft that can take off and land here, that have the capability to land on a shorter type turf strip.

Q. No jets, I assume?

A. No way.

Q. No Concordes going to be able to land and take off here?

A. No.

MR. BARHIGHT: I have no other questions of this witness at this time.

MR. KOTROCO: Cross-examination?

MR. NELSON: Yes, I'm prepared. Perhaps we could take a short recess.

MR. KOTROCO: May I ask a couple of questions, and then we'll take a short recess

MR. NELSON: Sure.

Q. (MR. KOTROCO) You indicated that in your opinion there were no detrimental effects of the helicopter coming and going or the fixed-wing aircraft coming and going from this property. What if my house were 100 yards due south of here and I lived there? I mean, that helicopter coming in and the noise it generates, would that have a detrimental effect on me, in your opinion, if I'm living there?

A. I'd have to go through the actual -- the FAA has got some guidelines for noise, what is compatible and what's not compatible.

MR. KOTROCO: Do you have somebody to testify about noise?

MR. BARHIGHT: Yes.

Q. Okay. I'm not going to ask you to get into that.

What about, how do I know -- let's say I live a couple hundred yards from this site, and right now it's not flying over top of my house, it's flying over my other neighbor's house, and I don't care about them so much as I care about myself. How do I know that in the future the pattern won't change and he'll start flying over top of my house? What guarantee do I have? Is there like a road map that's put on record with the FAA that says you shall come in this way and you shall leave this way?

A. For the fixed-wing aircraft, there is the aeronautical information manual that prescribes standard patterns for them to come into and out of the facility. By function they're pretty well restricted to coming on a final landing parallel to the runway and departing that same way. They have to have some altitude before they make their turnouts left or right.

On the helicopter, they are much more flexible, more mobility. Depending upon the wind or weather conditions, the site certainly could accommodate them coming in from different directions. In talking with the chief pilot for this one operation, they have a preferred

route in and a preferred route out, which is toward the east both ways.

Q. What makes it a preferred route?

A. Excellent approach, good visibility, lack of power lines, things like that.

Q. Right. Safest way in, safest way out, in his estimation?

A. Plenty of alternatives if they should ever have a problem.

Q. Is that preferred route put in writing? Or do you have a map of what the preferred route is?

MR. KOTROCO: Mr. Barhight, is there going to be a map submitted of what this preferred route is?

MR. BARHIGHT: If I might proffer, and Mr. Nelson can certainly object if I'm stepping out of bounds, the Baltimore County requirements require us to show two different helicopter approach and departure paths as being possible, and I believe that Mr. Lucas and Mr. Lamb have testified as to what the preferred route is. That's all that we would have at this point available to introduce into the evidence.

MR. KOTROCO: Okay.

MR. BARHIGHT: I'm not aware, in other words, of any FAA or MAA or county requirement of drawing that on a drawing. I just proffer that. I'm just not aware of any, and Mr. Lamb can certainly correct me if I'm wrong.

Q. Are there certain rules about when you come in or leave by helicopter that you have to go a certain height before you can start going in a horizontal direction? I mean, can you just go 20 feet above people's houses and buzz them the whole way up the valley, or do you have to go up 300 feet before you can start going in a horizontal direction?

A. For helicopters, the only requirement in Part 91 is for them to be in a position where they can make a safe landing, if they should have an engine failure.

Q. So there is no real set standard of how high you have to be before you start moving in a horizontal, other than being safe, make sure you're higher than the telephone poles and the wires and the trees, then you can start going in a horizontal fashion?

A. That's right.

Q. Okay. And are there cases that you've been involved in, have there been other restrictions that would guide or restrict or condition the way a plane or helicopter might come and go from a site, or do you just leave it up to the pilot to use his best judgment?

A. There are markings you can put in for the preferred route in and out. In this case, it's a private use, privately-owned heliport or airfield. Typically that would not be put in, because the people coming in and out are familiar with the site, familiar with the preferred alignments. Public use facilities, you can in fact publish the preferred -- not mandatory, because wind and weather can make a difference, but preferred procedures.

Q. So coming in and out of BWI, some of those people who live down in that area know the flight pattern is right over top of their houses, and they expect the planes coming in and out over top of them. But in a smaller operation like this, it's up to the pilot to decide what's the best way to go?

A. Yes.

Q. Okay.

MR. KOTROCO: We'll take a short recess, and we'll come back, and we'll start with Mr. Nelson's questions. We should be able to finish with him prior to lunch. Take a five-minute recess.

(The hearing was recessed at 11:07 a.m. and resumed at 11:30 a.m.)

MR. KOTROCO: We'll go back on the record, and I believe we were at the point where Mr. Nelson was going to begin cross-examination of the witness.

CROSS EXAMINATION

BY MR. NELSON:

Q. How do you pronounce your last name, sir?

A. Lamb, L-A-M-B.

Q. Mr. Lamb, you read from a definition of an aircraft, and it appeared that you had a copy of the definition in your file. May I see that?

Now, did the definition that you read include, for example, a hot air balloon?

A. Yes, it would.

Q. It would. You referred to a zoning manual. Did you bring that? Do you have a copy there with you?

A. I have an excerpt from it, I believe.
Q. May I see your file, Mr. Lamb, see what other material you brought?
MR. NELSON: One moment.
Q. Mr. Lamb, I'm looking at your site inspection report dated March 16, 1998. Who asked you to prepare that report, sir?
A. David Gildea.
Q. And to whom did you mail a copy of that report?
A. I haven't yet.
Q. Okay. This is your copy. May I just show this to my client? We'll give it back to you.
A. Okay.
Q. Mr. Lamb, if I owned farmland, say 50 acres of it, and I came to you and said that I wanted to build an airstrip, and I wanted to make this airstrip as safe as I could make it, and I wanted to fly in and out of there small aircraft that could fly at relatively slow speeds, what would you recommend that I do?
MR. BARHIGHT: Objection. Highly speculative: as safe as you could make it.

MR. NELSON: That's exactly the point.
MR. BARHIGHT: He didn't ask him to make it meet FAA standards or any other known and accepted safety standards. As safe as you can make it is highly speculative and outside the realm of proper expert opinion.
MR. NELSON: I disagree, judge.
MR. KOTROCO: I'm going to overrule the objection and allow the witness to give an answer, if he can. I guess the safest way would be to have no airstrip at all.
Q. No, no, I want an airstrip there for slow-flying planes, on my farmland. I've got plenty of land, nothing in the way. What sort of things would you recommend? For example, the length of the airstrip.
MR. KOTROCO: Go ahead.
A. Typically you'd want a length of 2,000 feet or more, unless you're going to restrict the type of aircraft coming in and out. Typically you would want a clear area off each end. Typically you're going to want an area that is at least graded for 125, 120 feet wide. There are all kinds of other things could you put on a facility: put a

weather station, put lighting, could have put a medical station. I mean to make it as safe as possible.
Q. I understand that point, and let me clarify my question. What I'm really driving at here is, because I want to have a small airport just for the use of my customers and myself, so I'm interested not in the medical station, but the length. You said 2,000 feet; is that right, sir?
A. Yes.
Q. 140 feet wide?
A. 120.
Q. Now, if I had plenty of land, would you recommend that I'd have two airstrips that are perpendicular to each other?
A. That would depend upon the wind coverage. The FAA has guidelines for that. You get less than 95 percent wind coverage, then the FAA recommends that you investigate a crosswind runway, or making the runway wider itself.
Q. I'm sorry. That was new vocabulary to me. If it's less than 95 percent what, sir?

A. Wind coverage.
Q. What do you mean by that?
A. They're looking, for small, single-engine airplanes, they're looking for -- they would like to have 95 percent wind coverage where you have a 10 1/2 knot crosswind component, or less, 95 percent of the time. That would be ideal.
Q. Do I understand you to say that if you have a crosswind on the runway more than 5 percent of the time, you might want to entertain having two runways? Is that what you said?
A. No. If you have a crosswind component of more than 10 1/2 knots. That would be if it was, the wind was blowing at a 45-degree angle from the runway, then you take 70 percent of that, or that would be about a 14 knot crosswind. So it's a crosswind component calculation.
Q. Now, as a general rule, when you land, you try to land either going with the wind, or going into the wind, one of the two?
A. Into the wind.
Q. Into the wind. And you can calculate -- and how

about taking off?
A. You like to take off into the wind also.
Q. And you can calculate the angle of attack you need, where you're going to stall, and so on when you're flying into the wind; is that right?
A. Into the wind, the aircraft is going to perform, once it's in the air, the same either way.
Q. I mean -- I beg your pardon -- when you're landing or taking off you take those things into account?
A. Yes.
Q. Because you have the air flowing over the airfoil when you're landing or taking off?
A. Your ground speed will be reduced when you land into the wind. You want to land at the slowest air speed as practical.
MR. KOTROCO: One of the few things you want to do into the wind. There's a lot of advice about what you shouldn't do into the wind.
THE WITNESS: That's right.
Q. All right. What about crosswind and the effect of a crosswind on a slow moving aircraft that's landing or

taking off?
A. Basically there are two techniques to correct for crosswind. One is called a sideways slip and one is called a forward slip. Normally the pilot would put -- let's say this desk is the runway. Normally the pilot would put in a crab angle until he starts his transition for landing, and then he would put in a -- kick the runway, the aircraft, so it's parallel with the runway center line, and dip the wing into the wind so that he'll track a straight line and land parallel to the runway.
Q. (MR. KOTROCO) So he crabs on the way in and then straightens up as he gets ready to land?
A. Yes. Normally about 50 feet above the ground you start that transition to the ground.
Q. (MR. NELSON) But if you have perpendicular runways, you don't have to do that, do you, as much?
A. Not as much, no.
Q. So let's say you were flying a small plane, and the airstrip was only 1,200 feet long, and the wind -- and the airstrip was aligned 80 to 260, and the wind was blowing hard from the north, let's say 30 knots, hard

northwestern, maybe 30 to 40 knots, northeastern. Could you land there safely?
MR. BARHIGHT: Which is it? Let's get the question facts straight.
MR. NELSON: I think the witness will say it won't matter because it's from the same component, northeast to northwest. But you can give us whatever direction you choose.
A. No way in Sam Hill I'd land there.
Q. No way you'd land there?
A. No way in Sam Hill I'd be in the air in that small of an airplane in that sort of wind.
Q. Right, right. In fact, a man we know died doing that on Cape Cod, Richard Dunn. Do you know that name?
A. No, I don't.
Q. How about wind from the northeast as it was on Saturday? Did you fly on Saturday?
A. No, I did not.
Q. You know the weather, though, don't you?
A. Yes, I do.
Q. It was blowing pretty hard from the northeast,

wasn't it?
A. Yes, it was.
Q. Not 30 to 40, but maybe 20 to 25; is that right?
A. Yes.
Q. Would you land there on a strip 1,200 feet long that's aligned 80 to 260?
A. No, I would not.
Q. How about Sunday? It was blowing northwest. How hard was it blowing yesterday?
A. I'd say, where I live, about 15 knots.
Q. Right. Not as much, but it was blowing 15, maybe at 20. Would you land there, an airstrip 80 to 260?
A. If the downward -- probably not. It would depend on the aircraft. I'm not sure -- in the type of aircraft I'm talking about, I would not be up in the winds that were blowing even yesterday.
Q. What you're really saying is, the lighter the aircraft, the slower moving the aircraft, the more vulnerable it is to wind speed?
A. Lighter aircraft are typically less tolerant of crosswind components than, let's say, a heavy jet, yes.

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Q. So what we have in this situation is an airstrip that's 800 feet shorter than what you would normally recommend. It's 1,200 versus 2,000.

MR. BARHIGHT: Objection. That's not what he testified to. Normally recommend is not his testimony. I object to the mischaracterization --

MR. NELSON: Well, for my airstrip --

MR. BARHIGHT: Excuse me. You're interrupting me.

MR. NELSON: That's right. For my airstrip --

MR. BARHIGHT: Excuse me. I'm still making my objection. If you don't mind, allow me to finish my sentence. He did not testify that was his normal recommendation.

MR. KOTROCO: I'll sustain the objection.

Q. For my airstrip, where I said I wanted to make it safe, I had plenty of land.

MR. KOTROCO: Mr. Nelson, let me interrupt you for just a moment while I flip this tape over. Go ahead.

Q. For my airstrip where I said I had plenty of land, where I wanted to land slow aircraft, you told me

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you would probably recommend an airstrip that was 2,000 feet long; is that right?

A. Yes, under ideal conditions.

Q. And the one on this proposal is 800 feet shorter than that?

A. Yes.

Q. And the way you can compensate for a shorter airstrip is to fly a lighter, slower plane?

A. Correct.

Q. And a lighter, slower plane is more vulnerable to a crosswind that is as low as 12 to 15 knots?

A. Correct.

Q. And one of the ways you can compensate for a crosswind is to crab on the airstrip, to alter your course by a few degrees, to come in on an angle, and that's why normally an airstrip is, how many feet wide did you tell us?

A. 120 feet.

Q. How wide is this strip?

A. More than 120 feet.

Q. How many feet more?

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A. Looking at it, it's over 200 feet wide.

Q. Now, what's the maximum wind that you can land safely on this airstrip, that you personally would land a plane, a light, slow moving plane such as the ones that you said could land here?

A. Wind direction makes a big difference, but the type of aircraft that I'm talking about, fixed-wing aircraft, typically I would not fly if it was over 10 to 15 knots.

Q. (MR. KOTROCO) Is that a crosswind?

A. Wind.

Q. Wind in general? Headwind? Tail wind?

A. If it's blowing that hard, I'm not going to take up that family of aircraft for a flight.

Q. (MR. NELSON) Just so the record is clear, that's the type of aircraft that you feel could be landed on an airstrip that's as short as this one?

A. Correct.

Q. (MR. KOTROCO) You wouldn't take it up off of any airport?

A. Right. I don't care if I was at BWI. I wouldn't

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untie it from the tie-down ropes.

Q. At 10 to 15 miles per hour?

A. At 15 miles per hour, you're starting to approach half its stall speed, and that's faster -- I'm not going to go up in an aircraft when the wind is blowing more than 50 percent of the stall speed of the aircraft.

Q. (MR. NELSON) But if you had a longer airstrip, you could have a faster flying plane with a higher stall speed?

A. That's correct.

Q. Now, you mentioned a phrase that I wasn't familiar with before this morning when you said an 8-to-1 ratio.

A. Yes.

Q. What is that, sir?

A. That's the recommended approach slope coming into, in this case, the place where the helicopter would land. It's 8 foot horizontal, 1 foot vertical. It's an approach path.

Q. (MR. KOTROCO) Same for airplanes?

A. For an airplane, it's going to vary anywhere from

15-to-1, to 50-to-1, depending on the type of instrument approach and type of aircraft.

Q. (MR. NELSON) Let's talk about a slow moving aircraft such as the type that could land in under 10 knots on an airstrip that's 1,200 feet long. What's the ratio there?

A. Recommended ration there is 15-to-1.

Q. 15-to-1. So the plane is going to move horizontally 15 feet for every 1 foot?

A. Actually, no. That's the approach slope, recommended approach slope. If you look at the performance calculations of the airplane, the actual performance of the aircraft is much steeper than that.

Q. Oh, no, I'm not talking performance. What I mean is the recommended approach to the airstrip.

A. Okay.

Q. It's recommended that it's gradual enough that you can move horizontally 15 feet for every foot you drop, or, conversely, when you're taking off, you can elevate 1 foot for every 15 feet?

A. That's correct.

Q. Now, if you were to take off in a westerly direction on this proposed airstrip, how high will you be off the ground when you cross the property line?

A. That would depend totally on the type of aircraft that you're talking about operating.

Q. All right. Let me clarify that. Light, slow moving aircraft, such as the type that can land at this airstrip, according to your testimony?

A. The type of aircraft that I would personally bring into here would be like a J3 Cub. It can clear -- it's more than 50 feet in the air, but it can clear a 50-foot obstacle with no headwind in about 740 feet, between 600, 800 feet.

Q. All right. And with a headwind, that number goes up or down?

A. That number, you would need less runway length with a headwind.

Q. So if the wind were blowing from the east to the west, tail wind, you're taking off?

A. Takeoff is the other direction.

Q. Taking off in the other direction. Okay, we can

do that. Let's say it's blowing from the east and you're going to take off west to east, right?

A. Um-hmm.

Q. How high will the plane be when it crosses that line, the property line?

MR. KOTROCO: You're referring to the eastern boundary line of the property?

MR. NELSON: Yes, sir, the boundary between the subject property and Meadow Wood, Inc.

A. Do you want me to take an educated guess? It would depend on the aircraft, the temperature, the wind conditions, the loading.

Q. All right. The least advantageous conditions for a slow-moving, light aircraft.

A. Least advantageous?

Q. Yes, sir.

A. The aircraft could be over 100 feet, passing that property line.

Q. And what if every factor was lined up against the ability to elevate quickly, how high would you be?

A. If every factor was against me, I wouldn't take

off.

MR. KOTROCO: He'd be in the cornfield next door, I think.

THE WITNESS: I would be sitting under the seat.

Q. But if there were factors lined up against you, but you, in your professional judgment, said I can do this safely, there's no question, how high up would you be?

A. You would need to be at least -- I would not take off unless I could clear the property line with at least 50 feet.

Q. How tall are the trees on that property line?

A. I would estimate 40 feet.

Q. Now, if the wind were blowing from the west to the east, you would take off in a westerly direction, wouldn't you?

A. Correct.

Q. How high are the trees on the property line on the western edge of the subject property?

A. I'd estimate 40 feet.

Q. Who owns those trees?

A. That, I don't know.

Q. Can we agree that your client, Mr. Grass, doesn't own those trees?

MR. BARHIGHT: Objection. He's never indicated Mr. Grass is his client.

Q. Is Mr. Grass your client?

A. No, he's not.

Q. Is he paying your bill?

A. No, he's not.

Q. Well, can we agree that neither Mr. Grass nor Mr. Lucas, nor Mr. Gildea, to whom you sent the report owns those trees?

MR. BARHIGHT: Objection. He indicated he did not send the report.

MR. KOTROCO: He was asked to prepare the report by Mr. Gildea.

MR. NELSON: I'll rephrase the question.

Q. Can you agree that my clients own the trees on the western border and that Meadowbrook (sic) owns the trees on the eastern border?

A. I don't know.

Q. You don't dispute that?

A. No.

Q. What if those trees were to grow up to, say, 48 feet, would you take off?

A. I would look in the pilot operating handbook, and look and see -- they have a standard published height on required runway length with a given temperature, wind, loading conditions. And I would look at the 50-foot high obstruction, which doesn't mean the aircraft is at 50 feet, it means that you're passing over a 50-foot obstruction. I'd use that as a determination, and then I would say, Do I have enough safety factor or don't I?

Q. (MR. KOTROCO) So the manual for the plane that you're flying would tell you that information of how fast that plane can climb and how much distance you need?

A. What distance is required to cross a 50-foot high obstruction at the end of the runway, yes.

Q. (MR. NELSON) Now, you mentioned a JC3 Cub?

A. J3 Cub.

Q. I beg your pardon, a J3 Cub. How many people can sit in that plane?

A. Two people.

Q. In addition to the pilot?

A. No, that's with the pilot.

Q. So if Mr. Lucas wanted to fly with one of his customers in a J3 Cub, and he were not a licensed pilot and he wanted to fly to New York, could the three of those people fit in that plane?

A. Not in that plane, no.

Q. If Mr. Lucas wanted to try to convince two customers who didn't have pilot's licenses to fly to his farm in a J3 Cub, could three people fly in a J3 Cub to his airstrip, his proposed airstrip?

MR. BARHIGHT: Objection, asked and answered.

MR. NELSON: No, no, different question.

MR. KOTROCO: I don't see the difference. Three people can't fly in a J3 Cub is what the man is telling us.

Q. (MR. KOTROCO) The fact of the matter is three people can't fit in a two-seater; is that right?

A. Correct.

Q. Can a four-seater plane fly in and out of this farm?

A. Some can.

Q. Some types of planes can?

A. Some four-seaters.

Q. (MR. NELSON) Now, have you submitted any documentation to the FAA for this proposed airstrip?

A. No, I haven't.

Q. Have you seen such an application?

A. Yes, I have.

Q. Who submitted that, do you recall?

A. Mr. Lucas, I believe.

Q. Have you submitted anything to the Maryland Aviation Administration?

A. I have not submitted anything, no.

Q. Have you seen a copy of any submission?

A. Yes.

Q. Who prepared that submission?

A. I did.

Q. Do you have that with you?

A. No, I don't.

Q. What sort of submission did you submit to the MAA?

A. Standard application form for registration.
Q. When did you submit that?
A. I didn't submit it.
Q. I thought you said you did the MAA and he did the FAA. Did I misunderstand you?
A. I completed the draft. I believe it was mailed in last week, but I did not submit the form.
Q. But you filled out a draft that was mailed to the MAA?
A. Yes.
MR. NELSON: One moment, Mr. Kotroco.
MR. KOTROCO: Let me ask a couple of questions while you're looking through your notes, Mr. Nelson.
Q. (MR. KOTROCO) Mr. Lamb, I don't know how many times you've been in a venue such as this where someone such as myself has to make a decision on a case like this, but, in your experience, is it appropriate for a hearing officer, such as myself, to try to restrict the manner in which pilots come and go from the property? I mean, is that interfering with pilot discretion too much, where I might cause them to be in danger because I say you have to

do this or you have to do that?
A. In my opinion, absolutely.
Q. And that would go for flight paths as well as, I mean, the size of airplanes that can come and go?
How can I assure the citizens around here that some guy is not going to try and fly a too big of an airplane into here and crash into a neighbor's house?
A. Good question. The fact that it's a privately owned, private use, restricted airport gives the owner a great deal of flexibility. Functionally, nobody could come in or depart without that owner's permission.
If the owner were to voluntarily say, well, first off, pilots would be in violation if they come in and operate the aircraft contrary to the pilot operating handbook. In other words, if the pilot operating handbook said I need 2,000 feet to take off, and the runway is 1,200 feet long under these conditions, then he would be in violation already.
The facility itself, there are standard patterns to come into and out of the facility. It would be my recommendation to -- people are used to those. The safest

thing you can do is to have people fly a standard pattern in, a standard pattern out of the facility.
Q. Okay. And then we are to trust that a particular pilot wouldn't go against his pilot manual for that particular plane that he's flying and try and land something here that isn't appropriate to land?
A. That's exactly what they're trained -- that is their training. If in fact the pilot operating manual says that you cannot land under the given conditions at this facility, you would be crazy to try it.
MR. KOTROCO: Okay. Mr. Nelson?
MR. NELSON: One moment, please. That's all. Thank you, sir.
MR. KOTROCO: A couple other questions.
Q. You've inspected the landing area out here. Is the ground, in your opinion, graded or cultivated properly so that the planes can come and go in a smooth fashion?
A. Yes. For the type of aircraft I'm talking about, they can accommodate it.
Q. Okay. If there's a lot of rain and the ground becomes mooshy or soggy, is that not an appropriate time

to land or take off?
A. If in fact you have wet or soggy field conditions, that can be a significant factor. In fact, the pilot operating handbook a lot of times will indicate separate lengths required for soft or mud conditions. That can, in fact, be a factor.
MR. KOTROCO: All right. Mr. Barhight, do you have any -- do you have another question, Mr. Nelson?
MR. NELSON: I do.
MR. KOTROCO: Go ahead.
Q. (MR. NELSON) Mr. Lamb, you're an engineer. This is a zoning proceeding, so this is a question that really addresses both subjects. But if we had a choice of two places to land a plane, both of which were farmland like this, but one of which is down the road in the same zone, same RC-2 zone, but it's a big enough piece of land that you can have an airstrip that's 2,000 feet long, and there are no trees at the end of the property 40 feet high in 1998, and I said to you, What's the safer place to build an airstrip, down the road in the RC-2 zone where we can have a 2,000 foot strip and no trees, or here at 901

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Greenspring Valley Road where we have a 1,200 foot strip with 40 foot trees, which would be the safer, better place? If I owned both pieces of land and could build either place, where would you recommend that I would built it?

MR. BARHIGHT: Objection. I don't believe this witness is qualified to understand the difference between an RC-2 zone and --

MR. NELSON: Delete the RC-2 zone.

MR. KOTROCO: He's just saying it's the same zone. I'll overrule the objection. You can answer the question.

A. I'd go for the longer runway length.

Q. Right. So if we had 1,000 acres of farmland, and there were multiple, all same flat farmland, and there were multiple locations elsewhere on other farmland where you could get a strip that's at least 2,000 feet long, in every instance would you not recommend that site over this site where you can have a 1,200 foot strip, if everything else is equal?

A. Alignment, wind, and everything else is equal?

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Q. Yes, sir.

A. I'll always take the longer runway length.

Q. (MR. KOTROCO) Is 2,000 feet like a minimum recommendation?

A. No.

Q. I mean, if you're flying ultralights or something, there's plenty of room to land?

A. That's correct. If you want -- depends on what type of aircraft you're going bring into and out of the facility. There are some airplanes that can operate comfortably on that length. There are a lot more airplanes that can operate comfortably on 2,000 feet or 3,000 feet.

Q. Has anyone indicated to you the types of airplanes that will be coming and going from this facility? Anybody sat you down and said, We want four-seaters, we want six-seaters, we want -- nobody has said that?

A. No. They've only put it in terms of the smaller, single-engine, piston airplanes.

Q. It's been accommodating airplanes for years on

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this facility, and apparently, I guess, as --

MR. NELSON: Six years.

Q. -- without incident.

MR. BARHIGHT: Objection.

MR. NELSON: The evidence is six years.

MR. BARHIGHT: He constantly mischaracterizes the testimony.

MR. NELSON: Six years. '72 to '78 is the only testimony on aircraft, on airplanes. That's the unequivocal testimony from Mr. Lucas, not years.

MR. BARHIGHT: Are you done?

MR. NELSON: I am done.

MR. BARHIGHT: So I'm not interrupting you now? I believe the testimony of Mr. Lucas is all the way back to 1971. I could be mistaken about that, but I think that's more than six years.

MR. NELSON: Correction. He is right. Seven years. It's '71 to '78.

MR. BARHIGHT: '71 to the present, operation intermittently throughout that time.

MR. KOTROCO: All right. Do you all have any

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other questions of Mr. Lamb?

MR. NELSON: No, sir.

MR. BARHIGHT: Yes, as long as I'm not interrupting, I would be happy to.

REDIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Lamb, are you familiar with different airports that are in the state of Maryland?

A. Yes, I am.

Q. Are you familiar with BWI?

A. Yes, I am.

Q. Are you familiar with Martin State Airport?

A. Yes.

Q. If I have a 727, can that land at Martin State Airport?

A. Yes, it could.

Q. How about BWI?

A. Yes.

Q. Which one would you prefer to land on?

A. BWI.

Q. Why?

A. It's a longer runway, has better facility.
Q. Is it safe to land that 727 at Martin State Airport?
A. Yes.
Q. Why?
A. It's an adequate runway and adequate facilities.
Q. Okay. What kinds of aircraft can land safely at the proposed airport?
A. Your smaller, slower, single-engine, piston, fixed-wing aircraft, such as a J3 Cub, a Maule, Citabria, like I learned to fly in, that type of aircraft.
Q. Okay. Are there very many of those kinds of aircraft in service?
A. Thousands, but not a large percentage of the fleet.
Q. About, if you know, about what percentage of the total fleet in America are the kind of airplanes that can land here?
A. A guess would be 10 percent.
Q. So we're not talking about a large percentage of the fleet that's able to land here?

A. Correct.
Q. So that means a very limited facility?
A. Yes.
Q. Now, one of the things, obviously, Mr. Nelson is trying to establish is somehow this is an unsafe airstrip. Do you have an opinion about whether this proposed airstrip or proposed operation is safe?
A. For the correct aircraft, it's a safe facility. For example, the operations of the helicopter going in and out of there, it's, in my terms, overbuilt. It's got a lot more flexibility and options and clearer approach than is – it's far in excess of what the standards are for a privately-owned, private-use heliport.

For fixed wing, it is a limited facility. And for the right family of aircraft, they can in fact operate in an and out of the facility safely and in accordance with the pilot operating handbook.

Q. How does a pilot who is flying around the air space in the Baltimore metropolitan area even know this airport is there? Assuming at the moment the zoning commissioner approves it and we get appropriate FAA and

MAA approvals, assuming all the approvals go through, how does he even know it's there?
A. It would be shown on the sectional chart as a restricted use facility. The runway length of 1,200 feet would be listed. What that tells the pilot is that they are not permitted to land there unless they have permission from the owner to take off and land there.
Q. So there are different kinds of airports, then?
A. Absolutely.
Q. You've identified this as, what, a private-use, private-ownership airport?
A. Yes, private use, private ownership.
Q. What's BWI?
A. That is a public-use, publicly-owned, Part 139 certificated exterior airport.
Q. If I'm flying around the Baltimore metropolitan area, and I want to land at BWI, how would I do that?
A. You would follow standard procedures which you're trained with from the beginning of your flight training. You would pick up frequencies, for example, out of the facility directory or instrument approach plates.

Typically you would talk to approach control, over 30 miles out, to get into BWI. And you'd have specific clearance to take off or land or enter their air space.
Q. How about another airport that's not public, how do I land at a privately-owned, privately-operated airstrip?
A. There you have to obtain permission from the owner before you take off or land at that facility. If it's not open to the public, it's shown as a restricted use facility.
Q. Are there privately owned but publicly operated in the sense of open for the public to land type airstrips and airports?
A. Yes, there are.
Q. Can you give me an example of some of those?
A. Over on the Eastern Shore, Ridgely, for example, is a privately-owned, public-use facility.
Q. And what's the length of that airstrip?
A. I think it's around 3,000 feet.
Q. Are there airplanes that can land there safely?
A. Yes.

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Q. Are there airplanes that can't land there safely?
A. Yes.
Q. Before the pilot thinks about touching down there, does he know the length of that airstrip?
A. He knows the length and also has considerably more information than that from the published information. He'll know the length, the width, what sort of obstructions are in the approach, what facilities, in-services, are available.
Q. Is it typical to find helicopter operations at airports?
A. Absolutely.
MR. BARHIGHT: No other questions on redirect. Thank you very much.
MR. KOTROCO: I'm going to ask a couple and then you can ask some.
Q. (MR. KOTROCO) Are there certain things that restrict a pilot's ability to fly certain paths? For example, I know you can't land at Memorial Stadium because Donald Kroner tried that and ended up in the upper deck. And I know you can't fly over top of Memorial Stadium, can

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you, or is it a certain height restriction?
A. It's a height restriction.
Q. So you can fly over it, but at certain heights?
A. Yes.
Q. Is there anything in the Valley over here that would have any restrictions associated with it, any highways? Are you allowed to fly right over top of the Beltway, over top of 83? Can you fly 100 feet over 83 and go right up 83, if you want?
A. Okay. In all cases the pilot is required by Part 91 of the federal air regulations to be in a position that, if he were to lose an engine, that they could land safely, have a place where they could land safely.
Then, in addition, for fixed-wing aircraft, there are other requirements, such as over congested or downtown, you have to be at least 1,000 feet above the highest obstacle or object within a 2,000 foot radius or a half mile, total about almost a mile. Over less than congested, then you have to be at least 500 feet above the ground. In sparsely populated areas or open water, you cannot go closer than 500 feet to a structure, a person,

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or a vehicle. Helicopters are precluded from the latter requirements. So legally, they could, in fact, a helicopter could fly up -- they don't, but could fly up the interstate at 40 feet above the interstate. Common sense stops you from doing that.
MR. KOTROCO: Okay. All right, Mr. Nelson?
RECROSS EXAMINATION
BY MR. NELSON:
Q. You mentioned the J3 Cub, the Maule.
A. Citabria was --
Q. What are the three? You mentioned three or four planes, sir. What were they, just for my benefit?
A. J3 Cub, a Maule M6, and a Citabria.
Q. And these are the types of aircraft that can land on an airstrip that is as short as 1,200 feet?
A. Yes.
Q. Do any of those plane have more than two seats?
A. I believe the M6 does. Some of the Maules do, yes, that could operate on this land.
Q. Now, you sound like your company does a fair bit of work in Maryland; is that right?

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A. Yes.
Q. On both the Eastern and Western Shore?
A. Yes.
Q. Can you list for Commissioner Kotroco all the airstrips of which you have knowledge that are 1,200 feet long or less in the state of Maryland?
A. The document that I can go to for that is the airport facility directory. That doesn't list privately-owned, private-use facilities. Any public use, whether it's privately owned or public use, is going to be longer than 1,200 feet. But there are other facilities that are currently registered with the state that are less than this in length.
Q. My question, sir, is how many airstrips of which you have knowledge are less than 1,200 feet in the state of Maryland?
A. I haven't tabulated that. I don't know.
Q. Can you give me one example of an airstrip that's less than 1,200 feet in the state of Maryland?
A. I know in talking with the state, there are some, but no, I don't. I cannot give you the name.

Q. So you've never seen one in the state of Maryland?
A. Never flown into one.
Q. How about in Delaware?
A. Not information I need to know.
Q. Well, in what states does your engineering firm work?
A. Delaware -- we work in nine states.
Q. And in those nine states, can you list all the airstrips, of which you have personal knowledge, that are 1,200 feet or less?
A. I don't go into privately-owned, private-use facilities. I have no reason to know that information.
Q. So what you're telling us is you are unable to point to one airstrip in nine states where your firm practices that is 1,200 feet or less; is that true? I just want one example.
A. Sitting here today, I'm trying to think of a privately-owned, private-use facility I can give you the name of.
Q. Well, just so the record is clear, am I correct

when I say, sir, that you cannot give us the name of one 1,200 foot airstrip, or less, anywhere in the nine states where your firm practices?
A. That's correct.
Q. All right. And what are the states in which your firm practices?
A. Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Delaware, Texas, Nebraska.
MR. NELSON: That's all I have. Thank you.
MR. BARHIGHT: No other questions.
MR. KOTROCO: Thank you, Mr. Lamb. You can step down. It's quarter after 12. How many more witnesses do you have?
MR. BARHIGHT: Two.
MR. KOTROCO: Okay. And are you prepared to start your case today, Mr. Nelson?
MR. NELSON: Yes, sir. And we have Mr. Dillon and a few individual protestants. Protestants have certain commitments, but I was going to chat with Mr. Barhight at the break, but maybe we can do it now.
MR. BARHIGHT: That's fine.

MR. NELSON: When do you think you'll finish your case?
MR. BARHIGHT: This afternoon. I only have two more witnesses.
MR. NELSON: How long do you think that might take?
MR. KOTROCO: How long are the witnesses going to be? Who are they? You have a sound person?
MR. BARHIGHT: A sound person and one other expert. I would say that our direct examination will probably take, total, less than an hour for the two.
MR. KOTROCO: Could eat up most of the afternoon, based on your cross.
MR. NELSON: We'll be prepared to put on Mr. Dillon.
MR. KOTROCO: Okay. We also have tomorrow reserved.
MR. NELSON: Yes, sir, and then I can put individuals in the morning.
MR. KOTROCO: And if they have someplace they need to go now, they're welcome to go and come back

tomorrow morning.
MR. NELSON: That's fine.
MR. KOTROCO: Then we'll finish up with Mr. Barhight, and possibly get to Mr. Dillon, and then tomorrow we can get to the other protestants. Is that okay with you all?
MR. NELSON: Perfect.
MR. BARHIGHT: Excellent.
MR. KOTROCO: Let's break for lunch. It's 12:15. Come back by about 1:30, and we'll resume at that time.
MR. BARHIGHT: Thank you very much.
(At 12:15 p.m. a luncheon recess was taken.)
-o0o-
AFTERNOON SESSION
1:40 p.m.
MR. KOTROCO: We'll go back on the record after a lunch recess. And I think, Mr. Barhight, you have a couple other witnesses you want to call?
MR. BARHIGHT: Yes, please. I'd like to call Kevin Miller.
MR. KOTROCO: Come up to the witness stand, Mr.

Miller. Raise your right hand, if you would.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes, sir.

MR. KOTROCO: Have a seat, state your name and address for the record.

THE WITNESS: My name is Kevin Miller, and my business address is 6731 Whittier Avenue in McLean, Virginia 22101.

KEVIN MILLER,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Where do you work, Mr. Miller?

A. Miller Henning Associates.

Q. And what's the nature of that firm?

A. We're consultants in acoustics, vibration, and audio-visual design.

Q. If I ask you to describe your profession, what would say you are? What word or phrase describes what you do?

A. Most commonly we would be called acousticians.

Q. What does an acoustician do?

A. We're professional consultants covering mostly architectural acoustics, which covers the whole gambit from design of buildings; zoning around airports, railways, highways; vibration from mechanical equipment and noise; design of rooms of this nature, such as zoning boardrooms, courtrooms, churches, auditoriums, arenas. So just about anything that deals what acoustics, short of medical. We don't get involved in the medical side, that is like sonograms, or under water. We leave that to the Navy. We don't do underwater acoustics.

Q. What is your title with this company you just identified?

A. I'm president of the firm.

Q. Of Miller Henning?

A. Yes.

Q. Generally what are your duties? What do you do

day-to-day?

A. Besides the administrative aspects of a small company, I am heavily involved in the engineering side, so I do primarily engineering, overseeing projects and actual engineering of the projects.

Q. How long have you been involved in the field of acoustics?

A. A little over 30 years.

Q. And what has been the nature of your involvement? Could you briefly describe your professional career in acoustics?

A. The nature of the involvement has been from talking with clients to obtain projects, all the way through the actual design engineering of projects, writing of reports, and any follow-up necessary to work.

Q. Can you give us a sense of some of your representative clients?

A. Certainly. Examples of representative clients would include, we just completed the MCI Center for Mr. Pollin. We recently did a project for Gannet Foundation, which represented Fairfax County and several other

entities in a court suit specifically relating to aircraft noise, helicopter noise. We have numerous churches on the books. We're doing some radio studios in Boston and in Philadelphia for Greater Media, which is a conglomerate of studios. The one in Boston also involves transportation noise, both railway, highway, and aircraft. And we have numerous other clients. We're doing a project in Moscow right now.

Q. Have you ever been hired by any local jurisdictions to assist them in any kind of noise studies or noise research, noise regulations?

A. Certainly. I personally assisted Prince William County in developing a noise code. I helped them develop the code, and then testified before the board to get the code adopted.

Q. Okay. Have you been accepted before other boards and commissions or circuit courts as an expert acoustician?

A. Yes, I have.

Q. Can you give us a couple of examples of those?

A. Certainly. I have been accepted as an expert

witness in Florida on several occasions involving -- I believe those were primarily zoning boards. I've testified both before zoning boards and circuit courts in the state of Virginia, and I've testified before, in the state of Maryland, Baltimore-Washington Airport board. I qualified as an expert witness in acoustics and specifically aircraft noise there. And then also in other boards, the Montgomery County zoning board, for numerous different types of acoustical areas.

MR. BARHIGHT: I'd like to offer Mr. Miller as an expert in the field of acoustics, specifically as an expert in aircraft acoustics.

MR. KOTROCO: Any voir dire?

MR. NELSON: No, sir.

MR. KOTROCO: Any objection to his qualifications?

MR. NELSON: No, sir.

MR. KOTROCO: I'll accept him as an expert in acoustics, specifically aircraft acoustics.

Q. Mr. Miller, are you familiar with the subject site?

A. Yes, I am.

Q. Are you familiar with surrounding area and uses?

A. Yes.

Q. Let's get right to the heart of it. How does an acoustician measure the level of noise for airport uses and aircraft uses generally? How do you do that? What is it that you do?

A. Specifically transportation noise, which aircraft falls under, over the years has evolved into a system called DNL, or Day Night Level, and that has pretty much become the universal standard throughout the country as how to measure transportation noise, including aircraft. And I say transportation. It also includes highways, railways.

The DNL system is a 24-hour average measuring the sound level over that period of time on an average basis with a 10 dB penalty during the nighttime.

Q. (MR. NELSON) Excuse me. A what?

A. A 10 dB penalty during the nighttime. By that I mean, what that system does is recognizes nighttime as more sensitive, nighttime being defined in most

jurisdictions, and specifically in this scenario, as 10 p.m. until 7 a.m. And during those hours, 10 dB is artificially added to the levels that are measured, thus penalizing them, recognizing it's a more sensitive time.

Q. (MR. BARHIGHT) What is the national -- let me ask you this. Is there a national standard for noise levels for airports and other transportation uses?

A. Yes, there is.

Q. What is that national standard?

A. The national standard is 65 dBa LDN. And when I had previously said DNL, the descriptor, the way it's normally referred to when you specifically state a number, is LDN. It's a subscript L and then subscript DN.

Q. What does LDN mean?

A. Level day night.

Q. What is the national standard for LDN of airports?

A. The national standard would be 65 for residential, 70 for commercial, and I think 75 for industrial.

Q. Okay. Did you study the ambient noise and the

proposed airport operation noise at Helmore Farm?

A. Yes, I did.

Q. And what were the results of your study?

A. The ambient or background noise, void of local aircraft operations, and when I say local in the sense of actually from the Helmore Farm, because there is other aircraft traffic that naturally passes by the area, the average 24-hour sample we measured at two locations. One of the locations was about 1,600 feet north of the site of the proposed strip on Helmore Farm property, fairly close to one of residence buildings up there. And I can point them out on the map, if you'd care.

Q. Later I'll ask you to do that.

A. So we measured at two locations, to get a sense of the surrounding community. At one of the locations, the background level, without any activities at Helmore, was 56.4 or a little over 56 dBa LDN, and at the other site it was 58.4.

Q. Now, are you aware of the self-imposed restriction that's suggested to the zoning commissioner in this case of eight fixed-wing events and eight helicopter

events per day?
A. I am.
Q. Using this standard, are you able to determine what the LDN level would be if you had each of these eight events occurring each day?
A. We calculated that, based on measurements that we made of the aircraft actually flying.
Q. What were those measurements?
A. The calculated levels with those eight of each type of aircraft would be 57.4 at the one site. And again, for refresher, that was the site that was 56.4 before, so it raised it about one LDN point. And at the other site, the one that was 58.4, that would raise it to 59.1. So effectively 59 dBa LDN.
Q. Let's ask you to come to the board and look at what's been marked for identification purposes as Petitioner's Exhibit No. 2. And if you can turn your back to me so that trial table and the zoning commissioner can see, could you please point to the two different noise assessment locations? Are they identified on this --
A. They are indeed identified on the site plan.

Q. Could you please identify those locations?
A. This was our Position 1, NAL 1, Noise Assessment Location No. 1, and over here is NAL 2.
Q. Did you select those locations?
A. We did.
Q. And why were those two locations selected?
A. For two reasons. One was we felt it gave a reasonable sample of the overall community. This site here was a site that we could get that was reasonably accessible without interference from buildings or the terrain, because the terrain is varying there. So we wanted to get a site that had a fairly good line of sight, vision sight, to the aircraft operations, and at the same time represented approximately the same distance away from the site and the closest residence, not on Helmore Farm, in that location. And by the same token, the second site over here, again, although off of Helmore property, gave us a fairly good sampling of what levels would take place at this residence, which was the other closest residence.
Q. On the day that you took your measurements -- let me back up. Did you take all those measurements on one

day, or was it multiple days? How did you take the measurements?
A. This was all done on one day.
Q. Okay. Were there a series of events which were staged in order for you to measure?
A. They were.
Q. Could you briefly describe those events? What were the nature of the events?
A. Initially a twin engine helicopter, twin turbine helicopter was brought in, and multiple flights were made, both takeoffs and landings, so that we had a good acoustical sample of what the helicopter operation would do.
Shortly after that, a fixed-wing aircraft flew several simulated takeoffs and landings. Shortly after that, another fixed-wing aircraft actually did land and take off several times. And again, we got those measurements. And then finally a smaller helicopter, a single piston engine helicopter flew in and made several takeoffs and landings to give a good acoustical sampling for potential events.

Q. You can go back to your seat. Thank you very much.
Now, you've already testified with regard to the national standard, the 65 LDN.
A. Yes, sir.
Q. And what I'd like you to do now is direct your attention away from that national standard and just talk about dBa. What's a dBa?
A. All right. Decibels are used to measure sound or to depict sound levels, and the decibel system is a logarithmic scale. They use logarithms in decibels, as they do in many other forms of engineering, because often simplistic linear statements, specifically in acoustics, would be a very large range of pressure. You're measuring sound pressure or the actual pressure fluctuations, and there would be a huge range. So to compress that range to meaningful and manageable numbers, the decibel scale used.
So if one scratches their head and remembers their high school logarithms, a change of 3 decibels up or down is twice or half the energy. A change of 10 decibels would be 10 times or 1/10 the energy. But we, as humans,

don't hear linearly. We hear logarithmically. So a 3 decibel change is slightly perceptible; a 10 decibel change, most people would say is twice or half as loud.

However, to further complicate it, but I'll try to keep it simple, the microphone on a sound level meter hears all sounds equally. It's a very precise instrument, at least the ones we use. The human ear is not so precise. So to try to approximate the way the human ear hears, they developed many, many years ago what's called the A weighting network. So when one says decibel A weighting, that means it's got this A network involved in it or incorporated into it.

And what that does is it rolls off the low and high frequencies, similar to what base and treble controls would do, to simulate or approximate the way the ear hears. And the dBa is the most universally used method of trying to approximate the way the human responds to sound. So OSHA, for example, uses decibel A weighting network to define all the OSHA standards. So dBa is a decibel measurement using this or invoking this A weighting, and the LDN system incorporates that into it.

Q. Okay. With that explanation of dBa, could you please give us a comparative sense of the dBa ratings for a variety of different sound sources? And if you could, direct that to what would be heard at, let's say, the Immelt farm. Are you familiar with the location of that residence?

A. Yes, I am.

Q. And so you don't have to get up, am I pointing to that location?

A. Yes.

Q. Okay. Could you please give us a comparative sense of the different sound sources and what the dBa would be experienced at that location, making assumptions about the nature of the source and the distance and telling us what those assumptions are?

A. Certainly. We calculated several different types of potential sources, and calculated the levels at that location, just to give some sense of potential levels that one could experience with this kind of facility. A typical chain saw -- and chain saws have a range, so we did not take the highest, we did not take the lowest, we

took the norm or the median. Typical chain saw operating at approximately 600 feet from the residence -- and 600 feet was chosen because that would put it pretty close to where that NAL 1 site was, just for sense of approximate distance. So a chain saw operated on Helmore Farm at around where NAL Site 1 was would generate a level of about 65 dBa at the Immelt residence.

Similar scenarios or other types of typical equipment that might be found on a farm were also calculated. A tractor operating at 100 from the residence -- that would put it on the other parcel right next to the residence, not on the Immelt property but the second property. I don't remember the parcel number, but there's a parcel number up there on it. That tractor would generate 80 dBa at 100 feet from the residence. As the tractor would, say, progress down the field, at a significant distance away, say 1,600 feet, that level would drop to about 55 dBa. Trying to a sense of how the level would vary as the tractor would drive back and forth.

Other similar comparisons, a combine would be

about 75 dBa, because they're a little louder than a tractor, at the 100 foot range, and at 1,600 foot range, 60 dBa. An automobile passing by on Greenspring Valley Road would likely generate a level almost 35 dBa. Again, these are norms. Some cars would be louder, some cars would be quieter. A heavy truck passing by on Greenspring Valley Road, we would anticipate a level around 52 dBa at the Immelt residence.

Q. (MR. KOTROCO) That's at about 100 feet?

A. No, that's on the road. That's not 100 feet, that's actually driving down Greenspring Valley Road. At the 100 feet it would be much higher. But there wouldn't --

Q. Let me make sure I understand. Let me go over your numbers. The chain saw, the average chain saw 600 feet from the residence would be 65 dBa; is that right?

A. Yes, sir.

Q. The tractor -- was that 100 feet from the residence?

A. The closest one.

Q. -- would be 80 dBa --

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A. Yes, sir.
Q. -- at 55 at 1,600?
A. Yes, sir.
Q. The combine, 85 dBa at 100 feet?
A. Yes, sir.
Q. 60 dBa, 1,600 feet?
A. Yes, sir.
Q. The automobile, about 35 dBa at 100 feet?
A. No, that's on Greenspring Road.
Q. Greenspring, okay.
A. I tried to give typical distances that you would expect. So the tractor had a range, because it would run up and down.
Q. And that's from the Immelt residence?
A. Yes. In other words, a car driving along Greenspring Road, at the Immelt residence, would generate that level. And a truck, similarly driving along Greenspring Valley Road, at the Immelt residence would be about 52. It would be much louder if you got 100 feet away. The residence is quite a bit further than 100 feet from the road.

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MR. KOTROCO: Okay.
Q. (MR. BARHIGHT) Could you compare those events to helicopters and fixed-wing landings and takeoffs?
A. Yes, sir. The typical helicopter takeoff, and this was based on the helicopter that was used for the testing, which was an Augusta A109, takeoff, at the Immelt residence, would be 69 dBa.
Q. (MR. KOTROCO) Say that again.
A. 69 dBa for the takeoff. Landing would be 63. A typical fixed-wing would be 68 dBa for takeoff and 62 dBa for landing.
Q. (MR. BARHIGHT) Is there a reason, that you're aware of, why it's louder for takeoff than landing?
A. Normally takeoff requires more engine power for a longer period of time. Also the initial time that the engine revs up is a little longer for takeoff than it would be for landing.
Q. (MR. BARHIGHT) As an expert in the field of acoustics, do you have an opinion as to whether the proposed airport use at Helmore Farm will have a detrimental impact on the surrounding area?

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A. Yes, I do.
Q. Would you please state that opinion for the zoning commissioner.
A. Based on the national standards, with the limitations of the eight fixed-wing and eight helicopter operations per day, the levels calculated to be less than 60 dBa LDN, and the standard is 65 dB LDN, and therefore there would be no detrimental impact, based on national standards.
Q. (MR. KOTROCO) How do you know, unless you're sure of the aircraft that is coming and going? I mean, I've heard some military helicopters way up in the air that just about blow your ears out. How do you know, unless you know the type? And the Medevac helicopter is fairly loud, the police helicopter is fairly loud, some are fairly quiet. How do do we know, unless we know the exact type of helicopter that's coming and going?
A. That's a very good question, and you don't for certain.
Q. You would admit that some helicopters are louder than others?

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A. Not only admit it, hundred percent agree with you. There can be fairly large differences.
Q. How about the helicopter that's been coming and going from this particular site, did you witness that one coming and going? Not the Augusta A109, unless that's what Mr. Grass's helicopter is. Is that what it is?
MR. BARHIGHT: That's what he's using.
Q. So you actually witnessed the helicopter that has been coming and going to the site?
A. Yes, sir.
Q. And that's the Augusta A109 that you spoke of?
A. Yes, sir, plus we did measure one other one.
Q. But the Augusta A109, you gave me the dBa readings from the Immelt residence?
A. Yes, sir. And that was also used in the calculations for the LDN.
Q. Okay. Well, you had two NAL sites, two locations?
A. Yes, sir.
Q. Those levels that you gave me, the 69 dBa during takeoff, the 63 during landing for the Augusta A109, were

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they measured from a neighboring residence or from your NAL locations, the two locations that you selected?
A. Those were calculated levels of what we would expect at the Immelt residence, based on the measurements we made.
Q. Okay. And you chose that residence for what reason?
A. We felt it was the closest one.
Q. Did you also take readings from those NAL locations that you had, the noise assessment locations?
A. We did have readings there, yes.
Q. When the Augusta A109 landed and took off from the site?
A. Yes.
Q. I would assume that, given that there are some a further distance away, that some of the readings would be lesser, and the closer you got it would be louder. Is that --
A. If you get further away, it would normally be less, and if you got closer, it would be louder, yes.
MR. KOTROCO: And am I saying that correctly? Is

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it Immelt or Immel?
MS. IMMELT: Yes, Immelt.
MR. KOTROCO: Is there a T on the end?
MS. IMMELT: Yes.
Q. That is the closest residence that you could find to this particular airstrip, airport operation?
A. That's my understanding, yes, sir.
Q. (MR. BARHIGHT) Besides the ones that are on the property?
A. Right, not counting Helmore Farm itself.
Q. (MR. KOTROCO) Right, right. Okay. You actually used the helicopter that has been coming and going as your sample data for what you just testified to?
A. Yes, sir.
Q. And you mentioned one other helicopter. Whose helicopter was that? If you know.
A. It was a Bell 47.
Q. Which one of those two helicopters is louder, in your estimation?
A. The A109.
Q. Do you know what the Medevac helicopters are that

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we use?
A. For certain, no. I could guess, but I don't know for certain.
Q. Would you say these two helicopters are similar to that, or more quiet, or louder?
A. Probably a tad quieter, not a lot quieter.
Q. Okay.
A. But again, I don't know for sure what your Medevac helicopter is.
Q. So a Bell 47 was the other one?
A. Yes.
Q. How about the fixed-wing aircraft, do you recall the type of aircraft they were?
A. Well, there were several aircraft, but the one we used for the calculations was a Scout -- I have the number here, so bear with me -- 8GCBC.
Q. 8GC?
A. I'm sorry. 8GCBC.
Q. A little two-seater, single engine?
A. Basically.
Q. Didn't have any problem stopping on that runway

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out there?
A. No, sir.
Q. Didn't run you over, or anything like that?
A. No, sir.
Q. It did some touch and goes, is that what it did, and then actually came and landed?
A. Yeah.
Q. Both?
A. Both, and then took off.
Q. Okay. Is that Scout that you just indicated, is that fairly representative of a single engine, two-seater type plane that might come and go from this airstrip?
A. Yes, sir.
Q. Not the quietest, not the loudest, middle of the road, do you think?
A. That was my understanding, yes, sir. Probably, if anything, at the upper end.
Q. Okay. When you fly inside of those, do you know if the pilot might wear headgear or earphones? Are they loud inside, do you know?
A. I personally have not flown in a Scout. I have

flown in helicopters. They normally do wear headsets.
Q. Passengers and the pilot?
A. Passengers, not necessarily, no. The pilot almost always does.
Q. Is that for communicating with towers and so forth?
A. Yes, sir.
MR. KOTROCO: All right. Mr. Barhight, do you have other questions?
MR. BARHIGHT: Just one in light of that. I'd like to ask him to identify the photograph of the helicopter.
Q. (MR. BARHIGHT) I'm showing you two photographs, Mr. Miller. Can you identify those?
A. Those would be the Augusta A109.
Q. Are these the photographs of the helicopter that was actually used during your study period?
A. I believe they are, yes, sir.
Q. Did you take a ride in that helicopter?
A. Yes, I did, sir.
Q. And view that area from the helicopter?

A. I did. I took a view of the whole area so I'd have a sense of the lay of the land.
MR. BARHIGHT: I'd like to have this introduced as the next petitioner's exhibit, A and B.
MR. NELSON: No objection.
MR. KOTROCO: No objection? What are we up to?
MR. BARHIGHT: No. 3.
MR. KOTROCO: The photographs of the helicopter will be marked 3A and 3B.
(Petitioner's Exhibits 3A and 3B respectively were marked by Mr. Kotroco.)
Q. (MR. KOTROCO) Did you find that the helicopter blew the flies off of you when you were standing around that day?
A. Fortunately the day was cool and there weren't many flies.
MR. KOTROCO: Are you finished, Mr. Barhight?
MR. BARHIGHT: Yes, I am. Thank you very much.
MR. KOTROCO: Mr. Nelson, do you have some questions you want to ask the witness?
MR. NELSON: Yes, sir, just a few.

CROSS EXAMINATION
BY MR. NELSON:
Q. Mr. Miller, I want to ask you a few questions about the data for the A109 taking off. You related that the level was 69 dBa; is that right, sir?
A. At the Immelt residence.
Q. All right. Now, is that a peak level, or an average legal, or what is that?
A. Neither.
Q. Well, if you went to your source of data for your calculations, would you have a range of dBa levels at the Immelt residence for an A109 taking off, higher or lower?
A. I'm sorry? Would you repeat that?
Q. Do you have more than one number for the level of noise that you would expect at the Immelt residence?
A. There are many ways to present the data.
Q. And what I'm wondering is, what is the peak level at the Immelt residence from the helicopter, from that pad?
A. Peak in acoustic has a very specific meaning. I don't know -- it's not normally used.

Q. Well, if I were up there with a piece of your equipment and I know how to use it, and this A109 was taking off, what level would be generated on your equipment? Would it be 69, or would it be something higher than 69, lower than 69?
A. We would anticipate about 69.
Q. All right.
Q. (MR. KOTROCO) At the highest? I mean, as it ascends and goes away, it's going to quiet down, wouldn't it? I think his question is, what is the loudest.
A. Right.
MR. NELSON: That's exactly what my question is.
A. I understand the question. And 69 would be about what we would expect. It will vary from --
THE WITNESS: I'm sorry. Go ahead.
MR. KOTROCO: Hold on a second. Okay, go ahead.
A. It will vary from flight to flight. But 69, we felt, was a reasonable representation of the --
Q. The same helicopter can vary?
A. Yes.
Q. Based on when, other factors, it might?

A. Yes.
Q. (MR. NELSON) Here is my question. I understand the concept LDN.
A. Yes, sir.
Q. But to use an analogous concept, if it takes, say, two minutes for the A109 to take off and leave the vicinity, do you average that entire two minutes, or whatever period of time it is to get 69, or are you measuring the loudest level during that period of time?
A. It was not an average, okay. It was more -- it was essentially the loudest. When I say essentially, it's always possible that could have some brief moment for a second that could exceed that. But it was meant to be, to represent the nominal maximum.
Q. Okay, fair enough. And the same is true for the taking off of the fixed-wing aircraft at the Immelt residence?
A. Yes, sir.
Q. What is the distance from the helicopter, proposed helicopter pad, to the Immelt house?
A. Approximately, without remeasuring it,

approximately 1,500 feet.
Q. Okay. And if you want to remeasure it, you're welcome to.
A. That's okay.
Q. But we can use that number, 1,500 feet. Now, you may not know this, but Susan Immelt and her husband have the right to build a house right here, right on that crest. And I don't want to put words in your mouth, but that, from my rough gauge, appears to be just shy of 50 percent of the distance between the helicopter pad, proposed helicopter pad, and the current Immelt house. And feel free to measure. I don't want to -- if it's 50 percent or 48, I want to use the right number. But we can agree, can we not, that if the Immelts decide to build a house, which they have the right to do --
MR. BARHIGHT: Well, I object that that might be characterized as testimony, because we don't agree with that statement.
MR. NELSON: Okay.
MR. KOTROCO: Assume for the purpose of the question.

MR. BARHIGHT: If he wants to assume for the purpose of the question, then I have no objection.
Q. What would the maximum dBa level be at that house site for the A109 taking off?
A. If you'll bear with me for a moment.
Q. Take your time, sure.
MR. BARHIGHT: What's the distance?
MR. NELSON: He's free to measure it. I estimated to be just shy of 50 percent. Maybe it's 50, but I would say 45 percent.
A. Assuming we're not going to mince a dB or two, I can give you a reasonably good guesstimate without having to be specific.
Q. Fair enough.
A. Approximately 76, 77 dBa.
Q. Now, Mr. Miller, would you be kind enough to approach this map just for a moment, please. You see there, do you not, the proposed helicopter pad?
A. Yes, sir.
Q. Let's assume, hypothetically, that this A109 takes off in the center of that proposed pad, and you're

standing on the property line between my client, Susan Immelt, and the helicopter pad. What would the dBa level be on that property line, 1 inch onto my client's property, as the A109 is taking off, in normal atmospheric conditions?
A. I don't have the exact number, but I would estimate somewhere around 90.
Q. 90 dBa?
A. Yes, sir.
Q. All right. You can have a seat.
Now, you shared with us a description of the national standard for airport noise?
A. Yes, sir.
Q. And that, as we know, is 65 dBa LDN; is that right?
A. Yes, sir.
Q. And does that national standard also have a peak value, or not?
A. No, sir.
Q. And you will agree that there was a substantial debate as to whether or not, when evaluating national

airport standards, whether or not there ought to be a peak level in addition to the average? That was a major debate.

A. I wouldn't call it major, sir.

Q. You would agree there was a debate?

A. Yes, sir.

Q. And you would agree that there were people who were articulating the notion that if the government is going to adopt a noise standard, the federal government, for an airport, they ought to take into account peak levels?

A. It certainly has been put forth.

Q. Now, on the national level, it's only the LDN average; is that right?

A. Yes, sir.

Q. Now, you've been very careful to use the phrase national standard. Are you aware of any state standard for noise?

A. BWI uses the same standard.

Q. Well, that wasn't my question. My question was not whether BWI uses the national standard, my question is

are you aware of any state law with respect to the generation of noise at your property line?

A. Well, yes, many states have many different kinds of levels.

Q. What is the maximum peak level in Maryland for noise at your property line?

A. From what kind of source?

Q. How about a residential source?

A. Such as?

Q. Such as an 87 acre farm in an RC-2 zone of Baltimore County.

A. But I still don't -- I'm not sure of the question because I'm not sure what kind of source you're referring to.

Q. Why don't you give me the levels for whatever sources you choose. Industrial source, do you want to use that?

MR. KOTROCO: Are you talking about lawn mowers or chain saws?

THE WITNESS: That's why I'm asking the question.

Q. (MR. KOTROCO) Well, does our state code regulate

each and every particular item, or does it say there shall be no louder noise than 65 dBa at your property line? Or does it say for a lawn mower, you can have 50; for a tractor, you can have this? Do they designate different uses?

A. They do. I apologize for not answering the question directly, but it's not a simple answer. There is a state code, but the code specifically excludes a lot of things. Because otherwise, for example, mechanical equipment, air conditioners, wouldn't be able to function if they had to meet the code. Or somebody wouldn't be able to mow their lawn if they had to meet the code, because you would be exceeding the code with almost everything that you would normally use. You wouldn't be able to run the tractors. So there's a lot of exclusions or a lot of stipulations placed on it. So to simply say you cannot exceed X levels, it's not quite that simple. But with that caveat, I believe the Maryland Code is 60, without looking it up.

Q. (MR. NELSON) 60, maximum?

A. Yes, sir.

Q. Now, are you suggesting to Commissioner Kotroco that the Maryland Code says there's an exception for a helicopter pad which is located 5 feet from my client's property?

A. I believe that it does not apply to any kind of transportation noise.

Q. Doesn't apply to transportation noise.

A. Otherwise we would not be allowed to drive trucks down a street.

Q. But you would defer to that code, would you not? If that code didn't say there was an exception for transportation noise, you would accept that, wouldn't you?

A. Well, I know it does have an exception for transportation noise.

Q. Are you saying it has an exception for a helicopter that's taking off in an RC zone?

A. I would have to defer that to a legal interpretation, sir.

Q. But you would agree, though, that the limit that's imposed by state law is not an average? And I understand your point that there may be exceptions. I

understand that.
A. Yes, sir.
Q. But you would agree that that level is not an average level but a peak level?
A. It's a not an average level, that is correct.
Q. Right. Now, you describe the measurement of noise as really the measurement of pressure, I think; is that right?
A. Sound pressure is the normal term used.
Q. I'm imagining, not this site, but just any -- if there's a large noise, can the sound pressure -- and if you hear your windows rattle, is it the sound pressure that's causing the windows to rattle, or something else?
A. It can be.
Q. In what circumstances can it be?
A. If the level is high enough and/or the construction is easily excited.
Q. Can you draw any conclusions about the level of the noise based on the effect it has on the windows?
A. You may be able to.
Q. Are you able to?

A. I'm sorry, I'm not sure I understand the question.
Q. All right. Well, for example, let me get to the point. There's a Dr. Laura Robertson, a radiologist in town, who has got a house just to the east of the proposed helistop. She has testified under oath that the helicopter comes in over her house. In other words, she --
MR. BARHIGHT: I think I have to object to this.
MR. KOTROCO: Overrule it. I'll allow him to give a hypothetical. He can place it in hypothetical terms.
Q. Comes over her house. They described the flight plan. You weren't here earlier. Maybe you were. The witness described the flight plan for the helicopter. Her house is beneath that.
MR. BARHIGHT: I assume, again, this is all hypothetical.
MR. KOTROCO: A hypothetical?
MR. NELSON: We'll follow up. This witness already testified to this effect under oath.

MR. KOTROCO: Not at this proceeding.
MR. NELSON: I understand, but I haven't yet started my case.
MR. KOTROCO: But assuming for the purposes of this question, these are the facts?
MR. NELSON: Assuming for the purposes of this question this is so.
Q. She has testified hypothetically that the helicopter comes in over her house, and that it rattles the windows, and it's difficult to carry on a normal conversation because of the noise generated from the helicopter. Assuming that to be true, can you draw any reasonable conclusions as to the level of the noise at that point?
A. Not easily, no, sir.
Q. What makes it difficult?
A. It's not a simple answer. But having been in the field as long as I have, I've seen significant variations in people's reaction to sound. And often a person's reaction to sound is as much psychological as it is physiological.

Q. Fair enough. So let's delete my statement about inability to carry on a conversation, because that brings in subjective elements.
A. Yes, sir.
Q. How about the rattling of the windows?
A. It could mean that the level is relatively high, it could mean that the construction is easily excited. It could mean that you happen to be hitting a resonant mode briefly. So it's frequency dependent also. Some things will vibrate at a particular mode more easily than others and if you hit that particular frequency.
MR. NELSON: One moment, please. One moment, please, Mr. Kotroco.
(Discussion off the record.)
MR. NELSON: Just one or two more very minor subjects.
Q. Mr. Miller, did I understand you to say that one's ability to perceive the noise is somewhat dependent on, say, the atmospheric conditions or the weather?
A. I don't believe I said that, but that has some bearing on it.

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Q. All right. Could you describe for us, please, what weather conditions serve to insulate noise or depress it and what serve, what conditions serve to carry it more effectively?

A. Significant studies have been made on transportation noise over distance relative to weather conditions.

Q. Yes, sir.

A. Okay. There are many factors that affect it. Wind is probably one of the more dominant ones. Wind can bend or refract sound, thereby making it possibly appear a little louder, or most often actually less loud. Usually it's a much greater distance. Wind usually does not affect sound significantly over short distances.

You can also have temperature inversions. A temperature inversion, again, tends to potentially appear to increase the level at a great distance, but usually has little effect at short distances relative to if the inversion weren't there, okay. What happens is that you get a refraction or a reflection off of the temperature inversion, and at some distance significantly further

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away, where a level would have been lower, you can get some additive effect with a level build-up. But usually it doesn't take place over short distances, it takes place over longer distances. Over short distances, wind has a tendency to actually break up the sound some and actually can reduce it slightly. But over long distances, again, wind or temperature/inversions can increase the sound level at a significant distance away.

Humidity has an impact. Primarily it's the -- there's a term called excess attenuation. High frequencies attenuate. Air actually attenuates or absorbs sound as sound promulgates through it. It's more effective at the high frequencies than at the low frequencies of attenuating sound.

The best example that we all experience is lightning and thunder. When you see that flash, if you hear a crack, you kind of tend to know it was close to you. If you hear a boom, you know it was kind of further away. Why is that? Well, because the high frequencies have been attenuated. We have learned to associate that, just as humans, but that's the physics behind it. That's

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what's going on. If you're walking through the woods and you hear a twig snap, okay, it's close to you, you hear the high frequencies. You tend to think something is close to you. At a highway, you know if you're close to a highway you hear the whish of tire noise; when you're far away, you hear the rumble of the trucks. You don't hear the high frequencies any more. All of this is because there is this excess high frequency attenuation.

Back to your question, okay, humidity affects excess attenuation, so you can get more high frequency attenuation with higher humidity, as a rule, than you do with lower humidity.

So, yes, there are many factors in weather that affect sound propagation. Most of them tend to be longer range, longer distance, and not usually over shorter distances.

Q. And when you say shorter distance, you mean a distance 600 feet or less?

A. It varies depending on the source and other phenomena, but that order of magnitude, yes.

Q. Okay. Now, let's go back, if we can, for a

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moment. And I was a little bit unfair and asked you to calculate just in your head what the maximum dBa level would be at the Immelt property line where it abuts the -- where it's right next to the proposed helistop.

A. Um-hmm.

Q. And you did that equation in your mind. Now, I don't want to ask you to crank that equation out now to get a precise number, but are you able to write down on a piece of paper the equation you would use to derive the precise number, if you were to do that?

A. Well, in most cases it would be better to measure it.

Q. Well, then how was it that you came up with the estimate of 90?

A. Based on measurements that we made.

Q. Okay.

A. You're asking how would one calculate further or shorter distances?

Q. That's right.

A. Point sources, as a rule, decrease or increase 6 decibels for doubling or halving the distance. I guess

that's the equation that you were requesting information on.
Q. Right.
A. So if you have a, what's called a point source, a point source being defined as a point or something that's effectively a point, then as you progress away from that, if you have a known level of some given distance and you double that distance, as a rule it will drop off 6 decibels. That's the simple mathematics. Again, it's not quite that simple in reality. There are other factors involved, but from a simplistic trying to answer your quick question, 6 decibels per doubling of distance or halving of distance.
Q. Was it that fundamental principle that you applied when you came up with the estimate for the Immelt house site, which is roughly 45 percent of the distance from the proposed helistop to the existing Immelt house?
A. A modified form of that.
Q. Meaning you didn't actually monitor that spot with a meter?
A. We did not measure at the Immelt residence,

that's correct.
Q. Why did you say it was a modified?
A. Well, partially because, as I mentioned earlier, it's not quite that simple. But that is a simplistic, and that's pretty close to what happens, but --
Q. Okay, all right. Now, did you take -- let me move back now to the proposed helistop. I mean, you were personally there, not one of your employees or colleagues. I mean, you were there?
A. I was there, and I had one of the associates there.
Q. With the equipment?
A. Yes, sir.
Q. And did you ever measure the level of noise at the fence that surrounds the proposed helistop?
A. A measurement was made in that vicinity.
Q. And what was that measurement?
A. I don't have that number with me. I'm sorry.
Q. Well, was it higher than 90 or less than 90?
A. I don't remember the exact number.
Q. How did you come up with the 90?

A. I took a guesstimate, knowing what we'd calculated at the Immelt residence and worked backward.
Q. All right. Now I'm a little confused, because I thought in response to an inquiry you suggested that you had levels, actual test data, that permitted you to say it was in the range of 90.
A. That's not what I said.
Q. Then I misunderstood you. Do you have, in your office, data, tests that you took of the noise level at the edge of the proposed helistop?
A. In that vicinity, yes.
Q. Is that in the courtroom today?
A. I don't know.
Q. Who would know?
A. I would have to go through my material and/or call my office and find out if they have it.
Q. Would you look at your material and see if you have that here today?
A. I will look.
MR. KOTROCO: Go ahead.
MR. BARHIGHT: Mr. Kotroco, just for the record,

no objection to him checking his file. Obviously he should only be required to review what he's taken to the stand with him and relied upon for his testimony. But for the record, no objection for him to leave the stand and go see what might be elsewhere in the courtroom. I'll reserve on how far we go as to whether he is being requested to also call his office.
A. Yes, sir. I did have the information. It was 91.4.
Q. Where was that 91.4 taken?
A. Without looking again, I believe it was at the fence line, within a few feet of it.
Q. Within a few feet. So it's fair, is it not, for us to say that since the fence abuts the Immelt's property line --
MR. BARHIGHT: It's not fair to say that. Objection. It does not abut the property line.
Q. Well, Mr. Miller, I don't want to put words in your mouth. Why don't you come to the map, and you can tell us how many feet from the property line it is. I'm looking at the northwestern corner of the proposed

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helistop. Feel free to use this, if you want.
A. It would appear to be about 10 feet or so, 10 to 20 feet.
Q. Off by 10 feet. But is it fair for us to say, then, that if one were standing 10 feet from the fence, the level would be 90 to 91.4, thereabouts, dBa?
A. That order of magnitude, yes, sir.
Q. No, no, not that order of magnitude, because that is a range of tenfold, is it not?
A. Would you repeat your question, please?
Q. My question is, if you're standing 10 feet from the fence --
A. Yes, sir.
Q. -- meaning, which is to say, standing lawfully -- if Susan Immelt were standing lawfully on her own property, right at this edge of it, at the time -- or one of her children were standing there, one of the times the A109 was taking off, the noise level there would be 90 to 91 dBa?
A. That is correct. I said in that range. As I said, the helicopter may vary a dB or two from flight to

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flight.
MR. NELSON: Right. One moment, please, Mr. Kotroco. That's all I have. Thank you for your time.
Q. (MR. KOTROCO) Do you know at what level the human ear might suffer damage, what dBa level would cause -- not over a sustained period of time, but over a 30-second period of time, how many dBa's does it take to cause any type of pain to a human eardrum, or anything like that? Are you aware of anything --
A. Yes, sir.
Q. -- any standards?
A. Yes, sir.
Q. What would those be?
A. OSHA has established standards specifically for that reason. There was some debate as to whether the OSHA adequately protected people, so OSHA has actually ultimately ended up with two standards. The reason why they have two is, on one hand, if they implemented the lower standard, they felt that there would be too significant a cost implication for our industry. On the other hand, if they just left the high standard in, they

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felt that they weren't adequately protecting people. So without -- and I don't mind getting into more detail, but trying to keep it simple, the two standards are -- but they're going to require a brief explanation to go with them.
Q. Okay.
A. -- 90 dBa and 85 dBa. But the definition that goes with them is that's for an eight-hour workday, okay. So that's a cumulative exposure of 90 dBa and/or 85 dBa.
The distinction between them is 90 is the obviously less conservative one, but the one that may not protect people adequately. So what OSHA said is, if you're not exceeding 90, you're not exceeding our standard. However, if you're over 85, then industry is required to have a hearing conservation program where they provide hearing protectors, they monitor the people's hearing. If somebody is starting to lose hearing, then they have to do something about that. If you're under 85, then you're meeting OSHA standards clean cut, no questions asked. But that's, again, an eight-hour day.
Now, you had suggested a short time period,

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correctly so, because this is not an eight-hour exposure. The way the OSHA standard works is they have what's called a 5 dB exchange rate. That means, statistically put, that for every time you have the time, you can increase the level by 5. So in other words, if you're only exposed for four hours, then if you take the conservative one, the 85 -- let's assume we stay with that one, forget the 90 -- then you're allowed 90 for four hours, 95 for two hours, 100 for one hour, and so forth, 105 for half an hour. So does that answer your question?
MR. KOTROCO: Um-hmm. Okay. Mr. Nelson, any other questions?
MR. NELSON: Yes, sir
Q. (MR. NELSON) Mr. Miller, do you ever advise industry about precautions they should take with respect to their workers and noise? Is that part of your work?
A. Yes, sir.
Q. Now, let's assume, hypothetically, that one of your client's typical practice generates a steady noise of, say, 70 dBa with occasional peak levels, three, but peak levels in the range of 90 dBa.

A. Yes, sir.
Q. I'm not asking about OSHA standards, I'm asking about what your advice is. In those situations, is it your practice to recommend to your client, or to make sure that they're doing it on their own, that the men or the women who work in those conditions are wearing hearing protection devices?
A. As a rule, no.
Q. As a rule, no. Okay. So it's your testimony that you've never recommended to any of your clients that their workers wear hearing protection if they're working in an environment of noise of 70 dBa with peaks up to 90?
A. No, sir.
Q. Never done that?
A. No, sir.
MR. NELSON: That's all I have. Thank you.
MR. KOTROCO: Mr. Barhight?
MR. BARHIGHT: A few questions, please.
REDIRECT EXAMINATION
BY MR. BARHIGHT:
Q. Mr. Miller, you indicated what the LDN reading

was for no aircraft events at these two measuring locations. What were they, again?
A. 56.4 and 58.4.
Q. And yet they raised by less than one point with the eight events of each aircraft type?
A. That's correct, sir.
Q. Is there anything unique or unusual about having readings as high as 56.4 and 58.4 for the ambient reading of the LDN?
A. Unique, no, but indicates to me that this is not a particularly quiet site.
Q. Why is it not a quiet site?
A. Well, from having seen the area and having been in the area, it's predominantly denominated by the highway noise. It's relatively close to both 695 and 83.
Q. Do you have an opinion about whether that accounts for the ambient background noise at this location?
A. It's the dominant source of it. There is also some aircraft fly-over, but the dominant source is the highway noise.

Q. Would that noise level drop off as you got farther and farther away from 83 and 695?
A. Definitely.
Q. Okay. Do you know why the LDN standard has been selected as a national standard for the study and measurement of impacts of transportation noises, including airports?
A. Basically, yes.
Q. Can you please explain why?
A. Aircraft noise, all transportation noise but especially aircraft noise, has without a question generated some complaints around major airports, especially as they grew, as runways lengthened and aircraft got noisier. So assessment of the interaction of the airport with the community became a very important aspect of FAA and other national considerations, because they wanted to be able to maintain our national transportation system, but yet try to address community concerns.
Many systems were attempted and approached. The ones that they started to zero in on, and I'm sort of

dating myself here because some of these go back a long ways, but initially military airports and to some extent civilian airports adopted a system called CNR, I believe -- this is a long time ago -- Community Noise Response, or something of that nature. That evolved into something called NEF, Noise Exposure Forecast. And that became adopted for quite a few years. Ultimately that evolved into what's today known as the DNL or LDN system.
Now, in the process of all this evolving, what took place was that they mapped and generated contours around airports, and then took this vast amount of information of community response of objection to aircraft noise and determined how intense it was, and then determined what would be a reasonable boundary so that they would minimize any kind of community concern. And that was, they felt, in their best interest, both for the community and for the airport, because they wanted to keep the airport operational, to establish some standards so that people wouldn't be building residences within the complaint zones. Leave those for commercial or for industrial.

And I think I had testified earlier that 65 is a residential. Then up to 70 is commercial, and I believe up to 75 is industrial. And that's not to say that they don't allow anything beyond 75. These are just norms for particular reasons.

So they established these zones based on a significant wealth of data around airports. Today it's also applied, as I said earlier, to railway and highway traffic. Now, FAA has slightly their own rendition of it, but still the LDN system is basically applied to highway noise too.

Q. If the zoning commissioner were looking for a way to further restrict the noise impact on the community of the proposed operation, is it possible to do that through the LDN system?

A. Certainly.

Q. Is that measurable? Is that measurable in the future? Could some other acoustician come along and measure it, and check to see whether or not that standard is being met?

A. It's measurable and/or calculateable.

Q. Okay. Does the size and nature of the fixed-wing aircraft have an impact on the LDN reading? If larger aircraft were able to land at this location, would that effect the LDN?

A. It could. In fact, I believe I was asked the question earlier about helicopter size, by the commissioner, and I acknowledged that certainly some helicopters are noisier than others, just as some fixed-wing aircraft are noisier than others. So certainly a larger fixed-wing aircraft, as a rule, creates higher noise levels.

Q. Were you able to calculate how close a residence could get to the helicopter pad and still meet the 56 LDN requirement?

A. I did.

Q. What was that distance?

A. With the proposed eight fixed-wing and eight helicopter flights, using the aircraft that had been already previously discussed as our model or our basis, one could build a residence and meet the 65 dBa LDN criteria within 200 feet of the helipad property line or

250 feet from the actual helipad, because the helipad is inset some.

MR. BARHIGHT: No other questions of this witness at this time.

MR. NELSON: May I follow up?

MR. KOTROCO: Yes.

RECROSS EXAMINATION

BY MR. NELSON:

Q. Now, with respect to the national standard of 65 dBa LDN, you say that applies to a residence, not commercial or industry; is that right?

A. Yes, sir.

Q. And in the federal system, in the federal statute, how do they define a residence? Is it the bedroom? Is it the front door? Or is it the edge of the property line?

A. This is an exterior level that the dwelling is subjected to.

Q. Well, you mean to say, then, that it's the level at the outer skin of the house?

A. Basically that would be normally the area of

concern.

Q. Well, that would be normally the area of concern. My question, sir, is different. My question is, under the federal system, is there anywhere in this code about which you've testified that says you ought to measure at the property line, as opposed to exterior edge of the house?

A. I don't believe they have set a specific location. It's the impact on the facility.

Q. Oh. So the federal system does not say measure it at the exterior wall of the house, doesn't say that, does it?

A. I don't believe it does.

Q. It says you want to measure the impact on the -- what was your word?

A. I don't remember exactly.

Q. Facility?

A. Facility.

Q. Okay. Well, assuming, hypothetically, the zoning commissioner were to read that federal statute, and we'll brief this at the end of the case, as being the edge of the property line, would this proposed helistop comply

with the national standard?
MR. BARHIGHT: Which property line?
MR. NELSON: The closest property line, which we've established is 10 feet away.
MR. BARHIGHT: That was an approximation. Mr. Matis can give you the exact distance, but accept it for the hypothetical.
MR. NELSON: If you want to measure it, if it's 12 feet, I don't care what it is.
MR. KOTROCO: Mr. Miller took the measurement from the Immelt property and he estimated it to be about 10 feet.
MR. NELSON: That's my memory.
MR. BARHIGHT: 10 to 20 is what he said.
THE WITNESS: I did say 10 to 20.
MR. NELSON: Oh, I'm sorry. I didn't hear the 10 to 20. Okay. I mean, it is what it is.
MR. BARHIGHT: Exactly.
Q. But at 10 to 20 feet, assuming the commissioner concludes, reading the federal statute, that, number one, the federal not the state standard applies, and, number

two, that if you're going to apply the federal standard you go not to the exterior edge of the house but to the property line, and if you used your measurement of 10 to 20 feet, and we can confirm the precise measurement, would this proposed helistop comply with the national standard?
A. I don't know. I believe it would.
Q. You don't know?
A. Depends on how many flights and where the helistop actually ended up being physically placed.
Q. Well, the proposal is the helistop is going to be right here.
A. I would have to recalculate. I don't know for sure, because we calculated it to be 60, less than 60.
Q. 60?
A. We calculated with eight flights to be less than 60. We didn't say it was 65.
Q. All right, okay. So will you agree with the statement: Sitting here today, I cannot express the opinion with probability that if I were to do this calculation using 10 to 20 feet, as opposed to 600 feet, I could not state with probability that this proposed

helistop will comply with the federal standards. Will you agree with that assertion?
A. Would you restate that again, please?
Q. Will you degree with the following statement: that if you were to use a distance of 10 to 20 feet, not 600 feet, that you cannot state today with probability that this proposed helistop, with eight flights of eight events for an aircraft, eight events for a helicopter, you cannot express an opinion with probability that those flights would comply with the 65 dB LDN national standard, using the measurement of 10 to 20 feet to the next residence, as opposed to 600.
A. That is correct.
Q. You cannot state that?
A. That is correct.
MR. NELSON: That's all I have.
MR. KOTROCO: Anything further of this witness?
MR. BARHIGHT: No.
MR. KOTROCO: Thank you. You may step down. Next witness?
MR. BARHIGHT: Mr. Matis.

MR. KOTROCO: Raise you right hand, please.
Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?
THE WITNESS: I do.
MR. KOTROCO: Have a seat, state your name and address.
THE WITNESS: James Matis. My business address is 6600 York Road, Suite 209, Baltimore 21212.

JAMES MATIS,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Matis, where are you employed?
A. At the firm Matis Warfield.
Q. What are your title and duties there?
A. I'm the principal in a small firm. I'm pretty much hands-on with most projects in terms of engineering and design.

MR. BARHIGHT: I don't know whether Mr. Nelson is familiar with Mr. Matis or not. I can certainly go through the details, but I am going to offer him as an expert in civil engineering and zoning. If you want, I can certainly go through the entire --

MR. NELSON: I have no objection to engineering, I have no objection to zoning. But if we're going to get into a question such as, Can you build a helistop by special exception in an RC-2 zone in 1998, I object to that.

MR. BARHIGHT: We're not.

MR. NELSON: But if it's just --

MR. BARHIGHT: We're not.

MR. KOTROCO: All right. Then I'll accept him as an expert in engineering and zoning.

MR. BARHIGHT: Good.

Q. Did you draft the site plan submitted for identification purposes as Petitioner's Exhibit No. 2?

A. Yes, I did.

Q. Is that your seal on the site plan?

A. My seal is on the prints, my seal is not on the

petitioner's exhibit.

Q. Okay. I believe both counsel and Mr. Kotroco have a copy of your sealed print for Petitioner's Exhibit No. 2?

A. I believe it was offered this morning.

MR. KOTROCO: I've got --

A. It has a revision date of April 3, 1998.

MR. KOTROCO: No. 2 is the one you have up on the board, the colorized version.

MR. BARHIGHT: All right.

MR. KOTROCO: I've never marked this on here.

MR. BARHIGHT: This is the same as on the board.

MR. KOTROCO: But that's in color.

MR. BARHIGHT: We're going to give you that one, too.

MR. KOTROCO: Do you want me to mark this one?

MR. BARHIGHT: Yes. We can mark them both.

MR. KOTROCO: As what?

MR. BARHIGHT: Petitioner's Exhibit No. 2 -- do you want to do 2A and 2B?

MR. KOTROCO: Yes.

MR. KOTROCO: All right. The one on the board, which is colorized, will be 2B, and the one that's not colorized will be 2A.

(Petitioner's Exhibits 2A and 2B respectively were marked by Mr. Kotroco.)

Q. (MR. KOTROCO) I have the one up here, which is 2A, which, if I can ask Mr. Matis, is identical to the one on the board, except for the fact that the one on the board has been colorized?

A. It's been colorized, and my seal appears on the print, not on this one.

Q. Why doesn't your seal appear on the one on the board?

A. It was a direct plot from a machine. I did not seal it.

Q. Okay. But it's identical to the one I have before me, except for the colorization?

A. Yes.

Q. Okay.

Q. (MR. BARHIGHT) With regard to Petitioner's Exhibit 2A and 2B, do those site plans meet all the

requirements of Baltimore County zoning regulations?

A. They fellow the zoning office's checklist for submission of zoning petitions.

Q. Okay. And just generally speaking, how does the site plan in Exhibit 2A and 2B differ, if at all, from that which was filed when the original petitions were filed?

A. It's been updated to include the special exception data, in addition to the restrictions listed for the airport use. We also updated the topography to the current county GIS system. It's a little more accurate.

Q. Okay. And when you talk about the restrictions, are they the special notes regarding airport use that Mr. Lucas spoke of during his testimony?

A. Yes, Special Notes 1 through 8.

Q. At the top of the zoning map?

A. Yes.

Q. Have you had the opportunity to visit the site?

A. Yes, I've visited the site four times.

Q. Do you have a photoboard you could use to help describe certain features of the subject property? If I

can ask you to step down and come on up, and invite Mr. Nelson up as well.

MR. BARHIGHT: No need, I assume, to go through describing the property again. The man is familiar with the site. We don't have to go through and do that, I hope.

Q. But why don't we direct your attention to the photoboard. And working from the top to the bottom, would you please describe the photographs. Did you take these photographs?

A. I took those this Friday. It's a series of panoramic shots, looking from -- the top photo is north and east, standing at the southwest corner, approximately the southwest corner of the aircraft landing and takeoff area, with the helicopter landing area, fenced area, in foreground and the field is in the rear. We have also noted Mr. Dale Lucas's residence, and in the background also you can see just the pavilion of Greenspring Station.

Q. (MR. NELSON) North is which direction?

A. North is going this way.

MR. NELSON: Thank you.

Q. (MR. BARHIGHT) North would be looking towards the Lucas residence?

A. Correct, up the driveway.

Q. And how about the second set of photos?

A. Second set is standing in the center of the proposed helicopter landing area and looking east.

Q. Would that view be over the field to the tree line, the facility between the Meadow Wood property and the subject site?

A. That's correct.

Q. And how about the bottom?

A. And this is, once again, in the center of the proposed helicopter landing area, looking towards the north and west. Again, Mr. Lucas's, Mr. Dale Lucas's residence.

Q. Okay. There has been some question with regard to the distances between property lines and fence lines. Do you have an idea, in the field, of where the property line is between the Immelt to the immediate west and the subject site?

A. We didn't undertake a field survey. Mr. Lucas has one currently under contract. My estimate is that we're some 25 feet away from basically the western fence of the helicopter landing area and the property line. I would suspect the property line is somewhere around the tree line shown.

Q. Okay. So it could be approximately 20 feet, give or take?

A. Yes.

Q. And your estimate is 25 feet?

A. 25.

MR. BARHIGHT: I'd like to offer that as the next Petitioner's Exhibit.

MR. BARHIGHT: Any objection?

MR. NELSON: No.

MR. KOTROCO: I'll mark it as Petitioner's Exhibit 4.

(Petitioner's Exhibit No. 4 was marked by Mr. Kotroco.)

Q. Are you familiar with the surrounding properties and uses?

A. Yes, I am.

Q. What is the zoning of the subject site?

A. It's RC-2.

Q. What is the zoning of the surrounding properties?

A. RC-2. On the other side of Hillside Road, which is south of the property, is zoned RC-5.

Q. Have you been here all day during all of the testimony?

A. Yes.

Q. Were you also present during the tests that were done by Mr. Miller, the sound tests?

A. Yes, I was.

Q. Have you had a chance to witness some of the operation of the fixed-wing and helicopters?

A. I did.

Q. Are you familiar with the proposed use as described by Mr. Lucas and restrictions that are identified on the site plan?

A. Yes.

Q. Are you familiar with the zoning maps of Baltimore County, particularly the locations of the RC-2 zones generally in Baltimore County?

A. I am.
Q. Are you familiar with the Baltimore County zoning regulations --
A. I am.
Q. -- particularly as they relate to airport uses?
A. Yes.
Q. Are airports permitted by special exception in the RC-2 zone?
A. They are.
Q. Would the proposed airport use be detrimental to the primary agricultural uses in the vicinity?
MR. NELSON: I object.
MR. KOTROCO: Did you object?
MR. NELSON: I did. The man has been offered and accepted as an expert in engineering and zoning, not farming.
MR. BARHIGHT: The zoning regulations require that we discuss whether a special exception case, specifically under, what is it, 1-A-04, whatever it is -- I can cite the reference -- that we determine whether there is going to be an adverse impact on primary

agricultural uses of the vicinity. There has been ample testimony about what the nature of those uses are. He's an expert in zoning. These are typically the kinds of questions that zoning experts testify to.
MR. KOTROCO: I'll overrule the objection. I'll allow him to express his opinion. You can delve in the cross-examination as to what his experiences are with the uses in the RC-2 zone.
MR. BARHIGHT: Well, let me lay a little more foundation, then.
Q. Are you generally familiar with the kinds of uses that one finds in the RC-2 zone?
A. Yes, I am.
Q. Are you familiar with the uses specifically in the vicinity around this site?
A. Yes.
Q. Did you hear Mr. Lucas characterize the nature of the agricultural uses in the area?
A. Yes, I did, row crops, thoroughbred horse facility.
Q. Do you agree or disagree with Mr. Lucas's

characterization of the agricultural uses in the area?
A. I agree.
Q. Is that based upon your personal knowledge?
A. Yes.
Q. Have you had occasion to practice civil engineering and zoning in Baltimore County for a number of years?
A. 18 years.
Q. And during that time, is this your first RC-2 case, or have you had a variety of other RC-2 cases?
A. A number of RC-2 cases.
Q. Have any of those dealt with impacts on agricultural uses?
A. Indeed.
Q. Would the proposed airport use be detrimental to the primary agricultural uses in the vicinity?
MR. NELSON: Object for the record.
MR. KOTROCO: Overruled. You can answer.
A. No. I believe, on the contrary, it's -- based on the testimony of Mr. Lucas, it serves to enhance his facility.

Q. Are you familiar with Baltimore County zoning regulations, Section 502.1, as they relate to special exceptions?
A. Yes, I am.
Q. I'm going to ask you a series of questions, then, with regard to the 502.1 standards, and in each case, so I don't have to beat myself too much, if it's appropriate, I will be asking these questions as they relate to you as an expert in the field of civil engineering and zoning. I will be asking you to render those opinions on those bases only, as an expert in civil engineering and zoning.
The first question is whether the proposed airport use will tend to create congestion in roads, streets, or allies, above and beyond which you would ordinarily expect for an airport use in the RC-2 zones?
A. No, it will not.
Q. Why?
A. In essence, the restrictions placed on the number of flights limit the airport severely, that would typically be expected by a typical airport in an RC-2 zone.

Q. Is there any special traffic generation that you can think of that would have an adverse effect?
A. Not that I foresee.
Q. The next expert opinion would be whether the proposed airport use will create potential hazards for fire, panic, and other dangers, above and beyond what you would normally expect for an airport use in the RC-2 zones.
A. No.
Q. Why?
A. Based on the testimony of Mr. Lamb and the restrictions placed on the plan, I believe the airport will operate in a safe condition.
Q. Okay. Next question in your opinion is whether the proposed airport use will tend to overcrowd the land or cause undue concentration of population, above and beyond what you would normally expect for an airport use in RC-2 zones?
A. No.
Q. Why?
A. Once again, the restrictions placed on the use of

the airport would make it substantially less intensive than a typical airport in the RC-2 zone.
Q. The next one is whether the proposed airport use will interfere with adequate provision for schools, parks, water, sewerage, or transportation, above and beyond what would you ordinarily expect for an airport use in the RC-2 zone?
A. No.
Q. Does it use public water, public sewers?
A. This is on a private septic and private well water system.
Q. Does it generate any need for schools or parks?
A. I don't believe so.
Q. Okay. Any adverse effect on transportation, that you're aware of?
A. Not that I'm aware of.
Q. The next is will the proposed airport interfere with adequate light and air, above and beyond what you would ordinarily expect for airport use in RC-2 zones?
A. It will not.
Q. Why not?

A. The airport proposed, once again, is less intensive than what one would expect as a typical airport in RC-2 zone, and there are, in fact, no structures proposed at this time which would interfere with the light and air space.
Q. Are you familiar with the spirit and intent and purposes of the RC-2 zoning classification?
A. Yes, I am.
Q. And have you had an opportunity to review those during your career?
A. Yes, I have.
Q. Have you reviewed them recently?
A. In fact, I have them in front of me.
Q. Okay. The next question in the opinion is whether the proposed airport use is consistent with RC-2 zoning classification and within the spirit and intent of the zoning regulations.
A. I believe it is.
Q. Why?
A. For all the previous reasons stated.
Q. Next is, will the proposed airport use be

consistent with the permeable surface and vegetative retention provisions and policies of the Baltimore County zoning regulations?
A. It is. That particular provision relates to RC-4 zones, not necessarily RC-2 zones.
Q. Okay. Next is whether the proposed airport would have any adverse effect on health, safety, or general welfare, above and beyond what you would ordinarily expect for an airport use in an RC-2 zone?
A. It would not.
Q. And generally your reasons for that opinion?
A. The same reason I stated before: The airport, as restricted here, would be less intensive than one could expect for an airport in any other RC-2 zone.
Q. Do you have an expectation about whether it would be any adverse impact from this facility, as proposed?
A. Based on what I've witnessed in terms of the flights in and out of Helmore Farm, I can't expect that there would be a detrimental impact.
MR. BARHIGHT: No other questions of this witness at this time.

MR. KOTROCO: Cross-examination.

CROSS EXAMINATION

BY MR. NELSON:

Q. Mr. Matis, you observed that it's your opinion that this proposed helistop will enhance Mr. Lucas's thoroughbred operation; is that right?

MR. BARHIGHT: Objection. I believe that we have asked for a petition, on the special exception side, for an airport, not asking for a special exception for a helistop. So I need to object to his characterization of use.

MR. NELSON: Call it an airport and/or helistop. We'll see at the end of the day what it really is.

Q. But did I understand you to say that it's your observation that this proposed use will enhance the petitioner's horse operation?

A. It will foster his -- based on the evidence I heard from Mr. Lucas, it appears that it will foster his ability to conduct his operation on the farm.

Q. Right. Now, can you identify anybody who has been a passenger in a helicopter that's flown into Helmore

Farm?

A. Mr. Lucas.

Q. Can you identify anyone other than Mr. Lucas?

A. Mr. Miller.

Q. Well, my question is that at the end of the day we're going to hear testimony that it's only that it has been Mr. Grass who has been commuting to work from this site. You're familiar with that?

A. Yes. I haven't witnessed Mr. Grass land his helicopter.

Q. But you have knowledge that he's doing that?

A. Yes, I have.

Q. Can you identify any customer of Mr. Lucas's, someone who wants to participate in a horse syndicate or in a percentage interest in one, or two, or eight horses, other than Mr. Martin Grass, who's flown either into Helmore Farm or away from Helmore Farm?

A. I have no personal knowledge of that.

Q. So even though you have expressed the opinion that it will enhance his thoroughbred operation, you can't give us one example in which it's done that, can you?

MR. BARHIGHT: Objection, asked and answered. We're so far beyond the scope of direct examination, as well. Mr. Lucas was on the stand. He had more than ample opportunity, and he did ask Mr. Lucas these same questions.

MR. NELSON: I'm seeking to cross this witness.

MR. KOTROCO: I'll overrule the objection, and you can answer the question, if you can, if you know.

A. I based it on Mr. Lucas's testimony as to the operation of his farm.

Q. Now, you heard Mr. Miller testify, did you not?

A. Yes.

Q. And you heard him state under oath that he could not say whether or not this operation would comply with the federal guidelines, if the guidelines applied to the property line?

A. That's correct.

Q. Now, you have no expertise in the federal noise statute, do you, with respect to airports?

A. Absolutely not.

Q. So you have no opinion as to whether or not the

level of 65 LDN, which is an average level over 24 hours, you have no opinion as to whether it applies to the property line, 10 to 20 feet away from the proposed heliport, helistop, or applies to the exterior wall of Susan Immelt's house? You have no knowledge about that?

MR. BARHIGHT: Objection, asked and answered. He already said he doesn't understand and have knowledge of the FAA requirement or noise standards.

MR. KOTROCO: I'll sustain the objection. He did already answer that.

Q. And you have no knowledge about the applicability of the state noise standard, do you?

A. No, I don't.

Q. Well, can you explain to Commissioner Kotroco how, if you have no knowledge of either the federal or the state noise standard, how you can say that this facility, under oath, will have no detrimental effect on the health, safety, or general welfare of the locality? How can you say that?

MR. KOTROCO: Think about that answer for a second while I flip this tape over. Okay, go ahead.

A. I base it on my understanding of the special exception, in that it would not have a detrimental effect above and beyond what normally could be expected in an RC-2 zone.

Q. All right. Well, certainly there are RC-2 zones in Baltimore County that are greater than 87 acres in size, are there not?

A. Absolutely, including this one.

Q. I'm sorry. How many is this?

A. The entirety of the RC-2 zone?

Q. How many acres is the RC-2 land?

A. On Helmore, it's about 87.

Q. But there are other tracts of land in the RC-2 zone, owned by other people, that are greater than 87 acres?

A. Oh, sure.

Q. Many?

A. Yes.

Q. And many of those have flat fields, do they not?

A. I would suspect, yes.

Q. In fact, you've worked on many of those, haven't you?

A. Yes.

Q. And there are many tracts of land in the RC-2 zone of Baltimore County that have flat fields that extend for more than 2,000 feet in an easterly or westerly direction?

A. Yes.

Q. So you would agree that there are many, many, many, many places in Baltimore County, in an RC-2 zone, where you could build an airstrip that's two to 3,000 feet long, with no difficulty?

A. Yes.

Q. And you would agree there are many, many, many, many places in the RC-2 zone where you could build an airstrip that's 3,000 feet long and it's another 500 feet to the property line?

A. Yes.

Q. And you would agree, based on the testimony you heard today, that if the airstrip was 3,000 feet long, as opposed to 1,200 feet, that it would be safer, because, as Mr. Lamb said, longer is always better than shorter? You

would agree with that, that that's what he said?

MR. BARHIGHT: Objection. He didn't say safer. He said that if he had the opportunity to select two different airstrips upon which to land, he would take the longer.

MR. NELSON: Right.

MR. BARHIGHT: There's a big difference between the two. I object.

MR. KOTROCO: He also said it depends on the type of aircraft he was flying.

MR. BARHIGHT: Yes.

Q. But you would agree that he said what he said?

A. Yes.

Q. Okay. And you would agree, based on the testimony of Mr. Miller, that the further you are away from the point source of the noise, the lower the noise?

A. Yes.

Q. So you would agree, therefore, would you not, that there are many, many, many places in the RC-2 zone where you can build a longer, and the commissioner can conclude whether the witness said better or safer,

airstrip that generates less noise at the property line than this one does here at this one location in the RC-2 zone? You will agree with that?

A. Yes.

Q. Mr. Matis, can you share with this commissioner and with me your expertise or your experience running an agricultural operation in Baltimore County?

A. I have none. It's all been incidental.

MR. NELSON: One moment, please. That's all. Thank you.

MR. KOTROCO: Any redirect?

MR. BARHIGHT: Yes, a couple of quick ones.

REDIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Matis, since the issue came up on cross-examination, are you familiar with what's identified as Parcel 843, Susan C. Immelt, immediately adjacent to the subject site?

A. That would be the unimproved piece adjacent to the west side of Helmore Farm, correct?

Q. Yes. Have you had an opportunity to view

portions of that property?
A. Yes.
Q. From the Lucas property?
A. Yes, from the Lucas property.
Q. And what is the current use of that, based upon your observations?
A. Row crops.
Q. Can the owner of that property build a residence on that site?
A. It's debatable. Based on the date of that property being created, I do not believe it could be developed as a residence.
Q. And why not?
A. That property was created subsequent to November, I believe, 25, 1979, which would not permit, essentially would not permit subdivision, legal subdivision, of the property.
Q. That's not been checked through a special hearing or a letter to any --
A. There has not been any title report done, there has not been any confirmation with the zoning office,

that's correct.
Q. But based upon the information you know, you have that opinion?
A. I have that opinion at this time.
Q. Okay. Do you know whether that land is subject to any kind of environmental easement or agricultural easement?
A. I do not believe that --
MR. NELSON: I'm sorry, I didn't hear the question.
Q. Do you know whether that property is subject to any kind of environmental or ag preservation easement?
A. I don't know personally if that property is. I believe the adjacent property owned by the Immelts is held under a preservation easement.
Q. With regard to the RC-2 zones in Baltimore County, you already testified during direct examination to a general familiarity with their location?
A. Yes.
Q. With regard to the proximity to I-83 and 695, do you have an observation about the relative proximity of

this RC-2 zone property to those two transportation facilities and any comparison to most of the other RC-2 zoned properties in Baltimore County?
A. This property is generally closer to that urban area I guess we call the Baltimore Beltway and I-83. Certainly it's within 2,500 feet of that intersection, 25 to 3,000 feet of that intersection. So, indeed, it is closer in proximity to an urban area than a piece of RC-2 land north on Falls Road or up at the Pennsylvania line.
Q. Based upon your knowledge of the location of RC-2 zones in Baltimore County, is it fair to say that this is one of the RC-2 zone sites that is closest to the urban areas?
A. It's certainly one that's close to the urban areas.
MR. BARHIGHT: No other questions.
MR. NELSON: I have nothing.
MR. KOTROCO: You can step down.
MR. KOTROCO: Any other witnesses?
MR. BARHIGHT: No. The petitioner rests his case in chief.

MR. KOTROCO: Okay. I'm going to go get a couple more audio tapes, so we'll take a five-minute recess. Do you want to start with Mr. Dillon? It's almost about 3:30.
MR. NELSON: I would be happy to.
MR. KOTROCO: How long do you think he'll take? Finish him up this afternoon?
MR. NELSON: I think direct is going to be 30 minutes, tops.
MR. KOTROCO: Take a five-minute recess. I'll get some audio tapes, and we will come back out and resume with Mr. Dillon.
MR. BARHIGHT: Excuse me. I have some letters that need to be delivered to your file that were letters to the zoning commissioner's office. At the end of the case I can certainly put those in.
MR. NELSON: I'd like to see those before Mr. Dillon takes the stand.
MR. KOTROCO: There were a number of letters that have come into my office that may still be back on my desk or may have even made it into the file, both pro and con.

So once we put them in the file, you all are welcome to look at them, or even beforehand. So you're welcome to look at those. Maybe you can exchange that during the recess. Take a five-minute recess.

(The hearing was recessed at 3:23 p.m. and resumed at 3:35 p.m.)

MR. KOTROCO: Okay. Let's go back on the record. You all have a seat, and we'll resume with the protestants' portion of the case. Mr. Nelson, you can call your first witness.

MR. NELSON: Thank you, sir. I'd like to call Mr. Jack Dillon as the protestants' first witness. And I should say that I intend to seek both factual and expert testimony from Mr. Dillon, and I sense that everyone here knows Mr. Dillon quite well. I'm prepared to go through his CV, if you want me to.

MR. KOTROCO: Let's see. We'll take it when it comes up. What's your position, Mr. Barhight?

MR. BARHIGHT: Well, I think he can certainly be qualified as an expert in planning, no question about that. We'll concede that right now.

I'm honestly not that familiar with his expertise in zoning. I'm familiar with his work in the planning office. It's a little bit unusual situation, since I believe that his employer is the -- he's executive director of Valleys Planning Council, so he's sort of wearing two hats at once. And I don't think that necessarily creates an objection, I think it just goes to his credibility, quite frankly.

MR. KOTROCO: All right.

MR. BARHIGHT: Mr. Dillon, I'm not saying that you're not credible. I know Jack well. I mean, you know.

MR. KOTROCO: In what area are you going to offer him as an expert?

MR. NELSON: It's no secret. He will provide the factual foundation for my opening statement about the historical evolution of the zoning for this land, and that's important as a factual predicate for the nonconforming use argument.

MR. BARHIGHT: I'm not going to have any trouble with any of that. Those maps are actually kept in the planning office.

MR. NELSON: And for the special exception argument, because it leads the -- it's the factual predicate for his factual testimony for why the zoning was changed in 1979, as I mentioned in my opening statement.

That's all factual. But I intend to ask him factually what -- or not, call it factual, call it opinion, what zones permit airports as a matter of right, as a matter of special exception. He'll go through those. And I'm going to ask him about helistops, same thing. And I should say that -- there is no secret -- I'm going to ask him, as we speak today in 1998, does the RC-2 zone permit a helistop by special exception. I'm going to ask that question.

MR. KOTROCO: That was the question you said that Mr. Barhight couldn't ask of Mr. Matis, whether he was going to be asked if he could conclude whether or not the helistop was permitted by special exception in the RC-2, I thought.

MR. NELSON: Your memory is precise, and the basis of my objection was that he was offered as an engineer.

MR. BARHIGHT: Expert in zoning as well.

MR. NELSON: And I questioned his expertise, you'll recall, in zoning. I stood up and said the engineering, I have no problem, but the zoning, my view is that, despite his qualifications as an engineer, despite the fact that he's worked on projects in the RC zones, that doesn't enable him to render an expert opinion on a zoning matter. I believe that Mr. Dillon is fundamentally different. He's got 35 years with Baltimore County government. He'll have to tell us how many years are in planning and how many in zoning. I don't know.

MR. KOTROCO: I would assume that one of the major issues in the case is what you're just stating, then probably something that I'm going to have to rule on is --

MR. NELSON: Absolutely.

MR. KOTROCO: -- whether or not a helistop is permitted by special exception in this zone, is it part of an airport, is it part of whatever.

MR. NELSON: That's the issue.

MR. KOTROCO: That's where you guys are going to have to make legal arguments.

MR. NELSON: That's correct.

MR. KOTROCO: Do you have an objection to his opinion coming in as far as that goes?

MR. BARHIGHT: No. I have an opportunity to cross-examine him.

MR. KOTROCO: Okay. All right.

Well, raise your right hand, Jack, if you would.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: I do.

MR. KOTROCO: Have a seat, state your name and address for the record, please.

THE WITNESS: Jack Dillon, Executive Director of Valleys Planning Council. Office is at 212 Washington Avenue here in Towson.

JACK DILLON,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. Mr. Dillon, how long have you held that position at the Valleys Planning Council?

A. I started as executive director in the middle of May of 1997.

Q. Mr. Dillon, you heard our discussion just a moment ago about the nature of your testimony. Without going into every nook and cranny, could you describe for Commissioner Kotroco, please, your experience in the Baltimore County government before you went to work for the Valleys Planning Council?

A. Sure. I began working for Baltimore County actually in the Department of Public Works in 1962. I was assigned to a research project at Johns Hopkins University, working on a water and sewer research and how it affected the design of future systems. I worked there from 1962 until, I believe, early 1965. At that time I was transferred to the analyzer office, which is a joint city/county office that was then housed at Ashburton filtration plant, and that is the office that designs the metropolitan water supply system which is, well, an

engineering function. It's also a planning function in terms of dealing with population shifts and changes in development and those kinds of things.

I worked there until, I believe, July of 1996. Or 1976. '66. Gosh, time is getting away from me. 1966. And I transferred into the Office of Planning and Zoning and was assigned in the zoning office. I worked in the zoning office in a variety of levels, from a technician up to the chairman of the zoning advisory committee, and then later as the head of zoning enforcement division for Baltimore County, until 1975 where I transferred into the planning office, in the comprehensive planning division, as one of two environmental planners.

At that time my first assignment was to work on and develop the resource conservation zones. I worked in that office and was the first administrator of the ag preservation program, up until 1981, I believe, and from there I transferred into the community planning division, and was in that division until I retired in 1995. I retired as a senior planner.

MR. BARHIGHT: No objection to his qualifications

as an expert in planning and zoning. I had forgotten his zoning experience. I apologize.

MR. KOTROCO: Okay.

MR. NELSON: Thank you, sir.

Q. Mr. Dillon, in preparation for this case, did you have occasion to review the historical zoning regulations for the land at issue in this case?

A. Yes, I did.

Q. Let me ask you a few questions about that, and feel free to direct your comments to Mr. Kotroco, even though I'm posing the questions. Based on your research, what is the first evidence of any zoning in Baltimore County?

A. The first zoning ordnance was adopted by the county commissioners on January 2 -- or the effective date, I'm sorry, was January 2, 1945.

Q. And in that initial zoning regulation, what was Helmore Farm classified as?

A. In those days, the zoning regulations were relatively simple compared to today. You may have had an opportunity --

MR. KOTROCO: Might have been better.
A. They were what they called different residence zones. This fell into what was known as an A Residence zone.
Q. Based on your review of that zoning regulation, in the A Residence zone, which is where Helmore Farm is now -- right?
A. Yes.
Q. -- did that zone permit an airport as a matter of right?
A. Yes. There was a provision in that zoning regulation for special exceptions and special permits, and airports were listed as one of the special exceptions.
Q. Did it permit --
Q. (MR. KOTROCO) As a special exception?
A. In the A Residence zone.
Q. (MR. NELSON) But how about as a matter of right in the A Residence?
A. No. I'm sorry.
Q. That's all right,
A. I jumped to conclusion.

Q. Based on your review of that zoning regulation, did you see any reference to helicopters?
A. No, I did not.
Q. Now, did there come a time when the zoning regulations were modified or changed and different designations given to land?
A. Yes.
Q. And when did that occur?
A. 1955.
Q. And what did this land -- when I refer to this land, of course I'm referring to Helmore Farm. What did this land become designated as?
A. This may be a little confusing, but I'll try to give it my best shot. In 1955, they were in the process of updating all the zoning maps. In some areas, the maps were not updated to coincide with the adoption of the new regulations. We went from the A, B, C Residence zones to the DR -- I mean, I'm sorry, the R zones, which were minimum lot size zones. In areas that had not had new zoning maps adopted, they continued to use the old 1945 maps, which are still available, and they're very ragged

now. But I just had the opportunity to go back over all those.
As a policy, I guess -- this is what I ran into quite a bit when I first went into the zoning office, because they were still in some cases using those '45 maps -- the areas that were outside the metropolitan area that had not had an area, a new map, new zoning map adopted to cover it with any of the new R classifications, they would refer to these as residual R-6, which simply meant that the Health Department would determine lot sizes. And that's why, in some cases, we have lots that were created as half acre or an acre, three-quarters of an acre in some case. And they based that on perk tests, which were later updated and changed.
In this particular area, the residual R-6 remained in effect until 1957 when this area was rezoned to R-40, one-acre lots. And that was described in those days, when zoning maps were adopted, there were written descriptions of each and every zoned area, and this was described, I believe, 3-R-40-2.
Q. We'll come back to R-40, but let me ask you about

the two-year period of time in which it was known as R-6.
A. Yes.
Q. Was an airport in R-6 permitted as a matter of right between '55 and 1957, airports as matter of right?
A. No, it was not.
Q. Was an airport permitted as a special exception in the R-6 zone between 1955 and 1957?
A. No, it was not.
Q. Was a helistop listed as a special exception or permitted as matter of right in the R-6 zone between 1955 and 1957?
A. No, it was not.
Q. Now, you said that in 1957 this land became known as R-40?
A. That's correct.
Q. For what period of time -- let me withdraw that.
In 1957, did the R-40 zone permit an airport as a special exception?
A. The R-40 zone?
Q. Yes, sir.
A. Yes, it did.

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Q. Did it permit a helistop as a special exception?
A. No, it did not.
Q. (MR. KOTROCO) Was it even addressed in the zoning regulations, helistop, back then?
A. No, they were not.
Q. Did not find it anywhere?
A. No.
Q. (MR. NELSON) Now, in 1963 was there any change in the zoning?
A. Yes.
Q. For this land I'm talking about, now.
A. Yes. There was a modification to the zoning regulation.
Q. Now, was it still designated as R-40 in 1963?
A. Yes, it was.
Q. How did it change in the context of this case? What change, if any, was there that's significant to us in our discussion?
A. The changes to the special exceptions, special exceptions were modified, and at that time the introduction of helistop was placed in the zoning

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regulations under the R-40 and the R-6 and R-10, as special exceptions.
Q. As a special exception --
A. Yes.
Q. -- in the R-40 zone, among others?
A. Yes.
Q. And was an airport also permitted by special exception in the R-40 zone in 1963?
A. Yes.
Q. Based on your review of the historical zoning regulations, was this the first time that the phrase helistop, or any phrase analogous to that, appeared in the zoning regulations?
A. Yes.
Q. Now, did there come a time in 1970 when the designation of this land was changed?
A. Yes.
Q. And what was the new designation?
A. At that time there was a comprehensive revamping of the residential classifications, and also created two additional classifications, set aside from the -- we went

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from minimum lot size zones to the R zones to DR zones, density residential zones. So what was R-40 now became DR-1. What were areas that were outside the urban-rural demarcation line now fell into one of two classifications, RDP, rural deferred planning, or RSC, rural suburban conservation. The latter zone was placed primarily around the reservoirs. The RDP was placed on the remainder of the open land, the land outside the urban-rural, except what was commercial or industrial.
Q. So as of 1970 Helmore Farm was now in the RDP zone?
A. That's correct.
Q. And were helistops and airports still permitted by special exception in the RDP zone?
A. Yes.
Q. Was there a change in 1976 in the zoning classification?
A. Yes, there was.
Q. What change was that?
A. The RDP and the RSC zones were discarded and replaced with four new rural classification: RC-2, RC-3,

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RC-4, and RC-5. This land we're talking about today was zoned RC-2 agricultural.
Q. Now, have you had an opportunity to review the initial bill that became the basis of that new law?
A. Yes.
Q. And in the new law as of 1976, in RC-2 land, was an airport and helistop permitted by special exception?
A. Yes, they were.
Q. Now, what knowledge, if any, do you have of any petition for special exception in the zoning commissioner's office that was filed for the use of a helistop in 1978?
A. There was a petition filed for a special exception by Mr. Buzz Berg, who has a farm on Greenspring Valley Road west of this site.
Q. Do you have personal knowledge as to whether or not that petition for special exception was granted by the zoning commissioner?
A. Yes, it was granted by the zoning commissioner.
Q. What memory, what personal knowledge do you have as to what discussions there were after the Berg decision

came down from the zoning commissioner as to what steps should be taken with respect to the zoning law?

MR. BARHIGHT: That's where I have my objection. It's so speculative, so outside the scope of what is properly admissible, even in an administrative proceeding, because it's apparently going to be offered to go to why certain laws were changed. We cannot speculate about why a planning board or why a county council does anything, unless we can read their words. And in the case of the county council, they have the opportunity in preambles to say why they're doing what they're going to do in a bill. In the case of the planning board, they have the opportunity to issue reports.

Mr. Dillon, much as I love him, should not be allowed to sit here and say, Here is why we did something, because he's not the county council, he wasn't, never was, may be in the future, but he's not today, and he's claiming not to.

MR. KOTROCO: Well, maybe he participated in his position with the zoning or the planning office.

MR. BARHIGHT: I mean, with all due respect, so

what? It doesn't matter. The only thing that matters is was there a change in the law. He can certainly recite for us, and I'll have a chance to cross-examine him, because I disagree with some of what he believes in his research. Our research is different. That's fine. I can cross-examine him on that. But he can't testify about what went through the minds of the county council. And what went through his mind, frankly, again with all due respect, is irrelevant.

MR. KOTROCO: Where are you going with it? do you want him to try and say why the county council passed what they passed?

MR. NELSON: Is it appropriate for me to make a proffer? I mean, where I'm going with it is this. He's going say there was backlash to that decision. There were discussions in his office as to what steps should be taken. They participated in the change of the law.

Now, I will prove chronologically that in fact the next year Bill 178-79 was passed, and the word helistop was deleted from the statute.

MR. BARHIGHT: If you can prove that, then that's

his next step.

MR. NELSON: Well, I disagree. I can certainly prove what this man participated in during that 12-month period, I suggest, respectfully.

MR. KOTROCO: Okay.

MR. BARHIGHT: But it's irrelevant. The only thing that matters is what the county council says or does, not what I might have said in a lobbying opportunity, or what Mr. Dillon may have said in a staff opportunity. It's irrelevant.

MR. KOTROCO: Let's move on with the questioning, and if it gets too far afield we'll handle it with the objection at that time. Go ahead and proceed.

Q. Mr. Dillon, after the zoning commissioner issued the Buzz Berg decision, which for the record granted a special exception for a helistop in an RC-2 zone limited to 14 flights per months, what discussions did you participate in about what steps, if any, the county should take about the use of helicopters in RC-2 zones?

MR. BARHIGHT: Objection as to relevance.

MR. KOTROCO: I'll overrule the objection. Go

ahead, you can answer it.

A. Okay. As the planner who was the primary draftsman of RC-2 zones, I guess I was fairly well known in the rural community in my work in ag preservation as well. I got a lot of phone calls about that issue, although I did not participate in that hearing whatsoever.

When you're a planner working in these areas, you also work very closely with planning board on issues that come up, and also with councilmen when issues come up before the council. At the same time while this was going on, by the way, we were in the process of gearing up for our growth management plan, the new plan that was being done for Baltimore County. We had consultants on board.

With respect to amendments that were being discussed to the RC zones, and particularly the RC-2 zones, this issue was brought forward about the use of helicopters, and through those discussions it was determined that we have airports, we do not need a --

MR. BARHIGHT: Objection. We determined what? I mean, see, now it's starting to get far afield. I mean, he can talk about what he did, but I've heard him testify

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before like this, and the "we" starts to get all mixed in with the county council's thinking and the planning board's thinking. I have to object.

MR. KOTROCO: I'm not interested in you speaking for the county council. You or your office, I guess, if you had participation in it, you can testify about what your participation was.

A. Okay. In the staff discussions that led up to the amendments that were being proposed, the issue of helicopters in RC-2 was one that I recommended not -- that it be deleted from the RC-2 zone, and that carried through ultimately.

Q. (MR. KOTROCO) Was the Berg decision ever appealed from the zoning commissioner's level?

A. Yes, it was.

Q. Did you track, in your research, did you track the appeals and where it went and what ultimately happened?

A. It went on to the Board of Appeals.

MR. NELSON: We have the opinion here, if you want to see it.

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Q. Did you bring them all with you, the zoning commissioner's, the board of appeals? How far did it go, because I want to --

MR. NELSON: It went to the board of appeals.

Q. Just to board of appeals. What happened at that level?

A. The board of appeals did grant the special exception.

Q. And that was the end of it?

A. Yes.

Q. No further appeals?

A. No, I don't believe so.

MR. KOTROCO: Okay.

Q. (MR. NELSON) Now, why was it that you recommended that the helistop be deleted from the zoning regulations for the RC-2 zone?

A. Well, obviously it was in response to the response to the granting of the special exception for Mr. Berg. Probably -- I'm not sure I'll get away with this, but I'll try. Probably --

MR. BARHIGHT: Objection. He's talking about 20

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years ago. Now it's really speculative. I really fail to see --

Q. (MR. KOTROCO) Bottom line, it was deleted?

A. It was deleted. There were a whole variety of things that happened, but it was deleted.

MR. KOTROCO: Okay.

Q. (MR. NELSON) Now, when was the bill passed that deleted helistop as a special exception?

A. It was Bill 178-79, and I didn't write down the date it was passed. It's here probably in my notes someplace.

Q. Sometime in 1979?

A. It was in 1979.

Q. Now, is it fair to say that the law has been the same --

A. I think maybe October 15 rings a bell.

Q. Is it fair to say that the law has been the same since then with respect to helistops and/or airports in the RC-2 zones? I mean, has it changed any?

A. It has not changed since then.

Q. Now, are you able to describe to Commissioner

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Kotroco which zones in Baltimore County permit either an airport or helistop as a matter of right and which by special exception?

A. Yes. I went through the zoning regulations as of today and developed a chart listing DR all the way through MH, and airport, helistop, heliport 1, and heliport 2, and then listed where they were not permitted, permitted as a matter of right, or by special exception.

MR. NELSON: May I interrupt just for a moment? This is a fairly detailed chart. I can move this into evidence when he finishes reading it, so you don't take all these copious notes. I understand it's just a summary of his testimony, and there may be an objection on this basis, but his testimony is going to track it to the T.

MR. KOTROCO: Has Mr. Barhight had an opportunity to see the chart yet?

MR. NELSON: No, but I'm happy to show him. Do we have another copy, a clean copy?

Q. (MR. KOTROCO) You've compiled that chart by way of your research into the zoning regulations; is that right?

A. That's correct.

MR. NELSON: I can give Mr. Barhight my work copy. The copy he's reading from doesn't have that date on it because it was a new version. He did it with today's date, and that's my note, 1907. But otherwise it's exactly same.

MR. BARHIGHT: I'm having a hard time understanding the relevance to anything that relates to anything other than the RC-2 zone, as it relates to the special exception request.

MR. KOTROCO: One of the thinking, I think -- I don't want to speak for Mr. Nelson, but when a helistop is something that's permitted by special exception in another zone, and it's specifically identified by the county council to be in another zone, it tends to take away the argument that it can fit into the category of an airport because it is specified or provided for in another zone, specifically identified.

MR. BARHIGHT: Have you read the definition of airport yet?

MR. KOTROCO: No, I haven't.

MR. BARHIGHT: Well, then, okay.

MR. KOTROCO: But I don't know. I don't know why they're -- I know that when I chased Mr. Smith around Long Green Valley and tried to prosecute him for flying his helicopter around over there, we got into some of that, whether or not it was permitted. And I remember Ms. Nastarowicz telling me if it's provided for in some zones, just because it's not mentioned in the RC-2, sometimes I have to look to see if it's mentioned elsewhere. And I don't know what they're getting at with it, but --

MR. NELSON: I can tell you, you're right. I mean, our thesis here is that it's expressly provided for in certain zones -- we're about to prove which ones -- and that's a black and white analysis. And here it was in RC-2. First it wasn't there in its predecessor zone. Then it was added to it, and then it was pulled away from it, removed. So that's the relevance.

MR. KOTROCO: Okay.

MR. NELSON: I only offer the exhibit to save you the trouble of laboring through all the notes.

MR. KOTROCO: I appreciate that.

Q. That chart is not in the zoning regulations?

A. No, it's not.

Q. You made that up through your research?

A. Yes.

Q. As far as you know, it's as accurate as it can be; is that right?

A. Yes, sir.

MR. KOTROCO: Do you want him to testify about all those different categories? Mr. Barhight, do you take exception with any of that? Did you want to cross-examine him?

MR. BARHIGHT: We have our own little charts, and we'll have an opportunity in our brief to say what we have to say about the law. I think that provides the best setting for that.

MR. KOTROCO: All right, go ahead.

Q. (MR. NELSON) I'll be brief with this, but would you summarize, and direct your comments to Mr. Kotroco, what zones in the current law permit helistop by special exception?

MR. BARHIGHT: Is this chart in already?

MR. KOTROCO: No. They haven't offered it yet.

A. DR-1 through DR-16 with special exception, RC-3 is special exception. OR-1 and OR-2 are special exceptions for helistops.

Q. And which zones permit an airport by -- correction. Which zones permit a helistop as a matter of right?

A. It would be BL, the BM, the BR, the MR, the MLR, the ML, and the MH.

Q. Mr. Dillon, this petition has been described in part as a nonconforming use for an airport and/or helicopter operation. With respect to the phrase helicopter operation, is that a phrase that appears anywhere in the uses that are permitted as a matter of right in any zone in this county?

A. Not that I could find.

Q. Is the phrase helicopter operation a phrase that appears in any of the lists of uses that are permitted by special exception anywhere in this county?

A. No, sir.

Q. Mr. Dillon, based upon all of your experience, do

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you have an opinion, sir, as to whether or not the zoning regulations permit a helistop by special exception in the RC-2 zone today? Do you have an opinion?

A. Yes.

MR. BARHIGHT: Same objection that was made to my little witness back here before.

MR. KOTROCO: I thought you said you weren't going to object to him doing that, offering his opinion.

MR. BARHIGHT: I wanted to bring a smile to your face.

MR. KOTROCO: Do you want your objection entertained? Do you want him to give the answer, or don't you?

MR. BARHIGHT: You'll overrule it and he'll answer.

MR. KOTROCO: I really don't care what anybody tells me from that stand. I mean, I want to hear what you all have to say in your briefs or your legal arguments.

MR. BARHIGHT: You'll decide. You can read the law as good as anybody.

Q. Do you have an opinion, Mr. Dillon?

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MR. KOTROCO: You can give me your opinion, Mr. Dillon.

A. Yes. I believe that the helistop is specifically removed from RC-2, and the purpose of that was to eliminate that as one of the uses in an RC-2 zone.

Q. Do you have an opinion, sir, Mr. Dillon, as to whether or not -- let me back up. You've told us that the RC-2 zone permits an airport by special exception?

A. Yes.

Q. Assuming the petitioner can meet all the requirements for special exception, of course. But do you have an opinion as to whether someone who has an airport can also have a helistop in conjunction with the airport? Is that permitted by the zoning regulation?

MR. BARHIGHT: Objection.

MR. KOTROCO: I let him answer the other one. I'll allow him to answer, but, again, I'm more interested in what you all have to say by way of brief or legal argument than what Mr. Dillon has to say. But, go ahead, Mr. Dillon, what's your opinion?

A. I believe there is a distinction that's been made

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in the zoning regulations in that a helistop is specifically not intended to be part of an airport.

MR. NELSON: That's all I have of Mr. Dillon. Thank you.

MR. KOTROCO: Cross-exam.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Dillon, ever heard a helicopter --

MR. NELSON: Pardon me, one question. I beg your pardon. May I move into evidence Mr. Dillon's chart?

MR. KOTROCO: Sure. Any objection?

MR. BARHIGHT: I mean, you know, no.

MR. KOTROCO: It simply recites what the zoning regulations state.

MR. BARHIGHT: Because we have the opportunity to do our own brief, our chart is different from his chart, we'll point out to you, and you can decide.

MR. KOTROCO: All right. It will be Protestants' Exhibit No. 1.

(Protestants' Exhibit No. 1 was marked by Mr. Kotroco.)

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Q. So, Mr. Dillon, the zoning regulations don't talk about helicopter operations?

MR. NELSON: That wasn't the question. I object.

Q. That's my question. So the zoning regulations don't talk about helicopter operations?

A. The zoning regulations do talk about helicopter operations.

Q. What section is that under?

A. 420.

Q. When was that bill adopted? When was Section 420 adopted?

A. I believe --

Q. If you know.

A. I would be guessing. Sometime in the late '60s, I guess.

Q. (MR. KOTROCO) I'm sorry, what was that answer?

A. In the late '60s, I think. I didn't recall.

Q. (MR. BARHIGHT) Again, the zoning regulations have the bill in there, and we can look at the time reference. But you chose not to mention that bill during your historical research analysis.

A. I don't think it has relevance here.
Q. Section 420 has no relevance whatsoever to the history of helicopter operations in Baltimore County?
A. No, I didn't say that. I don't think it has relevance here.
Q. "Here" meaning?
A. On this case.
Q. Talking about Helmore Farm?
A. Yes.
Q. But it does have relevance to the history of helicopter operations in Baltimore County?
A. That fact that it's in the regulations, yes.
Q. Let's go back, then, and take a look at -- only because I'm interested, and I have so few opportunities to cross-examine you. The Helmore Farm property, you say it was zoned A Residence zone back in 1945?
A. Yes.
Q. What's the basis of that opinion?
A. In going back and pulling the '45 maps out, they're crude maps, if you've ever seen them.
Q. I have.

A. At best. The A Residence zone, if you will, was the zone that was placed probably in 90 percent of land around the county.
Q. Is there an A Residence zone designation that you can read for the Helmore Farm?
A. Specifically on top of Helmore Farm, I don't believe there is. But I think as I looked at the map, I think there was a reference to A zone someplace in that rural area there.
Q. So if I looked at that map, I'd see that this property was zoned A Residence?
A. Yes. I also have to rely somewhat on my in-house training. I mean, I wasn't here in 1945 when these were all done, but in my in-house training in the zoning office, in dealing with those maps, with people like John Rose and Jim Dyer, that's how that was all conveyed to me, that these areas were A Residence zones.
Q. Let's go back to the map itself, because maybe I'm confusing it. Who cares what they say if it's shown on the map? Is it shown on the map as A Residence zone?
A. I believe it is, but I can't swear to it at this point.

Q. When did you last look at that map to see what the zoning was on Helmore Farm?
A. About three weeks ago.
Q. And you can't recall whether it said A Residence zone when you researched it for this case, in preparation for this testimony?
A. Well, if you, again, look at those maps, you'll find big, gaping holes in those maps. There's pieces of them that are just torn away, actually. They have not been maintained very well.
Q. Was Helmore Farm torn away?
A. I said I didn't see an A Residence -- I don't believe I saw A Residence over top of Helmore Farm.
Q. Okay. Was Helmore Farm on the map?
A. The area of it, yes.
Q. So it wasn't torn away?
A. Not on Helmore Farm, no.
Q. Was the area, was the zoning designation for Helmore Farm on the zoning map for 1945 A Residence zone?
A. I believe it was.

Q. Okay. We're going to go back and check.
A. Okay.
Q. Where is it written that, between 1955 and 1957, that something that was zoned A Residence zone in 1945, assuming the accuracy of that, that until 1957 it was called Residual R-6?
A. It isn't. I have not found it written anyplace.
Q. So if some poor zoning lawyer went over and looked, he wouldn't find a change in the zoning map until 1957?
A. That's correct.
Q. Okay. In 1957, the zoning maps say this property is zoned R-40?
A. That's correct.
Q. When you were researching the zoning regulations, specifically around the zoning regs for 1955, did you research the actual county council bills, or did you rely upon somebody's copy of the zoning regulations?
A. I went to the -- I went to the original black book for zoning regulations.
Q. Whose copy of the zoning regulations was that?

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A. This is one that was in the library in the planning office.
Q. Okay. It has a looseleaf binder, you can open it up and put pages in and out?
A. Yes.
Q. And this is a little bit before your time, but are you aware of whether amendments were made to that black book from time to time by adding or deleting pages?
A. I am sure that they were, yes.
Q. As we are all well aware that they were, because there are copies of that black book that are different, I'm sure, than the one you have there; isn't that correct?
A. It's possible.
Q. Okay. Do you want me to show you one?
A. They're hard to find.
Q. In fact, I have a copy that's different as it relates to that. Would you be surprised if I asserted that?
A. I would be disappointed to find it, but I wouldn't be surprised.
Q. So you relied totally upon that book without

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researching the actual bills?
A. I did not get to the actual bills, that is correct.
Q. Okay. Other than -- let me take a look at what you did. May I see this?
A. Sure.
Q. I'm looking at, just for the record, Baltimore County Zoning Regulations, 1955, Book No. 1398, apparently signed out to a Ronald -- do you know how to say his name?
A. I don't know.
Q. -- Pulignani (phonetic). I will proffer mine is a copy of Book No. 231 for Mr. Hugh Gelston. Was it customary that when these books were issued, that somebody would sign their name in it?
A. When they purchased the books, they put their name in.
Q. What's all this loose stuff in the back? Some of it has holes in it, some of it doesn't. Were these potentially --
A. Probably some of the either extra pages or things that were submitted.

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Q. Things that were submitted?
A. Not things, but --
Q. Have you looked at all --
A. No, I did not pull the pocket parts out.
Q. And I see there's all kinds of extra pocket parts in the back. Would you guess there's about 30 or 40 pages of ringed pages --
A. Something like that, yeah.
Q. -- that look like they could fit into there?
A. Um-hmm.
Q. Do you know whether these are a previous or later edition of those sections?
A. I would have to look at them.
Q. But you didn't look at these?
A. I don't recall doing that, no.
Q. What else did you look at? May I look at that?
A. Sure. That was the book that I had in 19 -- when I arrived there.
Q. Dated 1963?
A. Yes.
Q. Do you recall ever removing any of these pages

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and supplementing them with later editions?
A. Oh, yes.
Q. So when you had your book, your pattern was to go ahead and when you got the most recent copy of a section as identified on that page, you would go ahead and put the supplement in?
A. You're familiar with how the planning office works, yes.
Q. You'd go ahead and put the supplement in. So is it fair to say that this was kept up to date by you as well as possible from '63, when you got it, until the new --
A. Until the new ones came out in '70, yes.
Q. Okay. So you wouldn't be able to do a zoning history analysis in this, because you threw away the old pages?
A. Right. But as I went back through other books that I found, I tried to match it and verify what I found.
Q. Okay. There is a copy here of Zoning Regulations and Restrictions for Baltimore County, effective date January 2, 1945, that I have here. Do you know whether

this was ever supplemented or amended between 1945 and 1955?

A. I don't know that it was. I looked at other copies of that, Malcolm Bell's copy I had for a while, and it's almost identical, if not identical.

Q. My recollection is that the practice was that folks would stick the amendments in the back. Were there any amendments, or additions, or amendments to the zoning regulations identified in the back of this, in your copy?

A. No, just whatever is there.

Q. Here's an amendment in 1953 that was stuck in here. Is that an amendment to the zoning regulations in '53?

A. Where are you reading?

Q. This blank date of 1953 order that county commissioners of Baltimore County -- seems to amend the A Residence zone. Look at that.

A. Okay.

Q. Did you review that before your testimony?

A. No, I did not review that.

Q. Okay. Is there a definition in the Baltimore

County zoning regulations of an airport?

A. Yes, there is.

Q. What that's definition?

A. I don't have it. I don't have the current definition in front of me.

Q. I'm sorry. Did you review that in preparation for your testimony here today?

A. The definition? Yes, I read that several times.

Airport: Any area of land or water designed and set aside for landing or taking off of aircraft.

Q. Of aircraft. Is there a definition of aircraft in the zoning regulations?

A. No.

Q. And what does the zoning regulations tell us to do to determine the definition of a word when it doesn't have a definition all on its own in the zoning regulations?

A. Dictionary reference to.

Q. Is there a particular dictionary that's referenced?

A. Yes, but I've forgot what it was.

Q. Did you look at that dictionary definition in preparation of your testimony today?

A. Yes. I don't have it. I didn't make a copy of it. I used one in my office.

Q. Can you recall what it said about what aircraft means?

A. It's a very broad definition of landing, of aircraft, yes.

Q. Are you familiar with airport operations generally?

A. Generally. I'm not a pilot.

Q. Okay. So you have no special training or special experience with airport operations?

A. No. I've flown a few times.

Q. Like most of us, you've bought your ticket and gotten on the plane and hoped for the best?

A. I've also flown in some light aircraft and helicopters, yes.

Q Good, good. That's fine. How many different airports have you visited in Baltimore County?

A. How many different airports?

Q. Yes.

A. There's Martin, of course, there's Baltimore Skypark, the Essex Skypark. There's two small airstrips that I'm aware of, one on Butler Road, that property, and the other on what's now the St. John's property off Worthington.

Q. And these airports, assuming they're legal airports, are you saying that a person is not allowed to land a helicopter on them?

A. I'm saying that in the zoning regulations, that by providing specific areas for helistops, that differentiates between an airport and a helistop.

Q. So if I have a special exception for an airport, let's say something like Martin State Airport, and I've got a special exception for an airport and somebody wanted to land a helicopter there one day, that would be a violation of zoning regulations? That's all I have, is special exception for an airport.

A. I believe so.

MR. BARHIGHT: No other questions.

MR. KOTROCO: Any redirect?

MR. NELSON: Just a few.

REDIRECT EXAMINATION

BY MR. NELSON:

Q. Mr. Dillon, let me ask you a question or two about Section 420.1, or Section 420 of the Baltimore County zoning regulations.

A. Yes.

Q. I did not ask you about this in direct examination, and counsel for the petitioner asked you why you left it out. You responded by saying that it has no applicability to the issue in this case.

A. That's correct.

Q. Could you explain for Commissioner Kotroco, please, why you believe Section 420 has no applicability to the issues in this case which involves, of course, RC-2 land?

A. This section, entitled Helicopter Operations, has some rather specific provisions to it. It begins with 420.1: Notwithstanding other provisions of these regulations to the contrary, certain helicopter operations shall be permitted as provided under the Section 420.

420.2 states temporary use by -- I'm just going to paraphrase these -- for use by helicopter for promotional activities. 420.3, Helicopter used to move equipment and supplies at construction sites. 420.4, Helicopters may make landings at public utility rights of way. 420.5, No special exceptions shall be required -- let me come back to that one in a second. 420.6, Any helicopter operation caused by emergency is permitted at any time in any zone.

Back to 420.5, No special exception shall be required to permit either a Type 1 or Type 2 heliport, if such use is located at least 1,000 feet from any property line in an RC-6, which is now DR-5.5 zone, or R-40, now DR-1 zone, and beyond the urban-rural demarcation line. Since we're not dealing now with an R-40 or DR-1 or DR-5.5 that is beyond the urban-rural demarcation line, it doesn't apply, I don't believe.

MR. NELSON: That's all I have. Thank you.

MR. KOTROCO: Anything further?

Q. (MR. BARHIGHT) This property at one point in time was zoned R-40 outside of the urban-rural demarcation

line; isn't that true?

A. Yes.

MR. BARHIGHT: No other questions.

MR. KOTROCO: Okay. All right. Thank you, Mr. Dillon. You may step down.

We had indicated that we would discontinue the hearing at this point in time, and pick it up again tomorrow morning with additional witnesses from the protestants.

MR. NELSON: What time would you like to start, nine?

MR. KOTROCO: Nine o'clock, assuming they don't get hung up down in the metal detector downstairs

MR. NELSON: I don't think we'll be very long.

MR. KOTROCO: We'll start nine-ish, nine, nine-fifteen we'll get started, however long it takes. There are several dates set aside, aren't there?

MR. BARHIGHT: Yes. It sounds like we'll be able to finish tomorrow. We'll make copies of these letters for Mr. Nelson tomorrow morning and provide them to him before we put these letters -- they're just letters to the

zoning commissioner.

MR. KOTROCO: Here's another one here. It's a letter of support. Take this one and make a copy. Do you have letters of support?

MR. BARHIGHT: Yes. We didn't intercept any letters in opposition.

MR. KOTROCO: If you're making copies of letters, go ahead and make a copy of that one for him also.

MR. BARHIGHT: This one got delivered straight to your office?

MR. KOTROCO: Came straight to my office.

Okay. Then we will resume tomorrow morning at nine o'clock and take whatever testimony in evidence we might have at that time.

MR. BARHIGHT: Thank you.

MR. NELSON: Thank you.

MR. KOTROCO: We'll see you then.

(The hearing was recessed at 4:30 p.m.)

* * * * *

STATE OF MARYLAND) ss
COUNTY OF BALTIMORE)

I, Susan E. Smith, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing is a true and accurate transcription of the proceedings indicated.

I certify that I am not of counsel, attorney, or relative of any party, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and affixed my notarial seal this day of April, 1998.

Susan E. Smith

Notary Public

My commission expires November 1, 1998.

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VOLUME II

IN RE: * BEFORE HEARING OFFICER/

HELMORE FARM * DEPUTY ZONING COMMISSIONER

Special Hearing/ * OF BALTIMORE COUNTY

Special Exception

* No. 98-294 SPHX

* April 7, 1998

* * * * * * *

The above-entitled matter came on for hearing

before the Deputy Zoning Commissioner of Baltimore County

at Baltimore County Courts Building, Room 407, Towson,

Maryland 21204, at 9:15 a.m., April 7, 1998.

* * * * * * *

BEFORE:

TIMOTHY KOTROCO, Esquire

Deputy Zoning Commissioner

APPEARANCES:

G. MACY NELSON, Esquire

On behalf of Protestants

G. SCOTT BARHIGHT, Esquire

On Behalf of Petitioner

Reported by:

Susan E. Smith, CSR

TRANSCRIPT OF PROCEEDINGS

* * * * * *

MR. KOTROCO: Good morning, ladies and gentlemen. This is the continuation of the special hearing and special exception case No. 98-294 SPHX. It's the petition filed by Edgar Lucas for property at 901 Greenspring Valley Road. This is the second day of the hearing, which is a continuation of the protestants' portion of the case.

Are there any preliminary matters that you all have?

MR. BARHIGHT: Several very minor ones. I have provided to Mr. Nelson, as promised from yesterday, photocopies of the letters that were -- one was mailed to you directly and the other two were provided to us, hand-delivered to you. I don't know that they need be marked as exhibits. Letters are allowed to be sent to you in these matters, and I would just put them into the record as correspondence to the zoning commissioner.

MR. KOTROCO: Okay. I'll include them in the file. We receive letters routinely, both for and against, and we have a number that came in that were against that

have made their way into the file. But normally, unless there is some other reason to mark them, we routinely do not mark them, we just include them in the case file.

MR. BARHIGHT: And Mr. Nelson has provided me with copies of some documents that he'd like to have introduced. The vast majority of them I have no objection to. I've indicated to him the one that I do have an objection to. So if we can handle the ones that there is no objection to first, and then we can handle the one that there is an objection to.

MR. NELSON: I think I'll deal with them in the other order.

MR. BARHIGHT: Okay.

MR. NELSON: I'll have marked for Protestants' Exhibit No. --

MR. KOTROCO: I think we have No. 1, which was the chart that Mr. Dillon prepared.

MR. NELSON: This is No. 2. For the record, Exhibit 2 for identification is the Baltimore County memorandum signed by Jeffrey Long and Gary Kearns, addressing the whole issue of the helistop and the

Baltimore County zoning regulations. I move that into evidence. I note for the record that the upper right-hand corner has a handwritten note faxed to R. Peter Rubin, PMZ. I received this copy from Peter Max Zimmerman. I don't think that notation is relevant to its admissibility or inadmissibility, but I move the introduction of this exhibit. If you want a clean copy, I can get a clean copy.

MR. BARHIGHT: I don't have any problem with the notations, and I don't have any problem with the authenticity of the document. I don't doubt that this is a memorandum of the date and author as indicated. I believe that it's irrelevant to these proceedings for a variety of reasons.

First, it doesn't relate to the property in question. It relates to a completely different site. And also doesn't relate to the same issues in question. It talks about the heliports and helistops. There is no discussion whatsoever in the summary of recommendations with regard to airports or aircraft, which is the issue at hand, and as a result I would strongly recommend to you

that you not permit its introduction, as it's irrelevant to the proceeding at hand.

MR. NELSON: Very briefly?

MR. KOTROCO: Sure.

MR. NELSON: It's true that this memorandum says the subject is 10714 Greenspring Avenue, which is just down the road. I believe it's -- I'm prepared to be corrected, but I believe that's Mr. Grass's residence where he was attempting to fly the helicopter initially. So it's a different address, but both addresses are in the RC-2 zone. And this opinion memorandum attaches a copy of the Smith case, which I have and will produce to you when we brief our case. I can give it to you now.

But the Smith case talks about a heliport -- correction, helistop -- by itself or in conjunction with an airport, which we all agree, assuming you can make the test for special exception, is a permissible special exception. And the Smith case says you cannot have a helistop in conjunction with an airport in RC-2 zone. So with all due respect to Mr. Lucas's argument, I disagree. I think it is relevant, and I renew my motion that it be

admitted.

MR. BARHIGHT: The last point, the relevant Office of Planning comment is the one that's in this file, not this one. The Office of Planning did choose to make a comment in this case. It's in the file, should be in the file. We received a copy of it. And this is not the comment that they made in this case. They could have; they did not.

MR. KOTROCO: Did not?

MR. BARHIGHT: It was one of their famous no-comment comments.

MR. KOTROCO: Okay. It's odd they would have a position taken in the comment given to me by Mr. Nelson this morning, and then make a no-comment in this case. It seems to be inconsistent with one another. The planning office, that is.

MR. NELSON: I haven't seen the comment to which counsel refers.

MR. KOTROCO: I'm looking for it, too. But you're indicating it's a no-comment type of comment?

MR. BARHIGHT: Right, right. It will speak for

itself, but it doesn't take a position.

MR. KOTROCO: Okay.

MR. BARHIGHT: And it should be in the file. If it's not --

MR. KOTROCO: Here it is. Hang on.

MR. BARHIGHT: You found it? Thank you.

MR. NELSON: May I see it? I haven't seen that.

MR. KOTROCO: One of their more famous comments here. Seem to be passing the buck, I guess. I don't know. You can take a look at it.

MR. NELSON: Well, it says it ought to defer to the zoning regulation, and in the other memorandum they interpret the zoning regulations, so I renew --

MR. KOTROCO: Well, I think I allowed Mr. Dillon to testify about what his opinion was, whether things were admitted or not admitted, or permitted or not permitted by special exception, so forth. I'll allow this exhibit to come in as Protestants' Exhibit No. 2. However, whatever weight I give it remains to be seen. I guess the planning office can -- they sometimes attempt to give me legal advice in their comments. Sometimes they're fairly

accurate, sometimes they're way off base. So I'll accept it in evidence as Protestants' Exhibit 2 for what it's worth. What else do you have?

(Protestants' Exhibit No. 2 was marked by Mr. Kotroco.)

MR. NELSON: I have Protestants' Exhibit 3, which is a summary of the zoning violations and the citations, and the fine of $2,400 and a letter dated January 8, instructing the petitioner to cease all helistop operations. I think we can mark that as one exhibit.

MR. KOTROCO: Mark it as Protestants' 3. Any objection, Mr. Barhight?

MR. BARHIGHT: I'm sorry. Excuse me?

MR. KOTROCO: Any objection to the violations citations?

MR. BARHIGHT: No, no. I believe they are all authentic. I've seen the originals of these documents before and believe that they are accurate photocopies of each of these, I believe, four documents.

(Protestants' Exhibit No. 3 was marked by Mr. Kotroco.)

MR. NELSON: And as I started to say, the one -- these documents are significant for many reasons, but one of the reasons is the first violation --

MR. BARHIGHT: Excuse me. I did not object. Now he's making argument?

MR. NELSON: That's right -- is October 17.

MR. BARHIGHT: I don't believe that's appropriate. He gets to put on witnesses.

MR. NELSON: I could call a witness to say what is the date of the first violation. I could do that. If you want me to do that I'll go down the hall and grab such a body to do that.

MR. BARHIGHT: Well, you have introduced documents that speak for themselves. You don't now get to make closing argument on it.

MR. KOTROCO: What is it that you want to tell me now?

MR. NELSON: I wanted to say that the first violation is, I think it's October 17, which is the very month that Mr. Grass invested in 25 percent of eight of Mr. Lucas, Sr.'s, horses.

MR. BARHIGHT: I have to object. I mean, is he allowed to make argument now, Mr. Kotroco? Is that what's happening here?

MR. NELSON: That's exactly what's happening.

MR. KOTROCO: Well, he moved the document into evidence.

MR. BARHIGHT: I did not object.

MR. KOTROCO: Let's wait and we'll have that argument at the end of the case.

MR. NELSON: Just wanted to make the point. Thank you, sir.

MR. KOTROCO: Okay.

MR. BARHIGHT: Feel free to testify, Mr. Nelson.

MR. KOTROCO: All right. What else do you have?

MR. NELSON: I have a witness to call, Susan Immelt.

MR. BARHIGHT: I have one other preliminary matter, if we can arrange how you want to handle this. Mr. Nelson raised the issue yesterday about private airport runway lengths, and we can either coordinate our calendars to make sure that Mr. Lamb can come back to

authenticate the documents that he received from the Maryland Aviation Administration, or you can accept them now. I'll leave that up to the Court's choice and Mr. Nelson's choice. Either way is fine.

MR. KOTROCO: Let's see if Mr. Nelson has an objection to them.

MR. NELSON: Might, might not. As a general rule, I don't like to make work for people and cause people to spend money, so if I can have an opportunity to review it and form a judgment as to whether or not he ought to come back, we'll let you know.

MR. KOTROCO: Okay. We'll hold off with that introduction until the end, at least to the end of the protestants' case. You can offer it in rebuttal. Assuming that it's accurate, I would think it would be a waste of time to have Mr. Lamb come back from Richmond -- Is that where he was from, Richmond?

MR. BARHIGHT: He's from Virginia.

MR. KOTROCO: -- just for the purpose of saying how he compiled that information. If it came directly out of an FAA published document or something --

MR. BARHIGHT: It was faxed to him from the MAA.

MR. KOTROCO: Okay. All right. Well, we'll let them have a look at that, and we'll wait until your portion of rebuttal of the case, and then we'll deal with that document. Are you ready for Ms. Immelt?

MR. NELSON: Yes, sir, I am. Ms. Immelt, would you take the stand.

MR. KOTROCO: Come on up to the witness stand, please. Good morning. Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes, I do.

MR. KOTROCO: Have a seat. State your name and your address for the record.

THE WITNESS: My name is Susan Immelt, I-M-M-E-L-T, P.O. Box 714, Brooklandville 21022, and that's 1019 Greenspring Valley Road.

S U S A N I M M E L T,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was

examined and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. Ms. Immelt, would you be kind enough to approach the map and just point out to Commissioner Kotroco where you live?

A. I live in this house right here.

Q. With whom do you live there?

A. I live with my husband Steve, and I have two daughters.

Q. And how old are your daughters?

A. 11 and 12.

Q. Now, can you describe to Commissioner Kotroco where you grew up, if you grew up in that house or near that house, and just give him a summary of your various residences?

A. Okay. I grew up on this property, and I grew up in this house here, which is where my brother lives now, but on the same property.

Q. For how many years did you live in that house?

A. I lived there for 20 years.

Q. What years were they?
A. 1952 to -- I went to college in 1970, and I lived more or less at home -- 20 years isn't right -- until I was 25.
Q. Okay. And after you got out of college, where did you live?
A. I lived in Baltimore City, and I spent a lot of time here on the farm. But I lived in Baltimore City until 13 years ago, in which we moved to this house, our present house.
Q. Okay. And that was 1986?
A. 1985.
Q. So is it fair to say that between, say, 1952 and 1970 you lived on that property which is Doug Carroll's current house, you lived there full time?
A. Yes, I did.
Q. And since 1985 you lived in your current home for that time?
A. Yes.
Q. And that between 1970 and 1985, you visited your family's place on a regular basis; is that fair?

A. Yes. And part of the time, when I was in college and after college, I was actually living there then.
Q. Okay. Now, let me jump ahead, because you're here at the map, and I was going to ask you these question later. But the engineer, Mr. Matis, testified under oath yesterday, as I recall his testimony, that you were prohibited from building another house on your property. Is that an accurate statement?
A. No. I wasn't here for his testimony, but, no, that is not true.
Q. How many houses are you permitted to build, as a matter of right, at this time?
A. One.
Q. And do you have any information as to where you have the right to build that house? And could you provide that information to Commissioner Kotroco?
A. Yes.
MR. NELSON: Can the commissioner see it from there?
MR. KOTROCO: Yes, I can see it.
A. Our house here is built on a piece of property

that goes just like this, which is in Maryland Environmental Trust, so we are not allowed to build a house on that piece of property. The rest of our property, this piece of property that goes down to the Jones Falls is in the agricultural program, and in that program we are allowed to build one house. We have, by right we have to -- I mean, we'd have to go through all the other processes, but we do have the right to a house site. And we obviously can't build it right down in the bottom, because it's a flood plain. So the options for building a house would be right along here, along the property line with the Lucases.
Q. Ms. Immelt, let me show you, since you're here at the map, Mr. Miller, who was the noise expert, noted two noise assessment locations. No. 1 is there. Do you see that? Do you see that?
A. Yes.
Q. And No. 2, over here to the east is there. Do you see that?
A. Yes.
Q. Now, can you describe, if you and I or you and

the commissioner were to walk down the boundary of your place and Helmore Farm, if you were to start at the noise assessment location No. 1, and walk in a southerly direction right down the property line to the northwest corner of the helistop, can you describe the topography, meaning would you go up or down, or is it level?
A. Okay. I think that the contour shows that that point right here is actually the highest place on the property, and I believe it's the highest point on any of this whole farm. And you walk down a fairly steep hill, and as you -- do you mean all the way down here?
Q. All the way down to the northwest corner.
A. You basically are walking downhill.
Q. Into a valley?
A. Into a very quiet valley. And you would be walking downhill to my house, too.
Q. You would?
A. Yes.
Q. All right. Well, in the course of all your years living at this property, both as a child, an adolescent, and as an adult, can you compare the level of noise at,

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say, noise assessment location No. 1 versus down at the bottom of the valley right next to where the petitioner proposes to have a helistop which generates 90 decibels of noise when the A109 takes off?

MR. BARHIGHT: Objection as to the highly speculative nature of the question.

THE WITNESS: Well, actually, it's not speculative, I can tell you.

MR. KOTROCO: Hold on a second. Go ahead, Mr. Barhight, why is it speculative?

MR. BARHIGHT: She is not a sound expert, and she has been asked to describe the relative noise levels of two locations several thousand feet apart. She has no qualifications of being able to do that, no basis to do that whatsoever.

MR. NELSON: May I be heard?

MR. KOTROCO: She's got a set of ears, doesn't she?

MR. NELSON: And 40 years of human experience living on the property.

MR. KOTROCO: You can tell me what you hear.

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A. Okay, okay. I'm sorry, I'm a little bit flustered.

Q. Let me rephrase the question. Take your time. Based on your 40 years of experience, either living or visiting on this property, are you able to compare the level of noise at the highest point of the property, which coincidentally is the place that Mr. Miller selected to test the noise, noise assessment No. 1, versus the lowest point in the property, in the valley, on your property, right next to the proposed helistop, which we know from Mr. Miller will generate 91.4 decibels of noise when the A109 takes off?

A. Okay. Now, this noise assessment place, I have not stood there with the express purpose of listening to the background noise, however --

MR. BARHIGHT: I have to object again.

MR. KOTROCO: Overruled. You go ahead and tell me what your experiences have been.

A. But my experience is in the front of my -- and not directly in front of my house, but out in this area, the sound of Greenspring Valley Road is loud enough that it would have an effect on the background noise. Okay.

Now, as I walk down here, if I am standing in this valley, there is a sort of area, sort of island of trees out here before the last descent into the valley. There is, I can't say there is zero noise, but there is virtually no traffic noise there. And I can almost say there is -- I can't hear any traffic noise down in this valley.

Q. (MR. KOTROCO) From Greenspring Valley?

A. From Greenspring Valley or from the Jones Falls Expressway.

MR. KOTROCO: Okay.

A. And particularly it's noticeable in the evening because you hear so many noises of birds and frogs and stuff like that. But I could say that there is no noise from Greenspring Valley Road, and only if there were something really loud on the expressway would you hear it.

Q. You can have a seat.

A. Okay.

Q. Ms. Immelt, during all the years that you've lived at the property or visited the property up until

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October 1997, not since October '97 but prior to October '97, going back to your infancy, what, if any, memory or knowledge do you have of any planes landing at Helmore Farm?

A. One time.

Q. Now, are you able to estimate when that was?

A. Yes. I would estimate that to be in the early '70s. It was after I finished high school but when I was still sort of living at home.

Q. And during those same years leading up to October 1997, do you have any memory or knowledge of helicopters landing at Helmore Farm?

A. No, I do not.

Q. Did there come a time in October of 1997 when the status quo changed, when the use of that bottom field changed?

A. Yes. And I wrote the very first date on that list. I think it was October 4, October 8, a helicopter landed for the first time at the site.

Q. Now, what did you do, what cause, if any -- let me rephrase it. Where did the helicopter land?

A. It landed – do you want –
Q. On which property?
A. On the Lucases' property.
Q. Okay. Now, what, if any, phone calls did you make after witnessing this helicopter land on the Lucas property?
A. I called up Dale Lucas to ask him what was going on.
Q. Now, had you previously met – I'm asking a silly question, but had you previously met your neighbor, Mr. Lucas?
A. Yes, from time to time.
Q. So you knew him well enough to call him up?
A. Yes.
Q. And what was the purpose of your phone call to Mr. Lucas?
A. I called him up to say that I hoped this helicopter wasn't going to be landing on a regular basis, that if it landed once in a while it really wasn't a problem, but I would -- and I didn't feel that I should just call up and report a zoning violation without having

the courtesy to call him and tell him I was going to do that.
Q. Did you ask him if it would be on a regular basis?
A. Well, I don't think I asked him specifically in the way that I said it. I said if this is going to be on a regular basis, it's going to be a problem for me.
Q. And what did he convey to you?
MR. BARHIGHT: Objection.
MR. KOTROCO: I'll sustain the objection. We were trying to stay away from hearsay earlier.
MR. NELSON: There's a difference.
MR. KOTROCO: What's the difference?
MR. NELSON: The difference is that Mr. Lucas began to testify about what his father said Maury Paschal said. Maury Paschal is a twice-removed, out-of-court declarant, so it's double hearsay by a nonparty, out-of-court declarant. In this instance – and there is no way I can cross-examine Maury Paschal, who may be dead, I don't know.
MR. KOTROCO: Why didn't you ask Mr. Lucas, when

he was on the stand, what he told her when she called him?
MR. NELSON: I could have, probably should have. If you want to really know, I forgot to. All right. Now, in this case, Mr. Lucas is the representative of the party seeking this. He's present in court. And it's an admission by a party, which is an exception to the hearsay rule.
MR. KOTROCO: Do you want to say anything, Mr. Barhight?
MR. BARHIGHT: I'll stand on my objection.
MR. KOTROCO: All right. Well, I'm going to allow her to give the answer. If you want to call Mr. Lucas and dispute it, he can testify later. So go ahead, what did he tell you, Ms. Immelt?
A. He said that it was Marty Grass's helicopter, and that he had given him permission to land and take off his helicopter to commute to Pennsylvania.
Q. And did he explain to you why he was doing that?
A. He said, It lands in practically my backyard, and it's sort of annoying, but it's worth it. I discussed it with my family, and we think it's worth it.

Q. Did he tell you that Mr. Grass had agreed to invest in eight of his father's horses?
A. No, no.
Q. Did he tell you that he intended to have people other than Mr. Martin Grass land either a helicopter or a plane at Helmore Farm?
A. No. I didn't ask him.
Q. Now, since that date in October, have you witnessed a helicopter take off or land?
A. Yes.
Q. Do you have knowledge as to who's in the helicopter?
A. I really -- no, I don't.
Q. All right. But do you have any information that allows you to say that anybody other than Martin Grass is using that location to commute to work or to commute to anywhere?
A. It's the same helicopter routinely that flies in and out. And I recognized that helicopter. I think there was a picture of it yesterday. There was one day when I specifically saw a different helicopter come in, which was

white. But on a regular basis, it's that blue helicopter that comes in and out.

Q. Since October 1997, have you seen an airplane land there on a regular basis? I'm not talking about the time they did the test.

A. Well, actually I was out of town for the test, so no, I haven't seen an airplane land there at all.

Q. What is the typical schedule of the -- in fact, counsel mentioned it to Mr. Kotroco yesterday, but what is the typical schedule for Mr. Grass's helicopter?

A. Almost always the helicopter comes in at 8 a.m., and in the evening it's different times, anytime from, say, 5 to 7:30. On the weekends it's usually later in the morning and then returning around different times in the evening, and likewise on Sunday. And it's not every single Saturday and Sunday, but it's consistent with the kind of schedule I would think someone like that would have.

Q. Are you able to describe to Commissioner Kotroco the noise, if any, that the helicopter creates when it either lands or takes off?

MR. BARHIGHT: My only objection is that she should be required to state where she is standing when she observes this noise.

MR. KOTROCO: Okay.

Q. And weave in your answer, if you can, the amount of noise at your house, inside, outside the house, or down in the valley next to the proposed helistop. Tell us where you are.

A. Well, down in the valley near the proposed helistop, I really -- there is no way that I can describe that. I mean, it's outside sort of human ear. It's just extremely loud.

Q. (MR. KOTROCO) Louder than a fire engine?

A. Oh, well, I mean, haven't you ever been next to a helicopter when it lands? I mean, you can't hear anything. I mean, it's -- it sounds like -- it sounds like a plane taking off next to you. I mean, it's just extremely loud. I think you need, you know, a decibel measurement to know. Or jackhammer, I guess, having a jackhammer, say, as far away as that wall. That's how loud it is.

Now, at my house, say, in my bedroom, if I happen to be asleep, which is unusual, when it takes off, it wakes me up. It wakes my daughter up, who is more frequently asleep, takes off. It is, I would compare it to having someone running a chain saw in my yard, just out in the backyard. That's about how loud I would say it would be, and more or less the quality of the noise.

Q. (MR. NELSON) Can I follow up on that? You mean if the helicopter lands at the proposed helistop --

A. It it's as loud as a chain saw in my backyard.

Q. If you were in your house?

A. If I'm in my house.

Q. Windows shut?

A. Windows shut.

Q. Can you describe the effect, if any, that the noise has on you and your family, say, at dinner time or in the springtime when you're sitting outside?

A. Well, if you're having a normal conversation during the time that it lands, you have to either raise your voice or pause. Is that what you mean? Is that your question?

Q. Yes. And does it affect -- what effect, if any, does it have on your family's ability to use and enjoy your property?

A. Well, at this time of year we have a very nice landscaped patio that faces south, and it faces right back down, back down the valley, and it's a nice place to sit and relax.

MR. NELSON: I'll have these marked in a moment.

Q. Would you identify these two documents, please.

A. Yes. The first one I wrote in November 12. I wrote a letter to Lavette Bannerman, and I made a list of helicopter landings/lifts-off I personally witnessed at Helmore Farm. And I made a point that -- I only wrote down the landings that I actually got up from what I was doing, walked outside around -- there's a tree behind my house -- walked around the tree, and looked to make sure that I could absolutely testify that that helicopter touched down. And the same is true of the next group, which is January 3. And it doesn't mean those were the only landings, it's just that I did not write any down on this that I hadn't gone out and actually seen it land.

Q. Are those documents an accurate copy of the logs that you maintained --
A. Yes.
Q. -- and the letter that you sent -- you sent this letter to?
A. Lavette Bannerman.
MR. NELSON: At this time I would ask that these be marked as Protestants' Exhibit, I think it's 4.
MR. BARHIGHT: No objection.
MR. KOTROCO: Yes, do you want to do 4A and 4B?
MR. NELSON: Whenever you please, whatever is easier.
MR. KOTROCO: All right, it will be 4A and 4B. 4A will be the dates commencing October 11, and then 4B would pick up on November 21.
(Protestants' Exhibits 4A and 4B respectively were marked by Mr. Kotroco.)
MR. NELSON: That concludes Ms. Immelt's direct examination.
Q. (MR. KOTROCO) Ms. Immelt, can you, from your house, are you able to -- I know you can probably see the

helicopter coming and going. Can you see the corral on the ground, or do you have to actually walk to the higher point of the hill and look down?
A. Right. No, I can't see it.
Q. Okay. There was some indication earlier about windows rattling and stuff. Do you experience any of that?
A. No.
MR. KOTROCO: Let me see if Mr. Barhight has any questions of you. Any cross-exam?
MR. BARHIGHT: Please, thank you.
MR. NELSON: Can I ask one follow-up. There is one item on my checklist I forgot to ask her. I beg your pardon.
MR. BARHIGHT: Go ahead.
Q. (MR. NELSON) Do you have any knowledge as to whether or not the proposed helistop location is in the flood plain? Or have you ever seen this area flooded down here?
A. I have seen my part of the property above that flooded, yes.

Q. When you say my part of the property, what do you mean?
A. Shall I show you?
MR. KOTROCO: You can go up to the board.
Q. Yes.
A. Let's see. Right about here there is an old -- I'm really terrible on distances. I'd say right about there there's an old barn, and I would say in Tropical Storm Agnes, 1972, the Jones Falls was flooded up to maybe 40 feet below that. And since this is down lower -- wait a minute. Yeah, down here. So this would have covered that.
Q. Let me ask you this. Have you seen -- if you were standing on your property line between your property and Helmore Farm, and if you were standing right where the proposed helistop is located --
A. Yes.
Q. -- have you, in the course of your lifetime, ever seen flooding that high, up onto --
A. Onto my property?
Q. Right.

A. Yes.
Q. All right. And is there any reason why, if your property were flooded, Helmore Farm would not be flooded?
MR. BARHIGHT: Objection. That clearly calls for an expert opinion that goes well beyond her --
MR. NELSON: I'll withdraw that question.
MR. BARHIGHT: Excuse me. The witness is now being coached by Mr. Carroll. I object to that as well.
MR. KOTROCO: No coaching over there, Mr. Carroll. You sit there and be quiet.
Q. Does water flow uphill or downhill?
A. That, I can answer. It flows downhill.
Q. All right. Now, is your property where you've seen water, flooding, is that at the same level or lower than the Helmore Farm just a few feet across the property line?
A. A few feet across the property line, it's at the same level.
Q. Okay. That's all I have. Thank you.
MR. KOTROCO: You can have a seat.
MR. BARHIGHT: Actually, if you don't mind, if

you can stand there, I can have those questions that I have about the chart while we're here.

THE WITNESS: All right.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. I'd like for us to have a little bit clearer sense of the location of that barn that you referenced so that we can get that on the record. Is my understanding correct that the barn that you're talking about on the parcel identified as Parcel 843 is approximately the same area north or south as the notation on your property that's identified as RC-2? Is that the approximate location, north and south?

A. Is there an aerial map available?

Q. I do not have one.

MR. KOTROCO: I have an aerial photo. Come on up here.

A. Because I'm really --

MR. KOTROCO: I don't know if this will help you or not. I don't know if this shows much of your property or not.

THE WITNESS: It doesn't show the --

MR. KOTROCO: The barn?

THE WITNESS: No, it doesn't show the barn.

MR. KOTROCO: This one doesn't either.

MR. BARHIGHT: Well, she testified before from this map, and I'm just trying to --

THE WITNESS: Well, let me study it harder, then.

MR. KOTROCO: It might be hard for her to actually locate where that barn might be or the tree line that runs through there.

MR. BARHIGHT: That's sort of my point.

THE WITNESS: There's a lot of variables.

Q. Excuse me. How about if I ask a question and you can provide an answer?

A. If you're polite, that's okay.

Q. I think I have been. Have I been polite so far?

MR. KOTROCO: You're always polite.

Q. Have I been anything but polite so far?

A. You've got me flustered. Don't get me flustered. Okay, go ahead.

Q. If there is anything that I'm doing that is

inappropriate, you tell me.

A. Okay.

Q. Have I done anything inappropriate so far?

A. Well, just go for the future. Okay.

Q. Have I done anything inappropriate so far?

MR. NELSON: I object. Can we have a question? Let's move along.

MR. KOTROCO: Yes, let's move on.

MR. BARHIGHT: I don't want the record to be indicating that I may have done something inappropriate.

MR. KOTROCO: I find you have not done anything inappropriate, Mr. Barhight.

MR. BARHIGHT: Thank you very much.

Q. Am I okay where I'm standing?

A. Yes.

MR. KOTROCO: It might be inappropriate that you're a lawyer. She might be -- I don't know. But I find that you haven't done anything inappropriate. You go ahead and ask your question.

MR. BARHIGHT: Thank you very much.

Q. Let's go back and go through the same question

again, just to see how close we can get.

A. Okay.

Q. Hold on, I haven't asked a question yet.

A. I'm sorry.

Q. That's okay. Is my understanding correct of your previous testimony that you have approximately located the barn in the area of what's known as Parcel 843, in terms of north versus south, where there's an indication RC-2 on the map, on Petitioner's Exhibit 2B?

A. Could I ask you a question? Is this Dale Lucas's house here?

Q. Yes, ma'am.

A. Okay. I would say this barn is approximately here, then.

Q. Okay. Now, that would be, to get -- let me hold my finger there. Would that be just above the notation immediately to the west that says Douglas Carroll?

A. Yes, above it.

Q. Just above that, okay. Are you sure of that location?

A. If you brought a photo here, you could prove me

wrong. But to the best of my knowledge, relative to where his house is, and there's a hedgerow that I can look over, that's where I would say it is.

Q. Is it above or below, north versus south, of the proposed helicopter operation?

A. North.

Q. And you said, I believe, that from that barn location there was an area that was flooded one time during a significant storm, about 40 feet within that barn?

A. Yes.

Q. When was that event?

A. Tropical Storm Agnes.

Q. What year was that?

A. 1972.

Q. Okay. And during that event, you must have been standing at that barn to observe that flooding?

A. I was, yes. I always go and look at the Jones Falls when it floods.

Q. And how do you know it was 40 feet, did you measure it?

A. No, I actually, when I was walking there yesterday, I looked at where it was, and you could take a tape measure out and measure it. I'm a very bad guesstimater of distances like that. But that would be my guesstimate.

Q. Okay. You can go ahead and step down. Thank you very much.

Do you know how far away your residence is from the proposed special exception area?

A. No.

Q. If I told you it was at least 3/10 of a mile, would you disagree with me?

A. That sounds about right.

Q. Let's go back to the beginning of your direct examination. Mr. Nelson asked you some questions with regard to your ability to build a house on what's known as Parcel 843?

A. Yes. That's the parcel that my house isn't on.

Q. Yes, correct. Just so we're talking about the same thing, the parcel that's identified with your house is Parcel 481, and the parcel between your house lot and

Helmore Farm is identified as Parcel 843?

A. Okay.

Q. So if that's okay, I'll reference it as Parcel 843.

A. Okay, Yes.

Q. Do you have any written confirmation from the zoning office, or any county agency, that you're allowed to build on Parcel 843?

A. I don't have it with me. I think I could get it.

Q. Well, not do you have it with you; do you have within your possession anywhere a letter that says that, today? Not can you get one in the future, do you have it today?

A. I believe that I do.

Q. You believe that you do?

A. Well, it's part of our contract for this agricultural easement, is that we have, we are, have the right to one house site. That doesn't mean that we have gone through the process of seeing whether we would actually be allowed to build it, but we have the right to a house site.

Q. Maybe I'm being confusing. That's what I wanted to get to. Have you gone through any of that process with Baltimore County, not the state, which is the ag easement that you have with the state, but with Baltimore County government in any way to determine whether they would allow you to build a house on that lot?

A. Have I personally?

Q. Well, let's start with that, have you personally?

A. No.

Q. Has anyone who is under your employment or direction done that?

A. Well, I don't know if you count this. My parents were interested in identifying a house site. Is that of interest to you, or --

Q. On Parcel 843?

A. Yes.

Q. Did your parents inquire about whether or not that lot was buildable?

A. They did, but it wasn't an easement then. It was because they were interested in possibly building a house there. Is that your question?

Q. Yes.
A. Yes.
Q. So that was prior to the agricultural easement being placed on the property?
A. Yes.
Q. When was the agricultural easement placed on the property?
A. Let's see, the early '80s. I can't remember exactly. It was before I actually moved to the property.
Q. Okay. Do you recall who the grantor was of that easement?
A. The state -- gosh, I'm blanking.
Q. Let me make it easier. I'm sorry. The reason I'm asking the question is that I'm trying to get a sense of, if I want to try and find it in the Baltimore County land records, how would I look it up. You've given me an approximate time frame.
A. Yes.
Q. Obviously -- well, I shouldn't say obviously. Is the grantee, the person that received the easement, the Agricultural Land Preservation Trust or the State of

Maryland?
A. Yes, that's who it is.
Q. Who gave them that right? Who was the owner of the property when that occurred?
A. Oh, okay. Myself, my brother, and my two sisters. Is that what you mean?
Q. Yes.
A. Yes.
Q. So that's been recorded in the land records?
A. Yes.
Q. I could go look that up?
A. Yes.
MR. BARHIGHT: I just request the opportunity to supplement the record at the appropriate time with that document, which should be self-authenticating.
THE WITNESS: Okay.
MR. KOTROCO: That's fine.
MR. BARHIGHT: If Mr. Nelson doesn't already have it, we can search it out and supplement the record with that document, and then I can stop bothering her with questions. The document will speak for itself.

Q. Now, I believe you've indicated that an area just north of where it says Doug Carroll, which is north of the RC-2 designation on Parcel 843 and north of the helipad site that's proposed, but south of the existing dwelling where Mr. Lucas lives, that there is a barn at that location; is that correct?
A. Yes.
Q. And that 40 feet south of that you've seen flooding?
A. Yes.
Q. Have you ever had anyone perk that area to see whether you could even obtain approval for a house site in that general vicinity?
A. That was not the area that was perked. That was not the place that was perked, it was another place.
Q. Oh, there is a place that's been perked --
A. Yes.
Q. -- on Parcel 843?
A. My parents told me. That's hearsay. But they did investigate building a house on that parcel.
Q. Do you know where they obtained the approval for

the perk?
A. Yes. It's just above that.
Q. Why don't you come on up, and I'll get out of your way so you can show us where it perked.
A. Right up in this area. There is sort of an island of trees out there.
Q. Okay. For the record -- correct me if I'm wrong -- you're indicating an area on Parcel 843 which is west and north of the existing dwelling where Mr. Lucas lives, in the approximate location of the word "Immelt?"
A. Yes. Yes.
Q. And that is elevation of 328?
A. Actually I'd say it was more like right here.
Q. That's why I asked, make sure I'm correct. I believe you're now indicating right at the 7 in 7830?
A. Yes.
Q. That's at an elevation 325?
A. Yes.
Q. That's where it perked, the best of your knowledge?
A. Yes, yes.

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Q. Since you have resided at your residence, can you clearly hear the road noises from Greenspring Valley Road at your residence?
A. If I walk outside, front of my house, outside, I can hear the noise out there.
Q. Can you hear the noise from Greenspring Valley Road when you're in your house?
A. No.
Q. Can you hear the noises, the other traffic noises from Jones Falls Expressway or 695 while you're in your house?
A. No.
Q. How about from outside your house?
A. Yes, you can hear -- yeah, you can hear noise from the Jones Falls. I mean, you don't hear a constant buzz. You can hear trucks starting up or that kind of noise.
Q. I believe during your direct examination you said that you can hear, at your residence, truck traffic from the -- correct me if I'm wrong -- the Jones Falls Expressway or 695, only if something loud was occurring?

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A. Okay. You can't hear anything from 695.
Q. Okay.
A. Yes. A truck starting up is pretty loud, I think.
Q. Okay. So you can hear truck traffic on Jones Falls Expressway from your residence?
A. You can hear a truck, like if it's a stop and it goes -- you know, starts up, yeah.
Q. And there is, I guess, a light at Falls and Greenspring Valley Road?
A. Yes.
Q. And there is a light at Falls and Joppa Road?
A. Yes.
Q. Okay. And I assume that trucks do stop from time to time at those lights?
A. They often run the lights, but hopefully they stop sometimes.
Q. That was a joke. I'm trying to be nice.
A. Okay.
Q. Were you here yesterday during Mr. Lucas's testimony?

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A. I was not here for all of his testimony. I was here for part of it.
Q. Were you here during the portion of his testimony when he discussed the aircraft usage at Helmore Farm over the last 30 years?
A. Yes.
Q. Okay. So you heard him testify that there were fixed-wing airplanes that have landed and taken off from time to time at Helmore Farm --
A. I did hear him say that.
Q. -- over that period of time?
A. Yes.
Q. And you also heard him testify that there were helicopters that landed over that same period of time, from time to time?
A. Yes.
Q. We'll get into the specifics of how frequently. Just from time to time?
A. Yes.
Q. Okay. Now, since 1970s you have actually only witnessed one airplane landing and taking off?

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A. Yes.
Q. And you've never seen a helicopter land and take off?
A. Until October 5.
Q. Of 1997?
A. Yes, or whenever it was, the beginning of October.
Q. So if Mr. Lucas is not lying, you either weren't there or the noise didn't bother you enough for you to notice it when these aircraft landed and took off; isn't that correct?
A. There is a part of that question I really don't want to address. I don't know if you want to put it that way. I don't believe they landed or took off.
Q. So you believe Mr. Lucas is lying?
A. Well, do you want me to testify that?
Q. Well, I want to know what you think. That's what this is all about.
A. I think that it's possible that a few planes or helicopters, it is conceivable that that would have happened. But the amount of time that I spent there, and

the level of awareness that I have of what goes on there, the amount of time I spend outside, it is almost inconceivable, to me, that planes or helicopters landed with the frequency that he described. I'm sorry, I really don't believe it.

Q. So either the events didn't occur at all, you weren't there when they occurred, or you didn't hear it?

A. But the possibility, the likelihood that I would not have been there for any of those events is, for any of them, is pretty amazing to me. And the difficulty with which the small plane landed that I saw, I have a very hard time believing that anyone would choose to land a small plane there on any kind of regular basis. It made at least two passes, if not more. And the trees have grown up even higher. It's not the length of the runway that's the issue, it's the trees that are at each end of the runway that make it -- it looked like it would be very hard. So the combination of the amount of all of those things make me believe that it's possible it happened from time to time, but not on any regular basis.

Q. Okay.

Q. (MR. KOTROCO) Well, if they came in from the Jones Falls side, you would be less likely to notice something there, than if they flew directly over your property and landed?

A. No, I wouldn't see it, but it's hard, considering the wind and so forth, and considering the trees at the other end of the runway, you know, it's hard for me to -- but, yes, you're correct, for a plane.

Q. The one that came in, the plane that came in, did it come in over top of your property, or did it come in the other way?

A. Yes. It flew right over our field, and it could not -- it couldn't have landed, it could not have done that recently, because the trees on our fields at the edge of the property line have grown up so much higher.

Q. (MR. BARHIGHT) You speak with such authority about how airplanes land and take off. You must be a pilot. Are you a pilot?

A. No, I'm not, and I am --

Q. Do you know what kind of airplane it was that you saw land and take off?

A. It was a very small airplane.

Q. Okay. What year was this that this occurred?

A. I would say it was in the early '70s. And it made a big impression on me, this plane.

Q. Okay. But you're not a pilot, and you don't know what the specs are and --

A. No. And what I just said about the tree and so forth is my, my unprofessional impression.

Q. But you're not in charge of airports, you don't land and take off airplanes, you don't know about the specifications for aircraft?

A. No, I don't.

Q. Okay. Ms. Immelt, do you recall suing Mr. Lucas?

A. Suing? Oh, is that called -- was that suing Mr. Lucas, the injunction?

MR. NELSON: That's a suit, yes.

Q. Most people think that's a lawsuit.

A. Okay, yes.

MR. KOTROCO: She was just trying to stop the helicopter.

A. I really was, and I even said I don't want to be

in this lawsuit, but that's what it was called.

Q. I have to lay a proper foundation for it. I have to ask those questions. Do you recall the lawsuit?

A. Yes.

Q. And do you recall testifying at the preliminary injunction hearing at that lawsuit?

A. Yes, okay.

Q. And do you recall testifying specifically during your direct examination by Mr. Nelson when he asked you questions in the courtroom?

A. I did.

Q. Okay. And do you recall him asking you specifically about your telephone conversation with Mr. Lucas that you testified about here today during your direct examination?

A. He did ask me about that.

Q. Okay. And do you recall your answer at that time?

A. I recall -- specifically, no, I don't remember exactly what I said. I remember the main points.

Q. So if I told you that you gave a different answer

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today than you gave in court on February 20, you wouldn't be able to tell me whether did you or you didn't?
A. If I told you -- if you said I gave a different answer?
Q. Yes.
MR. NELSON: May the witness see the transcript?
A. I would be surprised.
MR. BARHIGHT: I'm just asking whether she recalls. I'm about to give her the transcript. She said she doesn't remember what she said. I'm going to let her see it.
A. Wait a minute. I remember the quality of what I said. I don't know what part you're -- I don't know why --
Q. I'm asking you just specifically about your response.
A. I think I gave the same answer. Is that what you're trying to get me to say?
MR. NELSON: I object.
MR. KOTROCO: He just wants you to say whatever you want to say.

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A. I believe I gave the same answer. I believe that our discussion then was a little bit longer and more detailed.
MR. NELSON: May the witness see the transcript? That's the appropriate --
MR. KOTROCO: He's getting to that.
MR. NELSON: Wait until you see the transcript. You have the right to see the transcript.
MR. BARHIGHT: I have no problem with that.
THE WITNESS: Yeah. Otherwise you might be saying I'm perjuring myself.
MR. NELSON: Just read the transcript.
MR. BARHIGHT: Ma'am, I'm not suggesting --
MR. KOTROCO: That's Clinton's deal, don't worry about it. That's not us.
Q. For everyone's benefit, let me direct your attention. I'm on page 62 of the transcript.
A. Okay.
Q. And feel free to read that whole page, but I believe your answer began on line 22 and carried over to the next page. But feel free to read that page, any page

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that you'd like of that transcript.
A. Okay.
MR. NELSON: Wait for a question.
MR. BARHIGHT: Yes.
THE WITNESS: All right.
Q. Have you read it?
A. It's me that's being rude.
Q. No, you're not being rude. Don't take this wrong. If you're not used to this setting, it's not an easy setting. That's okay.
A. All right.
Q. Have you had an opportunity to review the transcript of your testimony before the circuit court?
A. I think so.
Q. Well, take the time that you need.
A. I don't know --
MR. KOTROCO: I don't know if she knows that's what that is.
A. I don't know what you're, what I -- there's something in here that we discussed at that testimony that we haven't discussed today, and there's something we

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discussed today that I was not asked about last time. That's the difference, but I --
MR. KOTROCO: Let me interrupt you for a minute. Okay, go ahead.
A. I'm not sure what you mean.
Q. Let me back up and address what Mr. Kotroco is raising. I am providing you with a copy of the reporter's official transcript of the proceedings before the Honorable Lawrence R. Daniels, Judge, Case No. 03-C-98000364, Friday, February 20, 1998.
MR. BARHIGHT: I would ask Mr. Nelson, if he objects that this is not the transcript, indicate such. But I'm proffering that this is the transcript of those proceedings.
MR. NELSON: No objection. I think I'll just put the whole transcript in the record.
MR. BARHIGHT: You'll have the opportunity to do that, if you wish to do that, Mr. Nelson.
MR. KOTROCO: It's fine if you want to do that, but he just wants to ask her a question about it. That's all.

MR. NELSON: That's the transcript.
MR. BARHIGHT: Okay. So it's established that this is the transcript.
MR. KOTROCO: Right.
Q. On page 62 and 63, did you also have the opportunity at the circuit court to answer the same question of what Mr. Lucas said to you when you called him on the telephone?
A. He asked me what the conversation was on the phone.
Q. Yes.
A. In neither this conversation nor that conversation did I give the entire content of the telephone conversation, and -- is this what you're asking me?
Q. Well, go ahead and give your answer, and then I'll ask another question.
A. So, I mean, do you want me to tell you what it says in here?
Q. It speaks for itself, ma'am, and I'm going to introduce those pages that are your response to that

question --
A. Okay.
Q. -- in the record. But I wanted to make sure that I'm establishing here that you were asked that question and you did give an answer that day to that question.
A. Okay. I was asked the conversation -- about the phone call.
Q. Okay.
A. Okay, yes.
Q. And you did answer the question about what happened in the phone call?
A. Yes.
Q. Okay. And that was on pages 62 and 63?
A. Yes.
MR. BARHIGHT: Okay. I'm going to make a copy of those two pages and provide them to you. Obviously I have no objection to any portion of the transcript being introduced, but would specifically -- and I'll make copies and provide it to you so you can see what the answer was at that time. I don't see any reason to read it into the record, unless you want it to be done that way.

MR. KOTROCO: Well, I mean, I'm a bit confused about it now. I mean, her testimony, as I recall it --
Q. (MR. KOTROCO) And you correct me if I'm wrong. This is my notes. On October 4 when the helicopter first landed, you picked the phone up and you called your neighbor and said, What's going on? You wanted to find out what was happening. You told him that if it was going to be a sporadic event, or something that occurs just once in a while, you wouldn't have so much of a problem with it, but if it happens on an everyday basis, you would have a concern about it, and you objected to that.
A. Um-hmm.
Q. Are there other things that were said back and forth that you want to tell me about?
A. Well, I mean, it was a long conversation, but, you know, I don't know that it's relevant.
Q. I mean, I don't care to get into --
A. But I don't want you some other time to say you didn't put this other stuff in.
MR. KOTROCO: That's okay.
MR. NELSON: I'll clean it up. There were

different issues in different cases --
THE WITNESS: Yeah.
MR. NELSON: -- requiring different evidence?
THE WITNESS: Okay.
MR. BARHIGHT: The words speak for themselves, and we can make argument in the briefs as appropriate as to what they say. But I'll provide you a copy of pages 62 and 63, which are the pages that she identified.
MR. KOTROCO: Okay.
Q. (MR. BARHIGHT) Let's go to the chain saw testimony. I'm a little confused by that.
A. Okay.
Q. You were trying to make a comparison between the landing and taking off of a helicopter at the proposed location on Helmore Farm, I believe; is that correct?
A. Um-hmm, um-hmm.
Q. So the one thing you were comparing was what you've actually heard from the inside of your residence of the helicopter taking off and landing on Helmore Farm?
A. Um-hmm.
MR. BARHIGHT: The witness is indicating yes, I

believe.
A. Yes. I'm sorry.
Q. And I believe the comparison that you used was it sounded the same as a chain saw heard from inside your house, if that chain saw was being operated in the front yard.
A. Yes.
Q. Okay. Have you ever operated a chain saw in your front yard?
A. Well, I have, yes.
Q. Okay. And you've listened to that from the inside of your house?
A. Well, let me put it the other way around. I have operated a chain saw. That's not relevant. I have been in my house when someone has been operating a chain saw outside, which is what's relevant.
Q. That was my question. So you have actually witnessed that event?
A. Yes, yes.
Q. And that chain saw was being operated in your front yard?

A. In my back yard.
Q. In your back yard, close proximity to your house?
A. Yes.
MR. BARHIGHT: Okay. Mr. Kotroco has -- and this is a question as much for Mr. Nelson as Ms. Immelt. I don't know whether he represents her or not. Mr. Kotroco has indicated his desire to visit Helmore Farm. He attempted to do so this morning.
Q. (MR. KOTROCO) Did it fly this morning? Did the helicopter come and go? Did you see it this morning?
A. I wasn't there at 8:00 this morning.
Q. You had other business to attend to.
A. I was gone.
Q. (MR. BARHIGHT) This is just a general question about whether it would be appropriate for Mr. Kotroco to visit your two parcels as well when he visits the site?
A. Yes, that would be fine.
MR. BARHIGHT: Is that acceptable?
MR. NELSON: Not a problem.
MR. KOTROCO: What time is dinner over your place?

THE WITNESS: I'm a great cook.
MR. KOTROCO: I stumbled into your field a little bit this morning when I was out there, but I didn't -- I saw the barn, but I didn't walk up to your house or anything.
THE WITNESS: Okay.
Q. Now, it's my understanding that from the events where you specifically recall the helicopter landing and taking off at Helmore Farm when you have been actually in your residence, that it disturbs your conversation. You can't maintain a conversation in your house?
A. That would be -- there's variation in how loud it is. I don't know why that is. Maybe this acoustician could explain that. But when it is loud, that's how loud it is. It's not always that loud.
Q. So you can't even hold a conversation within your rooms?
A. No, you have to raise your voice while you're talking. I don't mean -- if we were having a conversation like this, or like this, yes, it would be louder than that. But it doesn't happen every time that it lands.

Q. So if the zoning commissioner was standing in your house during one of these events, he can witness that for his own, on his own?
A. Yes.
Q. (MR. KOTROCO) But that doesn't happen every time? Wind direction and so forth may play a factor in how much noise it generates?
A. Yes. It's very variable.
MR. KOTROCO: Okay.
Q. (MR. BARHIGHT) With regard to the parcel where you reside, you indicate that you're there a lot. Do you work outside the home?
A. I'm a student. I'm writing my dissertation. I'm almost always at home.
Q. Oh, good. Just out of curiosity, what --
A. I'm a nurse.
Q. Okay. Okay. And your husband, where does he work?
A. He's a partner at Hogan & Hartson in downtown Baltimore.
Q. Do you all farm the parcel where you -- hold on.

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I'll ask both. I'll let you answer the question. Do you all farm the parcel where your residence is located?
A. Do we personally? We have a farmer, Trenton Mill Farms, and they are from Upperco, and they farm that property.
Q. (MR. KOTROCO) They were out there today with trucks. Is that lime or something?
A. Yes, lime.
Q. (MR. BARHIGHT) Is that the parcel where the house is as well as Parcel 843?
A. Yes.
Q. So both of those parcels are farmed?
A. Yes.
Q. By who?
A. Trenton Mill Farms in Upperco, Maryland. George Milke (phonetic).
Q. What is the nature of their farming operation on your property?
A. They grow soybeans, corn, barley, sometimes winter wheat.
Q. Okay. Any livestock at all?

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A. No.
Q. What is the nature of the farming operations, if any, on the property immediately to your west, identified as William Tremble and Charles Quirt, Parcel 354? Are you familiar with that site?
A. Yes. It's the same farming operation.
Q. As is done on your property?
A. Yes, Trenton Mill Farms.
Q. How about the parcel next to the west identified as Douglas Gordon Carroll, Parcel 355. Is there any farming operation on that site?
A. Trenton Mill Farms also farms some of their land, but that is only really a small portion of their farming operation.
Q. How about the parcel that is to the bottom of Petitioner's Exhibit 2B? It's adjacent to Parcel 843 to the west. It's identified as Parcel 204 that wraps around Parcel 843. Is that farmed?
A. Yes, also again Trenton Mill Farms, but that's only part of their farming operation.
Q. When you say part of their farming operation, who

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is "they?"
A. I'm talking about the owners of the parcel. You would have to ask them about their farming operation, but I know Trenton Mill Farms does farm part of their land.
Q. Okay. Would those be the lands in the approximate location as shown on Petitioner's Exhibit 2B?
A. Yes, the northern part of it.
Q. Okay. Turning to the east, the parcel known as Meadow Wood, Inc., Parcel 416, is that parcel farmed?
A. Yes, it is, Lippy (phonetic) Brothers.
Q. And what do they grow there?
A. They grow similar crops to Trenton Mills. I shouldn't -- I don't go out and look at it, but it's the same kind -- it looks like the same kind of farming operation.
Q. Well, I mean, you live right in the neighborhood there.
A. Yes. It doesn't belong to me, but --
Q. I'm just wondering about what the agricultural activities are in the area.
A. Yes.

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Q. Greenspring Valley Road, what are the uses coming west from Falls Road? There's a BL zoned area here. What's there?
A. BL is?
Q. Business local. In the northwestern corner of Falls and Greenspring Valley there's a commercial area. Do you remember what's there?
A. I think they have doctors' offices and things like that. They used to have a Gramophone there, but that went out of business.
Q. Okay.
MR. KOTROCO: Moved it to Towson. It didn't go out of business.
Q. Just real quickly, coming down the street, Brooklandville tenant houses is identified?
A. Yes.
Q. What is that?
A. That's some tenant houses. I don't know where the owner lives, but it's a small group of houses there.
Q. Is that property farmland?
A. I don't know the extent of -- I know where those

houses are. I don't know the property lines that are associated with it, so I don't know.

Q. How about directly across the street from Helmore Farm, Emerson Farms & Company, Parcel 88. Are you familiar with that property? Is its present use residential?

A. Yeah, it's a residential area.

Q. Okay. How about Jack Shay, Thomas Quirt, Parcel 5084. Is that property's existing use principally a residence?

A. Yes, it's a residence there. And I think --

Q. Go ahead.

A. I believe there is some farming in the back of it. I don't know the extent of the boundaries of these different places behind Greenspring Valley Road. So I know there's some of that same kind of farming back there, but I'm not sure exactly what it is.

Q. With the exception of Helmore Farm, is it fair to characterize the agricultural uses in the vicinity as row crops?

A. As what?

Q. Row crops.

A. Row crops?

Q. Or other kinds of crops, like soybean, corn, et cetera?

A. Along there, I know there's some other livestock in the area. I don't know the nature of the farming, though.

Q. Okay. How close is the next livestock to your house?

A. Across the -- what would it be, just slightly to the east and on the other side of Valley Road there are horses there. I don't know what they --

Q. Slightly to the east?

A. I'm sorry, west.

Q. Slightly to the west? Would it be on the west side --

A. Across from the Carroll property on the other side of Greenspring Valley Road.

Q. Would that be west of the intersection of Greenspring Avenue and Greenspring Valley Road?

A. No, no, just -- it's probably still on that map,

sort of on the edge of the map on the other side.

Q. Okay. Would that be east of Maryvale?

A. East of Maryvale. There are horses there. I don't know the nature of their operation.

Q. But other than those two, it's generally the crops that you've described?

A. Yes.

Q. Okay. Turning to that preliminary injunction, that injunction was denied, was it not?

A. Yes.

MR. NELSON: Pending the commissioner's ruling.

MR. BARHIGHT: Well, certainly we can put the appropriate documents in the record to show what the judge did. But he did deny the injunction. Excuse me one moment. I might be able to finish up.

Q. (MR. KOTROCO) Let me ask a question, because I don't get an opportunity to ask this too often. And I don't want to know anything about your personal finances, but I've always been curious, and it might help me in other cases to know.

What would Trenton Mill Farms pay somebody to

farm their land in this area, or whatever? How does that work? Do they pay by acre?

A. Yes.

Q. What happens if the crop fails and they don't get anything? How does that work?

A. They still pay.

Q. So they pay a flat rate by acre?

A. Yes.

Q. And what might someone in this area get for an acre of land?

A. I think it's $55 or $60 an acre. It's a total, we get a total payment at the end of the year in the range -- it's a little over $1,000.

MR. KOTROCO: All right, thanks.

MR. BARHIGHT: Thank you for that pause. No other questions of this witness at this time.

MR. KOTROCO: Any redirect?

MR. NELSON: I have a few questions about the transcript. May I just ask this question for the benefit of two witnesses in the courtroom, about the schedule. Mr. Burns and Mr. Brewster are here. I assured them that

if they got here early I could get them on and off. I think this redirect would take five minutes, and then I can put you two on next. Is that going to create a hardship for you to wait five minutes?

(Discussion off the record.)

MR. NELSON: Okay. May I have access to pages 61 and 62 of the transcript?

REDIRECT EXAMINATION

BY MR. NELSON:

Q. Now, Ms. Immelt, counsel for Mr. Lucas asked you some questions about your testimony in the hearing in the circuit court on your request for injunction, and he didn't ask you to go into detail. I want to do that now.

Before I do that -- and you told us that it was a long conversation and that something you said in circuit court you didn't mention today, and something you mentioned today, you didn't mention in circuit court. Do you recall that?

A. Yes, that I just said that?

Q. Yes.

A. Yes.

Q. I'm going to explore that with you for a moment. But in the circuit court proceeding -- now let's move back in time. In the circuit court proceeding, did Mr. Lucas or his advocates argue that the purpose of this helistop and airport was to cultivate clients from New York City and other centers of financial wealth?

MR. BARHIGHT: Objection. The record speaks for itself.

Q. Do you recall that argument being made in the injunction?

MR. KOTROCO: Overrule the objection. You can answer.

A. I don't recall. No, I don't recall it.

Q. Okay. Now, take your time, and what I want you to do is read pages 61 and 62 again, and take all the time you need. And then after you do that, I want you to tell the judge, the commissioner, what you said there that you didn't say today, and what you've said today that you didn't say then, explain why, and then give a summary of the entire conversation on all the issues that were relevant in the injunction and all of the new issues that

are relevant today. So the first question is, read that.

MR. KOTROCO: I was going to say, did you get all that?

THE WITNESS: I did. I think I did.

MR. KOTROCO: Okay.

THE WITNESS: You can stop me.

A. Okay. In this testimony, basically there were two points that I made in this testimony. One was that I wanted to know about the helicopter landing, and the second part was about Dale saying that they had been landing helicopters and airplanes off and on through the years. Actually he said that repeatedly during the conversation, and I didn't respond to it one way or the other. And that, I think, is the main point of what I said in that conversation.

Now, interrupt me if I am not answering what you said. What happened, what happened in this, and it's in this record, that upset me was -- I don't want to say upset, but was different from what this conversation had been is that Dale testified that -- and you can read exactly what it is, but he basically testified he was

doing this to be nice to Martin Grass, that that's why he was letting him land there. And I had gotten the very distinct -- I won't say impression. It was beyond an impression. But what he said in this phone conversation led me to believe that in some way he was being financially compensated. Now, he didn't say what it was, and I did not pursue it, but I felt that there was a contradiction there that I felt was important.

Okay. The other part of the conversation I had with Dale that day had to do with subdividing the property and had to do with the sale of the house, and it was -- that was somewhat -- he sort of talked to me about that and what his plans were for that. And I don't think that's relevant here, but that's -- I think that's all -- I think that I could testify that that is all we talked about.

MR. NELSON: That's all I have.

MR. KOTROCO: Do you want to ask any questions?

MR. BARHIGHT: Yes, just a quick follow-up.

RECROSS EXAMINATION

BY MR. BARHIGHT:

Q. Specifically what did Mr. Lucas say that led you to believe that he was being compensated by Mr. Grass for the landing and taking off of the helicopter?

A. He said -- I said that it was very disturbing to me, and he said -- I think I already said this earlier. He said, You know, it's landing practically, you know, right next to my house, and we discussed it and we decided that it was -- you know, that the inconvenience -- I don't know what word he used, inconvenience, noise, whatever was worth it.

Q. Did he ever indicate to you that he was receiving payment?

A. Cash, payment? I didn't ask him that.

MR. BARHIGHT: Okay. No other questions.

MR. KOTROCO: Okay. Anything further of this witness?

MR. NELSON: That's it for me. May I talk to these two witnesses?

MR. KOTROCO: Sure.

(Discussion off the record.)

MR. NELSON: I think it makes sense to call Mr.

Brewster first. He will be quite brief.

MR. KOTROCO: All right, Mr. Brewster. Come on up to the stand and raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: I do.

MR. KOTROCO: Have a seat, state your name and your address for the record.

THE WITNESS: My name is William M. Brewster. My address is 827 Hillside Road, Box 433, Brooklandville, Maryland 21022.

WILLIAM M. BREWSTER,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. Mr. Brewster, can you see this map from where you're sitting?

A. Barely.

Q. Okay. Why don't you come up? I was hoping I could save you the trip.

THE WITNESS: Can I do that?

MR. KOTROCO: Sure, go ahead.

Q. Take a moment and get oriented. Do you see Greenspring Valley Road? You see Falls Road, and you see a designation, William M. Brewster, with a house there?

A. That is my home.

Q. That is your home. Okay. You can have a seat.

A. Okay.

Q. Now, is it fair to say that the elevation of your property is higher than the elevation of where the Jones Falls courses through the valley?

A. It is. It's probably 200 or 300 feet higher.

Q. So you can look down into the valley?

A. Correct.

Q. And are you, from your home, able to look down to the area where Mr. Lucas proposes to let Mr. Grass use his helicopter?

A. It is covered by trees from my vision. Where the helicopter takes off from, it probably is off the ground

25 to 50 feet before I can see it.

Q. Now, are you familiar with the area that Mr. Lucas proposes to have an airstrip in that bottom field there?

A. I am.

Q. Now, for how many years, Mr. Brewster, have you lived in your residence?

A. Off and on for, oh, 62 or 63 years.

Q. And let's just go back, say, to the '60s. Have you been there -- well, for how many years have you been there?

A. Yes, I've owned the house since 1961.

Q. Have you been there full time since '61?

A. No, I have not.

Q. For how many years have you been there full time?

A. Oh, I've worked out of the house and been retired since 1975.

Q. So since '75 you've been there full time?

A. Yes.

Q. Now, are you a pilot?

A. No, I am not.

Q. Are any members or were any members pilots, members of your family?
A. Yes. My mother and father were both licensed pilots. Dad was on the aviation commission, so that we talked aviation and pilots and planes quite often at the house.
Q. Now, during the years that you have been living full time in your residence, have you seen airplanes frequently fly into the bottom field at Helmore Farm?
A. No, I have not.
Q. Have you seen helicopters fly into the bottom field or anywhere at Helmore Farm? This is prior to October 'of 97.
A. No.
Q. You have not?
A. No, I have not.
Q. Now, let me get right to the core issue in this case, Mr. Brewster. Are you in favor or opposed to Mr. Lucas's effort to get an airport where he can permit Mr. Grass to commute to Pennsylvania in his helicopter?
A. I would oppose it very definitely.

Q. And would you be kind enough to address Commissioner Kotroco and tell him why you are in opposition to it?
A. Well, as I say, I've lived here for -- I've lived in that house for 60-plus years. It's always been country, it's always been rural. And to have a helicopter, whether it be commercial or private, fly in and out of there on a regular basis, it just doesn't fit.
Q. (MR. KOTROCO) How about using the airstrip for small, fixed-wing aircraft, how about that? Are you opposed to that?
A. I would be opposed to that, yes.
Q. Are you opposed to him using the airport, airstrip, helicopter pad in furtherance of his horse farm business? There has been some testimony that perhaps some executives might come and go by way of that airstrip or heliport. Are you opposed that?
A. Yes, I am.
Q. Are you opposed to any aircraft coming and going from this farm?
A. Very definitely.

MR. KOTROCO: Okay. Any other questions, Mr. Nelson?
MR. NELSON: No, sir.
MR. BARHIGHT: No questions.
MR. KOTROCO: Thank you, Mr. Brewster.
THE WITNESS: Thank you.
MR. NELSON: Thank you, Mr. Brewster.
MR. KOTROCO: Let me ask one other question before you step down.
Q. Mr. Brewster, you mentioned -- the question was, did you witness planes or helicopters coming with any frequency. Did you ever witness any planes or helicopters coming to the farm?
A. I thought about that while I was in the back of the courtroom here this morning, and to be perfectly frank, I can never remember any time having a helicopter come in there prior to '97.
Q. And you are able to hear this helicopter when it comes and goes today?
A. I should be. I can't say that I would hear it all the time.

Q. Have you heard the one that's flying back and forth?
A. Absolutely. It's a sort of thing that -- you know, I wasn't expecting to testify here today, but sometime over the weekend, whether it was Saturday or Sunday, we were inside. The windows were closed. And you say, What in the world is that plane coming here today for? Because it wasn't a regular flight. So, yes, we do hear it.
Q. Okay.
MR. KOTROCO: Based on that, do you have any questions?
MR. BARHIGHT: I sure do.

CROSS EXAMINATION

BY MR. BARHIGHT:
Q. When was this flight that occurred over the weekend, what time?
A. It was about 20 minutes after 1, either Sunday or Saturday.
Q. You're specific on the time but you can't recall whether it was a Saturday or Sunday?

A. That's correct.
Q. So either Saturday or Sunday it came at 1:20?
A. That's my recollection.
Q. Okay. How are you so sure about the 1:20 but not the day?
A. Because I said that rascal's coming in again and checked my watch.
Q. Okay. Who was that rascal?
A. I should imagine the same person that comes in quite often every day to the Lucas farm.
Q. Do you know who that rascal is?
A. I would imagine that's Mr. Grass.
Q. Okay. Do you know one way or the other?
A. No, I do not.
Q. What did you see on this Saturday or a Sunday over the weekend?
A. I didn't see anything because I didn't bother to look.
Q. So you don't know what the source of the sound was, do you?
A. No, but it obviously was down close to the

ground, down in the valley below me. I don't think it was a police helicopter, but it could have been.
Q. You don't know, you just think it was the rascal?
A. That's correct.
MR. BARHIGHT: Okay. Nothing further.
MR. KOTROCO: Any questions, Mr. Nelson?
MR. NELSON: No, sir.
MR. KOTROCO: Okay. Thank you, Mr. Brewster.
THE WITNESS: Thank you.
MR. KOTROCO: He's free to go?
MR. NELSON: He is. Thank you very much.
The next witness is Mr. Burns, who is here in his own capacity as an individual and as a representative of an association, two associations. He'll be a few minutes. I would greatly appreciate just a three- or four-, minute break to run to the restroom.
MR. KOTROCO: Let's take a small five-minute recess, and we'll reconvene after that.
MR. NELSON: If that's acceptable.
MR. KOTROCO: That's fine.
(The hearing was recessed at 10:45 a.m. and

resumed at 10:55 a.m.)
MR. NELSON: The protestants now call Mr. Harold Burns. He's here individually and as a representative of two associations. And I thought that it might be more efficient if he just addressed his comments to the commissioner without a formal direct examination. I haven't interviewed him, but he has points he wishes to make. In the past we have done it that way.
MR. KOTROCO: He always says what he wants to say anyway, so whether you ask him the question or not.
Good morning, Mr. Burns. Raise your right hand.
Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?
THE WITNESS: I do.
MR. KOTROCO: Have a seat, state your name, your address for the record.
THE WITNESS: I am Harold Burns. My address is 5 Candlestick Drive, Lutherville, Maryland 21093.

HAROLD BURNS,

called as a witness, having been first duly sworn to tell

the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
MR. KOTROCO: Now, first of all, I guess we ought to determine how you want to proceed. You're here as an individual, but you're here also in the capacity of representing two community associations.
THE WITNESS: I'm here in four capacities: As an individual, I live in the area; I'm the president of Greenwood Community Association; I'm a director of the Falls Road Community Association; and I'm a social acquaintance of Dale's. I'm not happy to be on the other side of the table, I can tell you.
MR. KOTROCO: Okay. Greenwood Community Association?
THE WITNESS: It's called Greenwood, Inc. It's the Greenwood Community Association. I was looking at the map. It's not really shown on here, but the valley all kind of tends out toward the northeast, and it tucks in against the ridge side until it hits Dipping Pond Run, a stream I know you're familiar with.
MR. KOTROCO: I've heard of it.

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THE WITNESS: And Dipping Pond Run cuts back in at Maryvale. But there is a hillside that comes out along the side of Dipping Pond Run, and that's the hill that Greenspring Avenue goes up. And the reason that's important is because all that noise channels into that L shape of the ridge and the Greenspring Avenue hill. It funnels into that. I don't know if you've ever gone up the back driveway of Maryvale. Actually it's the front driveway, but we all call it the back driveway. But you've got that L shape of those two ridges, and that's where all that noise funnels right up in my backyard.

MR. KOTROCO: That noise is not bothering the trout in that stream, is it?

THE WITNESS: As far as I know, it's not. Greenwood is at the top of the hill on the east side of Greenspring. It goes through to Broadway. Houses on either side, a handful of courts, five or six courts, and a hundred houses.

MR. KOTROCO: Okay.

MR. BARHIGHT: Is that west of the Maryvale parcel?

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THE WITNESS: Right. It's between Greenspring Avenue and Maryvale. Well, Maryvale, the Sater Lane communities, church, and country club, Chestnut Ridge County Club. So those parcels and Greenspring and Greenwood in the middle.

MR. BARHIGHT: And Mr. Burns has offered to me for review two documents, one from Falls Road Community Association, Inc., and the other from Greenwood, Inc., both of which acknowledge that he's here to testify on their behalf. I have no objection to their both being introduced.

MR. KOTROCO: All right. Do you want to hand them to me now, Mr. Burns?

THE WITNESS: Sure.

MR. KOTROCO: We'll mark them as 5A and 5B.

(Protestants' Exhibits 5A and 5B respectively were by Mr. Kotroco.)

THE WITNESS: Unfortunately they're the only copies I have, so I have to ask for them back so I can look at them.

MR. NELSON: I have a faxed copy I can give to you.

MR. KOTROCO: If you need them for your testimony, I can give them right back to you.

THE WITNESS: I'd like to start with Greenwood. Greenwood has been up there about 50 years, a little less than 50 years, and it's built all around Dipping Pond Run. And you've heard me many times talk about Dipping Pond Run, the last stream in the Jones Falls watershed that still supports brook trout, naturally reproducing brook trout.

Greenwood has passed a resolution which I would like to read into the record. I know it speaks for itself, but do you mind?

MR. BARHIGHT: No objection.

THE WITNESS: Greenwood treasures the quiet atmosphere of its heavily wooded environment. Occasionally, although rarely, helicopters fly low over Greenwood. When they do so, the tremendous noise they produce profoundly disturbs our community. Greenwood opposes, therefore, any ruling by the commissioner -- by that we mean you -- that would permit a helicopter to land

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in the Greenspring Valley and thereby disturb the quiet of the Greenwood community.

I'd like to give you an example of the quiet, the community quiet. In 1991 Chestnut Ridge Country Club sought a special exception so that it could be grandfathered in as a country club, but it sought to exclude the westernmost 30 acres or so on which they proposed to build a housing development.

We came before your predecessor, Greenwood and many other protestants, to oppose that special exception. And the main thrust of our opposition was that, without those 30 acres of woods, the noise from the golf course would be substantially, that would transmit through to Greenwood, would be substantially increased, and that therefore it would interfere with our quiet enjoyment of our property. And that factor was one of the principal factors in the commissioner's decision to deny that special exception on that basis, without the extra 30 acres. So that development never took place.

On behalf of the Falls Road Community Association we also -- I have another -- I'm a director of the Falls

Road Community Association. And the Falls Road Community Association has also voted to oppose this. Greenwood has voted to oppose this. And the Falls Road Community Association's statement is a little shorter: Is opposed to the granting of a special exception which would permit the landing of a helicopter on Baltimore County land zoned for resource conservation.

The Falls Road Community Association is much larger, much more diffuse throughout the community, and is primarily worried about the precedent. I heard you earlier question one of the witnesses, I think Mr. Brewster, about whether he was opposed to any aircraft landing on this property at all or whether it would be okay if they landed sporadically. I think the Falls Road Community Association is worried about continuous landing. We already know that there are people up in our area that are landing once in a while, here and there, and it's a bother, but it's not enough of a bother for anybody to get organized and go out to try and fight it.

But as you well know, we live in a community of very well off, sometimes astronomically well off, very

strong-minded, independent people, libertarian, if you will, who don't want other people interfering with their use of their property. And while we respect that, they have to ameliorate their behavior to the extent that it affects us who live there. I'll come back to the Falls Road Community Association when I sum up.

As a homeowner, I live right on the banks of the Dipping Pond Run, and my house is very small and extremely quiet. We sleep most of the year with our windows open, and it is so quiet that we have even been awakened in the middle of the night by geese flying over. Or perhaps early in the morning, I don't know. But it's still dark out, and we have been awakened by the geese. In fact, I awoke one morning thinking I was in the middle of a traffic jam, and it took me some moments to realize that it was geese.

MR. KOTROCO: They're as bad as helicopters, aren't they?

THE WITNESS: Not quite.

The only noise we get from the real world is rush hour traffic does rumble up the valley. It's low, it's

white noise, it doesn't -- you know, I can hear it, but it doesn't really get to me. We spend most of our lives out on our deck. Our house is very small, certainly no more than 2,200 square feet. We do spend a tremendous amount of time on the deck, and the helicopters are an extreme disturbance.

I have no idea whether this is related to this case, but I know that I was quoted in the fall about this case, in opposition to any granting of the right to land an aircraft in the Greenspring Valley. And within a month or month and a half thereafter, in the middle of the night I had a helicopter hovering over my house. Now, I don't know whether that was related, but I took it personally as harassment, for what it's worth. I have no idea whether that was Mr. Grass. I'd like to think that Mr. Grass was asleep at that time, but somebody was hassling with me. One of the reason I don't own a rifle.

MR. KOTROCO: That, and the geese. The geese would be scared of you, too.

THE WITNESS: I would never kill a goose, but I would definitely shoot at a helicopter. I grew up in the

'60s.

I am a social acquaintance of Dale and Carol. Carol's brother is one of my closest friends from law school. I have known Dale and Carol, I don't know, a long time, 20 years. It pains me to be here. One of finest moments I can recall was when we all got together and opposed the nursing home that was going to be down in the valley. And that meeting was just an electric moment when about 40 of us gathered to tell that C.E.O. that he better rethink his plans, that we were going to fight him until we died, and then our children would fight him. Another reason I don't teach my children how to use rifles.

I've heard Dale and Carol over the years. You know, as we've raised our children, I heard about the racehorses, I've heard about bobsleds. I know that Dale went to culinary school for years. I have never heard anything about aircraft, I've never heard anything about landing aircraft. That's not to say it's not part of his life; it's just never been conveyed to me. So if it's a big part of his life, I don't know where I was.

My summation, what I want to say to you is that I

understand that this machine has been compared to a chain saw. I have never seen a flying chain saw. Chain saws are operated in the woods. Their noise is muffled by the other trees. They are operated sporadically. You simply cannot operate a chain saw for any great length of time, so you have to turn them off once in a while, and then you only operate them over a period of time, a few hours, until you cut down whatever it is you've got to cut down, and then you turn it off.

This helicopter is up in the air, and its noise reaches a tremendous breadth of area. The noise is a problem. I understand that people in the city think we're crazy. They live with helicopters all the time. I did live in the city once for six months at the end of law school. I thought I was going do die, and it was noisy. Of course, I did move into the flight path of Shock Trauma. I was about a quarter of a mile west of Shock Trauma down by Maryland. It was a serious mistake. It destroyed my life, and I moved out to the county, and I never came back.

But that's why I can't live in the city. And I

am committed to the city. I am a city lawyer. I go to church in the city. I was born in the city, all my kids were born in the city. My father was a city surgeon. But I cannot live there, and I can't live there because of the noise. I can't take it. And that's where I live, where I am.

And we pay a premium, as you well know. My little miserable 2,000 square foot house is worth a quarter million dollars, they tell me, because of where we live. And those lots in Westwick, one-and-a-quarter-acre lots, I think some of them smaller than that, not one of those has sold for less than 230, 240. Why? Because of the woods, because of the quiet. One of them, one of them sold for 400 grand, a lot, an empty lot.

There is a tremendous value to quiet in our noisy society, and it's being disturbed by Mr. Grass. And Mr. Grass has to learn that he is a member of a community, and we welcome him to our community. But he's got to live as one of us. And to live as one of us, he does not commute in and out with his helicopter, disturbing our quiet.

My last comment, I go back to what I said about

the FRCA. We're worried about the precedent this sets. You know, we're all friends up here, Mr. Kotroco. I know you're good friends with friends of mine. I know Dale and Carol, I know Scott. And Scott and I have worked together for the Sisters of Notre Dame. You know, I know that you're going to be looking at the precedent set by Annie Nastarowicz, and she's married to one of my brother-in-laws. I mean sisters with Mike McLaughlin. This is Baltimore, hon'. Okay?

We're looking to you to defend our turf. Rich people have been getting in our way too long, Mr. Kotroco. You know we're looking at you. We've been through this over and over: the BCC ruling that you just came down with, the moving this hearing around in this case. These resolutions are not quite exactly right, because it changed, everything kept changing. I didn't get word I was supposed to be here today until Thursday or Friday of last week. Bulldozing down the Samuel Owings House. I mean, that property had been there for a long time, and good friends of mine have been there 200 years, the Lyons family.

For hundreds and hundreds of years, people have defended the Greenspring Valley, originally against Indians, now against developers. I'm going to be out there in the western end tonight, worrying about Avalon, because the mud from Avalon is coming down into the streams, into the head waters of the Jones Falls.

What's going to be left for our children, Mr. Kotroco? You know, at some point you've got to draw a line, and you've got to say this is out of line. This is beyond the pale. If he was landing that helicopter once in a blue moon, or even once a week, nobody would care. But if he wants to fly in day in, day out, night after night, morning after morning, it's wrong. It's wrong.

And the key, of course, is whether or not there has been regular use of that landing strip. I'm not oblivious of my capacity as a lawyer. And I have no reason – I've been living there ten years. I went to Maryvale. I graduated there. I was there nine years. All four of my sisters, all four of my wife's sisters, me and my wife are Maryvale graduates. My father was the nuns' doctor for 40 years. I've been in that valley for

as long as I can remember, and I have never seen an airplane land at Helmore, never.

MR. KOTROCO: Did those nuns really tear down that tenant house down there?

THE WITNESS: They sure did, and I'll tell you something. I was just talking to Scott a minute ago. I was telling them to tear that thing down ten years ago, five years ago, and they kept saying, Oh, we've got to get permits, we've got to dot this I and cross this T. I said, You get me a bulldozer, I'll take care of your house. That house was a menace. It was a menace. There were bums living in it. It was attracting homeless. You know, my kids were within an easy walk of it, and I did --

MR. KOTROCO: What was the big stink about it, then?

THE WITNESS: You know, because they didn't get the right -- because, I guess, I gather -- I don't know, it's all hearsay to me, but I understand that the permit was issued improperly. You know, I wish there had been half as much stink about tearing down the Samuel Owings House, which was one of the most beautiful houses I've

ever been in.

Anyway, I mean to tell you that --

MR. KOTROCO: I'm not saying you haven't said enough, but is there anything else you want to say?

THE WITNESS: That's it, I'm done.

MR. KOTROCO: I want to see if anybody has any questions they want to ask you. Don't go anywhere yet.

Mr. Nelson, did he miss anything? Is there anything else you want him to bring out?

MR. NELSON: No, sir. I think he's covered it.

MR. KOTROCO: I wish I knew how he really felt about things, though. He doesn't express himself very well.

Mr. Barhight, do you want to ask any questions?

MR. BARHIGHT: No, thank you.

MR. KOTROCO: Mr. Burns, it's always a pleasure to see you.

THE WITNESS: Thank you, Mr. Kotroco.

MR. NELSON: At this time the protestants call Douglas Carroll, please.

MR. KOTROCO: Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes.

MR. KOTROCO: Have a seat, state your name and address.

THE WITNESS: Douglas Carroll, C-A-R-R-O-L-L, 1117 Greenspring Valley Road, Lutherville 21093.

D O U G L A S C A R R O L L,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NELSON:

Q. Dr. Carroll, can you see this map from where you are?

A. Yes.

Q. I'm pointing to a house that's labeled Douglas Gordon Carroll.

A. That's my house.

Q. That's your property? You can see that from

where you are? Okay.

Now, are you the brother of Susan Immelt?

A. Yes.

Q. Would you, in summary form, because we know much of this information, but could you in summary form talk about or describe the amount of land that's in agricultural protection in some form or other in the vicinity? We've heard a lot of testimony from the petitioner's witnesses about the intense development just far side of the zoning line. You've heard that, much of it. What I want to ask you about is how much land in the vicinity is protected within this zone. Would you give us an overview of that, in the area?

A. In the immediate neighborhood there is about 450 acres of permanently protected land in some form or another, either through RC-2 zoning, ag program, or Maryland Environmental Trust. Throughout the Greenspring Valley there is approximately, I believe it's around 800 acres that's permanently protected and in some type of agricultural use, whether it be hay, grazing, or crops.

Q. Do you endorse the proposition, Dr. Carroll, that

the Greenspring valley is lost to development?
A. No, because of the fact that there are permanent agreements in effect and being made. The Baetjer property recently went into Maryland Environmental Trust. It's 100 acres at Park Heights and Greenspring Valley Road, and they are considering, across the street there is another hundred acres. These are very viable farm areas, especially if the nature of farming was to change over the next few decades to become profitable.
Q. Now, the petitioner has introduced into the record three letters. One is a letter from Richard F. Blue, Jr., to the zoning commissioner. In this letter he claims that he lives at 1914 Greenspring Valley Road, right next to Mr. Grass's residence. Do you know of Mr. Blue?
A. I know Mr. Blue. I had a discussion with him about that letter, or prior to that letter being written.
Q. Now, is he the Mr. Blue who appeared in a Baltimore Sun newspaper article --
A. Yes, he is.
Q. Let me finish the question.

A. All right.
Q. -- where he outlined the amount of work his company did for Rite Aid, which we all know is controlled by Martin Grass?
A. Yes.
Q. Is that the same Mr. Blue?
A. Yes. He works for Colliers Pinkard International.
Q. Did that article convey the notion that one of their major clients was Rite Aid?
A. They reported $60 million in one year for that, with Mr. Grass. Seems like an awful lot of business to me, but that's what was reported.
MR. KOTROCO: Do you need to use my cell phone?
THE WITNESS: No.
Q. Now, Mr. Blue asserts, says in his letter to the commissioner that he's not opposed to Mr. Grass's effort to land his A109 helicopter at the Lucas farm. Have you seen any document which relates in any way to the use of helicopters at the Blue place and at the Grass place?
A. The conversation I had with Mr. Blue -- the

answer is yes.
MR. BARHIGHT: I think I have to object here for a couple of reasons. First of all, unlike the other hearsay testimony --
MR. NELSON: Let me finish the question. I think I can cure the problem.
Q. The question is not what Mr. Blue told you, Dr. Carroll, but whether you have seen any legal document that relates in any way -- this is not what he told you, but the document that relates in any way to the use of helicopters at the Blue place, or the Grass place, or right in that immediate area. Have you seen such a document, yes or no?
A. Yes.
Q. Does that document address whether or not people can fly helicopters next to or at the Blue residence?
MR. BARHIGHT: Objection. This has nothing to do with whether the special exception should be granted here at Helmore Farm, whatsoever, whether a covenant is on that land and helicopters can or can't land in some other part of Baltimore County. I'm sure there are parts of

Baltimore County where covenants apply.
MR. KOTROCO: The only relevance I could see it might have is maybe somehow attacking the letter of support of Mr. Blue, stating he can't land them -- I don't want them landing near my house, but it's okay to land them down the road. Is that what you're saying?
MR. NELSON: Yes. And what Mr. Blue is saying, what I will argue at the appropriate time, is he has a terrible conflict of interest. Martin Grass is a huge source of revenue for his company.
MR. KOTROCO: You've pointed that out through this witness, and he's identified the document.
MR. NELSON: And furthermore, Blue knows that if you endorse this use down the road, it will never have an adverse effect on him because he's got a covenant which prohibits such conduct. So he's had the resources to negotiate a covenant.
MR. BARHIGHT: I have to object. I apologize for interrupting, but I must object.
MR. KOTROCO: I'm going to sustain the objection. He's told me about the business that Blue does with Grass,

he's told me there is a document that exists controlling landing helicopters down the street near Mr. Blue's property, Mr. Grass's property. What else do you want him to tell me?

MR. NELSON: Let me just ask this.

Q. Does the document permit or prohibit the use of helicopters in the area where Mr. Blue and Mr. Grass live?

MR. BARHIGHT: Renew my same objection.

MR. KOTROCO: I'll let him answer that.

Q. (MR. KOTROCO) Have you read the document?

A. Yes, I've read the document. It prohibits helicopters from landing at any of the properties that people, of the three people who wrote in support of the use of the helicopter.

MR. KOTROCO: Okay.

Q. (MR. NELSON) So for the record, that would be Mr. Garland P. Moore and Mr. and Mrs. John Marks, those people? Or do you want to defer to the document?

A. I'm uncertain about the accuracy of Mr. Marks's property. But it would not be able to have a helicopter landing on it anyway. It's sandwiched between the other

two. But the other two, Blue and Moore, were both specifically prohibited.

Q. Now, Dr. Carroll, you've been involved over the years, have you not, with MET issues and ag program issues?

A. Yes.

Q. And are you generally familiar with whether or not, on property that you own or property that your sister owns, whether or not there are any other building sites? Is that something that you have?

A. I am very specifically familiar with that.

Q. All right. And would you address succinctly, please, whether or not your sister, Susan Immelt, has the right to build another property on the Parcel 843, which is the long parcel that abuts Helmore Farm.

A. She has a right to build a single --

MR. BARHIGHT: Objection.

MR. NELSON: I meant house, I meant residence.

MR. KOTROCO: What's your objection?

MR. BARHIGHT: Not that he ultimately may not be able to say what he's going to say, but because he's not

an expert witness, I think the proper foundation needs to be laid for him to be able to recite this.

Q. You've told us that you're specifically familiar with that. How is it that you know that, sir?

A. I had been the first to initiate the ag program in the Greenspring Valley in the early '80s. I got a number of neighbors to go into the program -- this is prior to the Lucas property going in -- and specifically negotiated the easement with my family that my sister is part of in 1980, whatever it was, '6, '5, something like that. I attend a lot of the ag board hearings. I'm very familiar with the ag program and very active with it.

Q. Does she or does she not have the right to build a house on her property?

MR. BARHIGHT: Objection. I don't think he has any foundation at all to reach that legal conclusion.

Q. (MR. KOTROCO) Did you look into getting a permit to build a house on that property?

A. I have the document that specifically gives her permission to build a children's lot on that property, and I supply that.

Q. The ag document?

A. Ag easement document, right.

Q. But not anything from Baltimore County Permits and Development Management or the Office of Permits itself granting a permit to build a house, right?

A. No, no application for permit has been ever requested.

Q. Your parents did do a perk test on the property?

A. I believe way before, even in the '60s. But no, any of those tests would have to be done again. That is a buildable site, I can tell you. I'm very familiar with building in Baltimore County. That is a buildable site, and Baltimore County's zoning is subject to the ag programs, unfortunately, so --

MR. BARHIGHT: I have to object to the legal opinion that this physician is now rendering.

Q. (MR. NELSON) Let me clean it up. I'm not asking about the permitting issue. We'll deal with that another time. Does the ag program document permit your sister to petition the county to build a house?

A. Yes.

Q. All right.
A. Restricted to one of her children or herself.
Q. Okay. And are you able --
A. Or her husband.
Q. Does that document address where that child's lot or family house could be built?
A. No, not specifically. It can be built anywhere on the property that is approved.
Q. Now, Dr. Carroll, would you be kind enough to approach the map, please, and I want to ask you about the topography of the land. Would you be kind enough just to give Commissioner Kotroco a summary of the topography. And use these points as landmarks, if you don't mind: Greenspring Valley Road as a reference, Falls Road as a reference, the two noise assessment points -- do you see those, sir? -- as references, the base of the valley where the stream runs through, and the proposed helistop. Using those points as points of reference, give us a feel for the topography. Where are the hills? Where are the valleys? Where can you hear noise? Where can you not hear noise from the various roads?

MR. BARHIGHT: Object, only because it's cumulative. Previous witness has testified, I believe, to the same facts.
MR. NELSON: That's correct.
MR. KOTROCO: Well, why don't we have him testify regarding his property and what he hears, what he sees. He may go onto his sister's property.
Q. Dr. Carroll, are you familiar your sister's property?
A. Very much so. I grew up there.
Q. Have you walked that ground all your life?
A. Many times.
Q. Please tell us about it. But be sensitive to the fact that we've heard your sister's testimony.
A. From my property, there's a berm along Greenspring Valley Road that's about 8 feet high. I get virtually no -- and heavy tree cover from this area north. I get virtually no Greenspring Valley Road noise.
The area that's down here, where I spent -- I have a lot of kids, I have three kids, so I don't spend much time in the house. I live down here, and this area

is very quiet. At 7 p.m. in the evening, there is no noise in this area, other than some spring peepers and animal noises.
This area is a low area that then gradually raises. Then this is fairly level out front here with heavy tree cover. The front part of the Lucas property has very heavy tree cover as well, protecting this area from that direction, from the Falls Road-Greenspring Valley Road corner.
The helicopter landing site is a direct sight line from my house. Unlike my sister's, we have a direct sight line to it. You can see the rotors going when they're on the ground, from this point, which is 30 feet in front of the house. Even though there's a drop-off here, the way the angle of the hill is, you can see right to that point.
Then the hill -- then this is in a level, so from this point to here you can see a direct line. Then the hill on the south side goes up steeply to the property that Bill Brewster described, his property.
This is about noise, you're asking?

Q. Yes. How is the noise in the base of the valley, the level of noise, compared to the level of noise at Noise Assessment Point 1 and 2?
A. Well, repeating my sister, this is the highest point, is what she said. This noise, there is no comparison in the noise from Greenspring Valley Road from this point here. This is very quiet here.
MR. KOTROCO: Let me interrupt you while I put another tape in. Go ahead.
A. The level of noise in this area at 7 p.m. at night, last night, is like that, what you just heard. Nothing, nothing except for maybe some spring peepers. And I checked that again last night.
That's just about the general topography. But what the net effect of it is, this is an incredibly protected watershed here. From this point up, the way the hillside comes up here, protected from the Beltway and Baltimore, this is probably one of the quietest places within a few miles of this area.
Q. You can have a seat. Are you able to hear the helicopter from your residence?

A. Yes.
Q. And would you recognize -- we've heard testimony from your sister and others. Would you describe that noise, please.
A. The helicopter makes the loudest noise that you can hear in that area, except for thunder.
Q. Now, the evidence is that Mr. Grass started landing his helicopter at Helmore Farm in October of 1997. I want to ask you about the period of time prior to 1997, October. What year were you born?
A. 1950.
Q. All right. So going back to your earliest memory, whenever that was, in the '50s, early '50s, up to October of 1997, can you tell Commissioner Kotroco how many times you recall an airplane landing at Helmore Farm?
A. I recall a single incident of an airplane in probably around 1960 or 1958. As far as a helicopter --
Q. Let me ask you that question. During those same years, how many times, if any, do you recall a helicopter landing at Helmore Farm?
A. Never during those years. I do remember a single

helicopter landing, which did not land on the airstrip, in probably the mid '80s. And it was such an event that I walked over to see it, and it did not land at the airstrip area, it landed next to the barn. I would have heard about or noticed, because I know everyone in the area, frequent, any, I think almost any helicopter landings in those 30 years.
Q. Now, have you ever spoken to Mr. Dale Lucas about the fact that Mr. Grass was commuting to work from Helmore Farm? What, if any, conversation did you have with Mr. Lucas at, say, an ag board meeting about that subject?
A. I met Mr. Lucas at the ag board meeting recently, when Mr. Barhight was there as well, regarding this subdivision of Helmore Farm and the helicopter landings.
Q. When was that?
A. Mr. Barhight would know the exact date of that.
Q. What year?
A. Recently. It was in the last month or two.
Q. Oh, okay. And what, if anything, did Mr. Lucas say about his arrangement with Mr. Grass concerning the use of the helicopter?

A. Mr. Lucas told --
MR. BARHIGHT: Objection.
MR. NELSON: This is precisely the same legal argument I made with respect to Susan Immelt, which is we're about to hear hearsay testimony. He's about to say what another witness said. This witness whom he's going to quote is in the courtroom, so he's not an out-of-court declarant. Furthermore, the witness is a party or representative of the party, so there's a hearsay exception. And thirdly, it's an admission, so it comes in even if he weren't in the courtroom.
MR. BARHIGHT: He's claiming Mr. Dale Lucas is about to say what he said?
THE WITNESS: Yes. Mr. Dale Lucas --
MR. NELSON: Wait for a ruling.
MR. KOTROCO: I'll go ahead and overrule the objection. You can answer the question.
A. Mr. Lucas told me that Mr. Grass was interested in buying the house, the front house on Helmore Farm, only if the helicopter landing was approved at that farm.
Q. Now, have you seen any documentation that

pertains to the sale of Helmore Farm, a document which purports to describe Helmore Farm, that is, what is being sold?
A. I've seen multiple listings for Helmore Farm for the full, whatever, 90 acres or 87 acres for $2.6 million. I believe that multiple listing is still in effect today, although I was unable to get a copy of it this morning.
Q. Did you read that multiple listing?
A. Yes.
Q. Did you read it carefully?
A. No, because I'm fairly familiar with the farm. But I know that it included the farm and outbuildings and farm operation, described a horse farm.
Q. Did you read it carefully enough to know whether or not it referred to an airport or a helistop?
A. There is no mention of any helicopter operation or proposed heliport or commercial operation on the farm, or the future use of a helicopter by the farm in any of the sales material that I've seen.
Q. Dr. Carroll, perhaps I should have asked this when you were at the map, but I think you can do it from

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where you are. Do you recall the testimony from your sister, in the cross-examination of Susan Immelt, about the difference in elevation between the helistop and the old barn which she described? Do you recall that portion of her testimony?

A. Yes.

Q. Now, is it fair to say that the old barn is a little bit north -- I mean it's also to the west, but it's north of where the helistop is proposed to be?

A. It's slightly north, but I think it's mostly directly west.

Q. Okay. Do you have personal knowledge as to whether or not there's a difference in elevation between where the -- I misspoke. I withdraw that question. I want to talk about where she thought the house could be built. What's the difference in elevation between where the house could be built, she testified, and the helistop?

A. That's a 30 foot difference in elevation.

Q. Okay. I'm sorry. That was awkward.

A. According to the contours on this map.

MR. NELSON: That concludes my examination. I

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know that this is informal, but if the witness has anything else he wants to say, maybe this is the time to say it. But keep in mind that we've covered a lot of ground. Is there anything else you want to add?

MR. KOTROCO: Covered a lot of ground. Do you want to say anything else?

THE WITNESS: I'd just like to urge you not to give up on the Greenspring Valley. This has been a lifelong project of mine and a lot of other people who live there, and I think this is a very significant change if this was approved.

MR. KOTROCO: All right. Mr. Barhight, cross-exam?

MR. BARHIGHT: Yes.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. You referenced an alleged document that you said relates to Mr. Blue and Mr. Moore's property. Yes?

A. Yes, yes.

Q. And is that document recorded among the land records of Baltimore County?

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A. Yes, it is.

Q. Do you have a liber and folio reference?

A. I think Mr. Dillon may have the document, but I know he'd have something on it. I don't know the liber and folio.

MR. BARHIGHT: I'd very much appreciate if you could go look at that document, give me the date of it and the liber and folio reference.

MR. NELSON: We'll trade that document for Mr. Lamb's report, which I meant to ask for. We'll be happy to give him a copy, but I'd like a copy of Mr. Lamb's report which was in his file. We'll be happy to show him our document.

MR. BARHIGHT: We'll cover that in a moment. Mr. Lamb is not on the stand and we're not covering Mr. Lamb's testimony or documents. I'm doing proper cross-examination of Dr. Carroll.

MR. NELSON: Pardon me. I'm not obligated to open my client's file to pull out a document. This is different from when Mr. Miller went to his own file. This is not Dr. Carroll's file. I'm making an offer. I will

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trade you that document for the Lamb report.

MR. BARHIGHT: Well, we're not going to talk about the Lamb document at the moment. If you are saying that I can't look at that document, you're perfectly within your right to say that we're not allowed to look at your work product.

MR. NELSON: That's what I'm saying.

MR. BARHIGHT: Fine.

Q. (MR. KOTROCO) You don't recall from your recollection the liber and folio or the date of that document?

A. No, but I know it's a recorded document that is easily obtainable.

Q. (MR. BARHIGHT) Let's find out more about it, since we're not allowed to see the one that's over here on the table.

MR. NELSON: A trade is on the table.

MR. BARHIGHT: Excuse me. I was speaking.

Q. What is the nature of that document? Is that a covenant?

A. It's a covenant. It's a neighborhood covenant

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signed by neighbors who surround what is now Mr. Grass's property. But at the time the document was signed, he was not the owner.

Q. What was the date of the document?

A. I don't know the exact date. I would -- it's recent. I would say it's in -- certainly since 1990, probably '92.

Q. Can you recall the names of any of the parties on the document so that I can extract it from the land records?

A. Well, Tim Rodgers was the mastermind behind the document. Bob Levy was involved in it because it was somewhat the result of a lawsuit between Mr. Moore, Mr. Levy against Mr. Rodgers, who owned that land all together at one point and then sold to Mr. Gill, who then sold to Mr. Grass. Blue was involved, Hagan was involved, Henry Hagan. Garland Moore was involved. And Bill Lanley (phonetic), whose house is now owned by Jack Marks, was peripherally involved. But whether his property is included in the final covenant settlement, I'm not sure.

Q. You've given me enough names. But apparently

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this covenant arose out of a settlement agreement in some kind of litigation?

A. I think partly it was included as part of the sale of Rodgers' land, but then there was a lawsuit regarding it. And then, I think, as part of the settlement of the lawsuit, they threw in some of the neighbors as making them kind of join the covenant as part of the settlement of the suit. I believe that's right, but I don't know the details of that. But I do know they're involved.

MR. BARHIGHT: As long as we have the opportunity, Mr. Kotroco, to actually provide that actual document in the record, we can certainly go extract it from the land records and obtain a copy that's self-authenticated.

MR. KOTROCO: Do you want to include it in your memorandum?

MR. BARHIGHT: That would probably be the best way to do it. Apparently opposition counsel has their own copy.

MR. NELSON: A trade is on the table.

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A. The document is enforceable by the Valleys Planning Council.

Q. I'm sorry?

A. The covenants are enforceable by the Valleys Planning Council.

Q. That will make it easier to find. Valleys Planning Council is a party to that agreement?

A. I think it's in the land records under the title for Grass's property. I mean, it would be in the title. It's a covenant restricting the land. It's in the covenant, it's in the land records on Mr. Grass's property.

Q. Okay.

Q. (MR. KOTROCO) There has been some talk of the other airstrips in the area, at St. John and one up on Butler Road. Are they utilized, do you know? Do people come and go from them?

A. Very infrequently.

Q. There has never been anybody launching opposition against those airstrips?

A. No. And I'm unaware of any helicopter landings

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on either one of them.

Q. Because of the lack of frequency of the use, that nobody really tends to oppose those?

A. They probably keep -- those owners, Mr. Hebb and Mr. St. John, probably keep a one --

MR. BARHIGHT: I have to object to the speculative nature of the question and answer. I know it's your question, but I guess I have somewhat right to object to it. I have to rethink what's going on here.

MR. KOTROCO: I'm just curious about -- Mr. Carroll seems to be very active in the area, in the valley, and I'm just wondering why nobody has seen fit to try to protect the valley by going after those particular airstrips. And I was just curious as to why that was.

A. I think that those people have been fairly careful to maintain the grounds very well by mowing the area well and land once a year to maintain their over 2,000 foot strips. They are very viable airstrips. It's been rumored that it's very hard to get a new airstrip in Baltimore County.

Q. Okay.

MR. BARHIGHT: Obviously I need to renew my objection to the question and all of the answer be stricken from the record. Highly speculative.

MR. KOTROCO: Overrule the objection. Do you have any other questions?

MR. BARHIGHT: Yes, I do.

Q. (MR. BARHIGHT) You were talking about the base of the valley in this surrounding area being near the Jones Falls?

A. Yes.

Q. Are there any houses down there?

A. No, no houses down there.

Q. Thank you. You indicated that, you asserted that you can see a direct line of sight from your residence to the helipad?

A. 30 feet in front of my residence, I can see it. I could see it from the residence, but there is one tree.

Q. So you're testifying that 30 feet in front of your residence, which is identified as Parcel 355, is a direct line of sight to the ground that the helicopter lands?

A. Yes, yes.

Q. Well, we can go look at that, can't we?

A. You're invited over for a drink, Scott.

Q. First invitation. I appreciate that. Thank you.

I think you also testified with regard to the loudness of the helicopter when it lands at the pad. And if I'm not inaccurate in my notes, from inside your residence you said that there is no louder noise that you can hear, other than thunder, than this helicopter; is that correct?

A. That's true. Or outside.

Q. So even if that was tractor or a combine or a chain saw operating on any of the agricultural areas between your residence and the Helmore Farm, your testimony is that those events would not be even as loud as the helicopter?

A. Right. I imagine a chain saw next to your ear would be as loud, but certainly a chain saw as it's operated, in my experience, away, you know, 100 feet away, there is no comparison.

Q. Okay. So a chain saw 100 feet away is not as

loud as a helicopter operated at the helipad proposed location relative to inside your residence?

A. Right. We'll use my chain saw for the test.

Q. Okay. We have other evidence in the record that we can rely upon to agree or disagree with it.

Do you know how far away your house is from Helmore Farm?

A. It's about 1,500 feet by direct line. I'm looking at the map.

Q. And about how far is it from your residence to the proposed special exception area?

A. 1,700 feet. I believe that's right. It's slightly more.

Q. Isn't it about a half a mile?

A. A mile is 5,400-something feet. This is 1,700.

Q. Isn't it true that you have known for years that Helmore Farm had an airstrip on it?

A. No. I have heard rumors of an airstrip in the '50s, but I have never -- I have always assumed that was a defunct right.

Q. Isn't it true that you've actually expressed the

opinion to others that there was an airstrip at Helmore Farm?

A. Yes. I believe in the 1950s there was an airstrip there that I saw used once.

Q. Let me go back and ask the question again. In recent times, in the last year, isn't it true that you have expressed the opinion to others that there is an airstrip at Helmore Farm?

A. I have expressed the opinion that there was an airstrip at Helmore Farm back in the 1950s.

Q. This ag board meeting that you discussed earlier in your testimony, do you recall attending that ag board meeting?

A. Yes, I do.

Q. And you were there, were you not, to oppose something that Mr. Lucas was seeking?

A. I was opposing the further subdivision of Helmore Farm through some very dubious methods of interpreting the ag program.

Q. Well, whether they're dubious or however your legal opinion might flow, you were there to oppose

something that Mr. Lucas was attempting to do through the ag board; is that not true?

A. Yes, two things. One was the amount of acres being moved around within the program, and the other was the landing of a helicopter on the ag easement lands.

MR. BARHIGHT: One moment, please.

MR. KOTROCO: Let me ask a question while they are conferring.

Q. (MR. KOTROCO) Do you know if Mr. Grass owns the house that he's in right now?

A. Mr. Grass has a lot of different corporations and partnerships. And from my point of view he owns it, but how he's got it legally arranged, I have no idea.

Q. Okay.

MR. BARHIGHT: What was the question? I apologize.

MR. KOTROCO: Whether he knew whether Mr. Grass owns the residence that he's residing in, whether he owns it, does he rent it. He's not sure. He thinks he owns it.

MR. BARHIGHT: Somehow he knows that he has lots

of corporations and partnerships.

MR. KOTROCO: He seems to know a lot. That's why I asked him.

A. I haven't looked at the land records to see if it's listed in his name, but he has one for the helicopter, he has one for, you know, his driver, one for his land below the house he owns, and so on. But, yeah, I think he owns the house.

Q. Okay.

A. Are you asking me that question wondering why he would be buying the other house to live at Helmore Farm?

Q. Well, you had indicated he expressed in that the conversation about buying the main house at the Helmore Farm.

A. He'd been interested in buying it for his father.

Q. (MR. BARHIGHT) With regard to your assertions about the ag easement that relates to Parcel 843 immediately west to the Helmore Farm, do you recall your testimony about that?

A. No. You mean just now, that there is an ag easement?

Q. Yes. Do you recall your testimony about Parcel 843, the Immelt parcel immediately west of Helmore Farm?

A. Oh, oh, Immelt parcel, yes.

Q. And you indicated there is some kind of an ag easement on that property?

A. Yes.

Q. Do you believe that any of the rights that might accrue under that easement actually preempt local zoning and development requirements?

A. The law has recently been changed on that, as you well know, making local, putting local jurisdictions ahead of the ag program. But at the time that this was signed, the ag easement held, as far as making it one house for 50 acres instead of one house for 50.

Q. Isn't it true that there is no density available for that Parcel 843 under the Baltimore County zoning regulations?

A. No, there would be one density allowed under that, because that is a division of a larger parcel, an 85 acre parcel, I believe. Actually I've got to remember when the decision was made. Whether there's a density

unit there from Baltimore County's perspective is when the division of what size parcel was made for that whole farm. I think Baltimore County would give a density right, if there was no ag program, on one or the other, either mine or my sister's, but probably not both.

Q. Let's explore that. The date in operation, in question, is 1979, correct?

A. That's when the zoning, RC-2 zoning, came?

Q. Yes.

A. Yes.

Q. How large was the farm in 1979, the farm in question that eventually ended up being the Immelt parcel?

A. I believe that's around 80 acres.

Q. Have there been any subdivisions since 1979?

A. There was a single subdivision of that, of that 80 acres, which is shown on that map there. There's a right-hand kind of square part with my name on it, and then the Immelt long, thin parcel.

Q. Why do you say that there would only be one subdivision right for either your property or your sister's property?

A. Well, you can build one house on the entirety of that 80 acres at any time. It seems possible Baltimore County would -- I mean, Baltimore County would give you one or the other. But I think the ag program preempts that, unfortunately. I don't believe that that should be the case, but that is the -- that has been tested by Walter Brewster. There's a lot of legal stuff going on there.

Q. I thought you just said that that rule has been changed now?

A. It has been changed, but you cannot change that agreement in retrospect. That easement was signed and is an agreement with the landowner. By that reasoning, Dale would not be allowed a children's lot. He was just approved a children's lot. In other words, Dale Lucas was just approved a children's lot by the same theory that I'm saying the Immelts could build a children's lot.

Q. I believe both you and your sister have talked about the potential house location on Parcel 843?

A. Yes.

Q. Could you please measure the distance between

that and the closest property line for the Helmore Farm? Do you need a scale?

MR. NELSON: Do you want a scale, Dr. Carroll?

A. Well, if this is 150 feet, it would be 300 feet. It could be as close as 300 feet and as far as 450.

Q. Do you know how to use a scale?

A. Well, I don't know which one is --

MR. DILLON: Use the 20, and --

MR. NELSON: Can Mr. Dillon assist the witness with the scale?

A. So that's 5 and one -- 500 feet? So it's between 500 and 150 feet. Actually you couldn't put it at 5. It would have to be 450, because you have a setback from this property line.

Q. Let's go through all of that. I want to give you an opportunity to say all those things.

A. That's wonderful.

Q. What is the necessary setback from the property line in the RC-2 zone?

A. 35 feet.

Q. And you've already identified the location,

potential location, of the house on Parcel 843?

A. I'm giving you the most -- a likely location. The house could be located anywhere on this parcel that would be approvable, including right here, including right there.

Q. Why do you assert that it would be approvable down by the helicopter pad?

A. Because you can now, through your expert efforts over the years, you can now pump sewerage anywhere you want on a property in an RC-2 zone. The precedents are there.

Q. Is there any likelihood at all that someone would build a house there?

A. It seems unlikely if there's a heliport right there.

Q. Very good, very good. But the identification of the location that has already been mentioned, would you measure that distance to the closest point on Helmore Farm?

A. Let's call it 300 feet, because I'm saying an area like this.

Q. And what is the distance from there to the closest point of the special exception area at that point?

A. This is the special exception? 400 feet.

Q. What is the distance to the closest point --

A. I'd say 300 feet is the closest.

Q. Okay. And the distance from that house site to the closest point of the --

A. 500 feet.

Q. Let me finish the question -- to the closest point of the landing area, the area where the fence is?

A. 500 feet.

Q. Okay. And the closest point to the actual concrete pad?

A. 600 feet.

Q. Okay.

MR. BARHIGHT: No other questions. Thank you.

MR. NELSON: I have nothing.

MR. KOTROCO: Okay.

MR. NELSON: Can we just address scheduling for a moment?

MR. KOTROCO: Sure.

MR. NELSON: The witnesses that I have remaining are all very brief. There is Deidre Smith, the wife of Dr. Carroll -- I will try not to have her testimony be redundant -- and then two other protestants here who will be very brief. I intend just to put them on the stand and let them say whether they oppose it or not.

I think, realistically, our live testimony would be done in 20 minutes. I just say that in view of the time. Then we have to address the question of the private airport runway, the Lamb document, and I wanted to have an opportunity to discuss that with my client. And I know that we have a third day as a backup next week, and perhaps we could communicate to everyone by tomorrow whether or not we think we need to cross-examine the witness or can agree to this going in.

MR. BARHIGHT: That's fine.

MR. KOTROCO: So what do you want to do now? It's 12:00.

MR. NELSON: I'd like to finish the case.

MR. KOTROCO: What do you have for rebuttal?

MR. BARHIGHT: Mr. Lucas.

MR. KOTROCO: Do you want to do that after lunch?

MR. BARHIGHT: Sure.

MR. KOTROCO: Let's finish with the protestants.

MR. NELSON: Okay. Let me just check on their schedules.

(Discussion off the record.)

MR. NELSON: Please take the stand. I think we'll do this the way we did Harold Burns. He can identify himself and state his views, and we'll move on to the next one.

MR. KOTROCO: Stand up, if you would, and raise your right hand.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes, I do.

MR. KOTROCO: Have a seat, please state your name and your address for the record.

THE WITNESS: My name is Steven Howard, H-O-W-A-R-D, and I live at 1903 Greenspring Valley Road in Stevenson.

STEVEN HOWARD,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MR. KOTROCO: Okay. What is it that you'd like to tell me?

THE WITNESS: And I'd just like to say that I am opposed to this use because I think it's very clear that the primary use of this airport, or helistop, or whatever it is, has absolutely no agricultural purpose whatsoever, and it's in a rural conservation zone. The primary use for this helistop has been to facilitate the suburban commuter use of flying a helicopter back and forth for somebody who is commuting to his office, and that takes away agricultural land. And this whole process takes suburban sprawl to a new level, because essentially it sets a very bad precedent for having lots of very rich people have a house wherever they want in an agricultural zone and fly helicopters off to Washington, Annapolis, Harrisburg, wherever they happen to be going.

MR. KOTROCO: How long have you lived at 1903?

THE WITNESS: About five years.

MR. KOTROCO: Who do you live there with?

THE WITNESS: Myself and my two dogs. And I've lived in the Greenspring Valley all my life except for college and a few years after.

MR. KOTROCO: Dogs don't howl at the helicopter or anything when it comes and goes?

THE WITNESS: Frankly, I personally do not hear it in my house. I hear a helicopter from time to time, but I can't tell if it's Mr. Grass's helicopter or not.

MR. KOTROCO: About how far from the Helmore Farm is your house?

THE WITNESS: I'm about two miles west of that.

MR. KOTROCO: Okay. Anything else you want to tell me?

THE WITNESS: That's it.

MR. KOTROCO: Mr. Barhight, do you want to ask him any questions?

MR. BARHIGHT: Just one, because it just piques my curiosity.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. You indicated it was bad precedent to allow rich people the right to fly to work. Are you asserting that somehow the fact that someone might have wealth reduces their rights?

A. No, I'm just saying that poor people are not likely to have a helicopter.

Q. So if you're poor, it would be okay if you had a helicopter?

A. No, I'm just saying it's not likely. It's likely that rich people are going to have helicopters and want to use them to fly back and forth to Washington and Annapolis and Harrisburg. I don't think poor people are going to be doing that.

Q. So that's a bad thing, that someone might commute in that fashion?

A. Not per se, but it's a bad thing for them to live on agricultural land, active, productive land, and turn that into a suburban trophy house. That's what the suburban sprawl problem is all about, is taking away agricultural land.

Q. So your problem with this is that we're going to have suburban trophy houses in the valley?

A. Yeah, that, you know, and that instead of having, you know, people driving in to Baltimore, they are then flying their helicopters all over the place and using up more and more agricultural land for their bigger and bigger houses.

Q. Okay. Are you one of those rich people that can afford a helicopter?

MR. NELSON: Object to relevance.

A. I have no idea how much a helicopter costs. I've never inquired.

MR. BARHIGHT: Okay. No other questions.

MR. KOTROCO: Do you want to ask him any questions, Mr. Nelson?

MR. NELSON: No, sir.

MR. KOTROCO: Thank you, Mr. Howard.

MR. NELSON: Mr. Jensen will be our next witness.

MR. KOTROCO: Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: I do.

MR. KOTROCO: Have a seat, state your name and your address for the record.

THE WITNESS: My name is Jorgen Jensen. That's J-O-R-G-E-N J-E-N-S-E-N, and I live on 8216 Tally Ho Road, Lutherville 21093. I'm the dull type. This won't be very entertaining.

JORGEN JENSEN,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE WITNESS: I am the president of the Heatherfield Association, and that's H-E-A-T-H-E-R. Certain words I can't pronounce. That's one of them. And I have been directed by our executive committee to present our concerns about this particular case. And we have two concerns. One is the precedent that's being set by the granting of this.

MR. KOTROCO: Excuse me, Mr. Jensen.

MR. BARHIGHT: Does he have, like Mr. Burns,

anything to document his representation?

MR. KOTROCO: Did you bring anything in writing where your association met and authorized you to come and speak here today?

THE WITNESS: No, I did not.

MR. KOTROCO: Did you all have a meeting and --

THE WITNESS: We discussed it, yes.

MR. KOTROCO: You did have a meeting and they said, Mr. Jensen, you go to the hearing and express our concerns?

THE WITNESS: Indeed. We have nine members of the executive committee, including myself.

MR. KOTROCO: And they appointed you to come sit here?

THE WITNESS: And I was authorized by them.

MR. KOTROCO: Go ahead and tell me what you want to tell me.

THE WITNESS: Okay. One of our concerns is the precedent that is being set by granting of this special exception. We have had bad experiences in the past by these operations which seems to be both contagious and

habit forming. And the reason we are particularly concerned is that we have -- we feel we are particularly exposed because we have a large field in our neighborhood, which Mr. Barhight is familiar with, and that's the Langford properties, about 20 to 30 acres, a corn field.

And we also know that the state, the SHA, State Highway Administration, is planning to sell, attempting to sell their property. And we feel that there might be some pressure for creation of heliports in these areas, since that seemed to be an important thing going on these days. So that's one concern.

The second concern we have, I really was not aware of until yesterday, and that's the resurrection of this airport which had been used for these stealth flights from time to time. And I was just looking at the map. I was unable to get my own map material. It seems that my house is right under the flight path, and I estimate it to be about 5,000 feet away, which says that the altitude of the aircraft would probably be 100 meters, or 300 feet. And I would anticipate the possibility of noise in the order of 70 dB or more. And if there is going to be eight

operations per day, that's 16, could be 16 overflights, which means that every half hour or so we might have one of these planes coming over. So that's essentially the concerns that we have, and we are opposed to the granting of this exception.

MR. KOTROCO: All right. Mr. Barhight, do you want to ask him any questions?

MR. BARHIGHT: Just a couple to make sure I understand his expertise. He spoke very succinctly about a couple of details. I want to make sure I understand his qualifications to be able to testify about those details.

MR. KOTROCO: Go ahead.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. You say you thought that your house was approximately 5,000 feet away?

A. Yes. I eyeballed it on the map.

Q. Did you measure it in any way?

A. It's about 5 inches on this scale.

Q. Okay.

A. I would be happy to show where our community is

located, but you know it.

Q. That's okay. Let me just ask the questions.

A. Sure.

Q. Now, are you a pilot?

A. No.

Q. Now, you said that the airplane was going to be 300 feet above your house. How do you estimate 300 feet?

A. I said 300 feet, 100 meters. I based it on your expert that you had here the other day that was talking about the flight path angle of 1-to-15. And if you project that to my place, it's 100 feet. I mean 100 meters, 300 feet.

Q. We can do that calculation and check, but I don't think that's what he said. But we'll go back and check.

A. It is one-third. It's just the common for these types of plane.

MR. KOTROCO: For fixed-wing aircraft, which is 1 foot for every 15.

Q. That's for landing and takeoff, but that's not the curising altitude.

A. He's not cruising by the time he gets to my

place. He's taking off.

Q. He would have taken off long before that, Mr. Jensen. You're a mile away.

A. Well, yeah, but probably a short mile away.

Q. Are you an acoustician?

A. I'm sorry?

Q. Are you an expert in acoustics?

A. Well, I don't know what an expert is. That's sort of a lawyer's fiction, an expert. I don't have a black suitcase and live 40 miles away, so -- but, yeah, I'm quite knowledgeable in acoustics. And again, I took your expert's testimony, although I didn't quite understand it. He was talking about the noise level at --

MR. BARHIGHT: I object. I think the only question I had on the table was are you an acoustician, and now he's going beyond giving an answer to that.

MR. KOTROCO: Right.

THE WITNESS: I'm sorry. I'm sorry.

MR. BARHIGHT: That's okay.

MR. KOTROCO: Your answer is no, you're not an expert in acoustics.

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MR. NELSON: That wasn't necessarily his answer.
THE WITNESS: What is an expert?
MR. NELSON: He wants to hear about your knowledge about acoustics and noise.
Q. (MR. KOTROCO) Do you have any training or experience in acoustics?
A. Yeah.
Q. What do you have?
A. Well, I have -- I'm a physicist by profession, and I have a degree in physics, a degree in engineering. And I've been very active over the last, oh, three or four years fighting with State Highway Administration about the noise barriers, been involved in a lot of acoustics work.
Now, admittedly the highway administration uses entirely different criteria than you would use for aircraft. That's a different technique, different criteria, different physics about it, although I think your expert said that it was the same for all transportation, which really is not true.
Q. (MR. BARHIGHT) Do you have any documents to support your assertion?

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A. Absolutely.
Q. On the table there with you?
A. Yeah, I can show you some of it. I have it in my --
Q. I would be happy to see them.
MR. KOTROCO: You have that black briefcase after all.
THE WITNESS: It is not black.
MR. KOTROCO: Okay. Well, go ahead and get your documents, if that will help you in your testimony.
THE WITNESS: Not black, brown.
MR. KOTROCO: It looks good, though. What's your question, Mr. Barhight?
MR. BARHIGHT: Just wanted to see the documents upon which he's relying.
THE WITNESS: I've got to find it for you first.
Q. Do you mind if I just look at your --
A. You can look at the whole thing, but let me find it.
Q. That's very helpful. Thank you.
MR. KOTROCO: No trades? You don't want to trade

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any of your documents for anything they might have?
MR. NELSON: This is different.
A. For example, these are the --
Q. How about if I just take a look at it. Okay?
A. Yes.
Q. This is your file regarding the State Highway Administration and the noise barriers issue?
A. A small sample of it. I have a big box. And this is the federal regulations pertaining to airport noise.
Q. Part 150?
A. Yes.
Q. Do the studies in your book of noise levels and dBa relate to houses in your community?
A. Yes. Well, and several communities along the line.
Q. Are these 24-hour noise measurements of different houses in that community?
A. Well, if I understand your question, the --
Q. I'm just reading. It says 24-hour noise measurements.

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A. Oh, yeah, they are.
Q. Okay.
A. But the criterion for the use is not 24 hours.
Q. It looks like there are noise levels in decibels that exceed 90 dBa at, by example, 2206 Fox Hunt Lane.
A. That's correct.
Q. Is that in your community?
A. Yes.
MR. BARHIGHT: I have no other questions.
MR. KOTROCO: Anything further of this witness?
MR. NELSON: I have nothing.
MR. KOTROCO: Did you want to say anything else, Mr. Jensen?
THE WITNESS: Not really.
MR. KOTROCO: Okay. Thank you very much.
THE WITNESS: Yes.
MR. KOTROCO: Any other witnesses?
MR. NELSON: We have one more. May I have ten seconds to communicate with her?
MR. KOTROCO: Okay.
MR. NELSON: At this time we'll call Deidre

Smith, who we know is married to Doug Carroll, lives on the property, sister-in-law to Susan Immelt. I'm sensitive to the fact that I don't want to present redundant testimony. And although she is really one of my clients, I can do a formal direct or she has a few things she wished to say. It may be more efficient just to have her say it.

MR. KOTROCO: I think it would be more efficient just to have her come up and give a narrative of what she'd like to say.

MR. NELSON: I think it's easier, I think so. So I'll ask her to do that.

MR. KOTROCO: Come on up to the witness stand.

MS. SMITH: I wasn't totally prepared for this, so it won't be smooth.

MR. KOTROCO: That's okay. Raise your right hand.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: I do.

MR. KOTROCO: Have a seat. You present what you want to say and whatever facts you would want to say to us. Just go ahead.

DEIDRE SMITH,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE WITNESS: I'm Deidre Smith. I live at 1117 Greenspring Valley Road, Lutherville, 20193.

MR. KOTROCO: And how long have you lived there?

THE WITNESS: About 15 years.

MR. KOTROCO: Who do you live there with?

THE WITNESS: I live with my husband Doug Carroll and my three children.

MR. KOTROCO: All right. What do you want to say?

THE WITNESS: Well, first of all, in all that 15 years I have never seen a helicopter or an airplane land at the Lucas farm. I also want to add that we do have livestock. I raise sheep and lamb and chickens, and we have cattle. From time to time we also have goats there,

and we work very hard on a portion of the land, farming it. Also our direct neighbors, the Levys, have cattle there also, and they farm that.

One point I want to make is the nature of this land that is being directly affected by this helicopter. It's been referred to as just open farmland and empty land in many instances, and it is far from that. This land that surrounds this area is in essence a community park. For example, last Sunday I counted 16 people, 16 different people using this land. There were people riding horseback, there were people running, there were people walking. There were people I didn't even know, sitting on the bench, because someone else saw them, you know, maybe practicing -- well, anyway, they were sitting on the bench along the Jones Falls. We have people fishing in that stream. We have people riding bikes through there. It is an incredible resource for the community. It is one of the most protected and beautiful spots for many, many miles around.

The irony there is that we are also very, very close to urban areas. We are very, very close to properly

zoned areas as well where, through private and public measures, this kind of activity can occur. This is not Montana. Mr. Lucas's farm is close enough to private and publicly owned land that is properly zoned that it could not be considered a hardship for, if indeed he does have people coming from out of town to look at his farm, that they could use that facility. You know, you have to remember where we are. We are close to the Beltway, we are close to other facilities like that.

I want to briefly tell you about the impact this helicopter has had on me. In a couple of cases its woken me up, and this is with windows closed. This is how far away I live, and that's how loud this thing is. One morning I woke up, was sleeping late for once. All my kids were asleep. And I thought for sure the helicopter was in my front yard. That's how loud it was. And it's variable because of natural factors, cloud cover. At night it's unbelievably loud. The noise fills up the sky. It certainly muffles all of the other wonderful sounds that we enjoy there, including the geese, which we love and the, you know, the other birds and incredible

resources that we enjoy there on a daily basis. It's woken my kids up at night. And we don't have some unnatural fear of helicopters, but when they were woken up they were frightened. And they were running down the hall, What the heck is this? What is going on? You know, we explain that it's a helicopter and explain what's going on, and, you know, they understood that. But you can't take away that moment. It's happened.

I also spend a great deal, amount of time down in this watershed. I run through there daily. I take my kids through there on nearly a daily basis, ride horses through there. I enjoy it. I'm planning a birthday party, you know, a few hundred yards from there in a couple of weeks. Had my son's birthday party there a couple of weeks ago in the rain. And we use this land on, just on a daily basis.

You know, you asked me where I live. I live up in that house, but I really live on all of this land. And it's very different from, you know, the way a lot of people live. We don't have air conditioning. Our windows are open most of the year. You know, I'm working with my

animals. I have a huge garden. And, you know, I think that it's that quality of life that is being affected. And it's not just for myself, it's for my neighbors also.

And I really consider this an invasion of the boundaries that we have set up and that legally are set up. There really isn't that much else the Lucases could do, or Mr. Grass could do, that would affect us in this way. It just crosses, this noise crosses boundaries.

I would also like to say that it is clear to me that this issue that the Lucases are seeking this change in the special exception because of Mr. Martin Grass. Mr. Martin Grass is commuting for his business reasons. This has nothing to do with agriculture, and anything that appears to look like agriculture is a fabrication. Because I have never heard a helicopter or an airplane before October '97.

And I will ask you. You know, you have an incredible power in your hand, and, sir, this special exception will have great implications for RC-2 land and it has a tremendous impact on us. And I really hope you will deny these requests and ask they use the proper

facilities like the rest of us do. Thank you.

MR. KOTROCO: When the helicopter comes and goes and the noise and the problems it creates for you and your family, the length of time, about, do you have an estimate of about how long that disturbance lasts for?

THE WITNESS: Five to ten minutes.

MR. KOTROCO: Okay. Mr. Barhight, do you have any questions you want to ask?

MR. BARHIGHT: No thank you.

MR. KOTROCO: Okay. Anything further of this witness?

MR. NELSON: I have nothing. Thank you, Ms. Smith.

MR. KOTROCO: Thank you.

MR. NELSON: Lynne Ellis is here. She will testify briefly. I said there was one more witness. I misspoke. She's the last protestant.

MR. KOTROCO: That's fine.

MR. NELSON: Why don't you have a seat, take the oath, and address the commissioner with your views.

MR. KOTROCO: Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes, I do.

MR. KOTROCO: Have a seat. State your name and your address for the record.

THE WITNESS: My name is Lynne Ellis. Address is 127 Northwood Drive, Timonium 21093.

LYNNE ELLIS,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MR. KOTROCO: How far removed are you from the property? It doesn't sound like it's right in the neighborhood.

THE WITNESS: No, I do not hear it from my home. I manage a farm on Greenspring Avenue and Greenspring Valley Road. It would be the northwest corner of Greenspring Avenue and Greenspring Valley Road, and I've managed it for 15 years. I am there all day long during the day, a lot of times on the weekends. I'm there until

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late in the evenings on a lot of occasions.
MR. KOTROCO: What type of farm is it?
THE WITNESS: It's a private estate. We have horses. We mostly have just small, you know, apples, vegetable crops, et cetera. But I do work there on a daily basis, so I'm there all day long, and I am privy to the beauty and the serenity of the valley. And I am very disturbed with the helicopters going in and out. And there have been times that I have noticed them, and I cannot say that it's Mr. Grass, or who it is, but someone does periodically come in during the middle of the day and land and take off, but not on a regular basis. I do hear it --
MR. KOTROCO: Do you personally see it, or do you just hear it?
THE WITNESS: I've seen it and I've heard it. His original takeoff and landing spot was in direct view of where I work. Thankfully that was changed, but the noise still does carry for about a half a mile from the Lucases' farm. And we're up on the hill, so the sound just travels right up the hill. And certain weather

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conditions, I think -- I'm not an airplane or helicopter specialist, but I'm gathering that certain weather conditions make the noise louder and more intense. And there are mornings that, when I'm at work, I can hear it. It rattles the windows. It's very disturbing. You don't know exactly what is going on, whether it's Medevac landing or, you know, landing in your front yard or exactly what's going on. Then again, there are days that I don't hear it at all.
But it's very disturbing. And I was very disturbed yesterday when I heard that Mr. Lucas wants to not only continue this with Mr. Grass, but he would like to have this special exception for his clients and his customers and increasing the takeoffs and landings for his business. Sounds like we're going to need air traffic controllers, and the amount of traffic we're going to hear then is going to be outlandish.
I'm afraid that it's going to set precedents to the other neighbors in the area, with the amount of money that is in the area and the property, that they might again say, Well, Mr. Lucas has one, why not us, too? I'm

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a wealthy executive, you know, I have clients who want to come in town, et cetera. And I just feel that, you know, you allow one, you're going to allow a whole bunch, and it's just going to take away the peace.
MR. KOTROCO: In your 15 years managing the farm down the road, ever witness any -- prior to Mr. Grass's helicopter, ever witness anything coming and going out of there?
THE WITNESS: Not out of Mr. Lucas's property. I've witnessed Medevac land in our field across Greenspring Avenue twice, so I know what Medevac sounds like when it lands. But I've never heard an airplane or helicopter taking off from his property in 15 years I've been there.
MR. KOTROCO: All right. Do you want to say anything else?
THE WITNESS: No, that's about it.
MR. KOTROCO: Mr. Barhight, do you want to ask her any questions?
CROSS EXAMINATION
BY MR. BARHIGHT:

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Q. If I understand the location of your farm -- what's the name of your farm?
A. It's called Waverly Farms.
Q. That's what we thought it was. It's the west side of Greenspring Avenue?
A. It's the northwest corner.
Q. Do you have a line of sight to the Helmore Farm?
A. No, I do not.
Q. So you can't see what's landing or taking off there from where you're located?
A. Not, not unless he comes west.
Q. So unless the flight pattern is all the way west as far as Greenspring Avenue, you can't tell where the helicopter is going, coming, landing, taking off?
A. I have seen him take off and land on numerous occasions from Greenspring Valley Road to know the times that he does. But no, I do not have a direct view from there at his present location, right.
MR. BARHIGHT: No other questions.
MR. KOTROCO: Anything further of this witness?
MR. NELSON: No, sir.

MR. KOTROCO: Thank you. Any other witnesses?

MR. NELSON: No, sir. I'd like to check my notes, but I think after the lunch break we'll rest our case.

MR. KOTROCO: Okay.

MR. NELSON: I imagine we're going to break now.

MR. KOTROCO: We'll break for lunch now. You can check your notes, see if there's anything else you may have missed. We'll come back. You can rest your case if you want, give Mr. Barhight an opportunity for some rebuttal. I don't know if there any other matters, other than that document from the MAA that was obtained by Mr. Lamb. You all might want to talk about that at lunch, see what your position is. I'm really hesitant to call him back, just for the purpose of authenticating that. I don't know if that would just --

MR. NELSON: I wasn't thinking about that. What I'm thinking is the document listed about, I'm guessing, 40 private airstrips, two of which are 1,200 feet or less. This is in response to what I thought was a fairly objective point.

Now, we may want to find out, well, Recompense Farm has a 1,100 foot airstrip, allegedly. We may want to find out and present documents or live testimony to explain -- I mean, I don't know if this thing has been used in 40 years, this airstrip.

MR. KOTROCO: I don't think that witness is going to know either, because on the top of his head he couldn't tell you any of them.

MR. NELSON: You're right, but what the petitioner is offering to do is put this document into evidence in their rebuttal. Now, this is an informal proceeding. The initial, threshold question, is this proper rebuttal? The answer is no. But even if you were to ignore the normal rules of evidence and let it come in, which you'll probably do, then I would have an opportunity to respond to it. That's all.

MR. KOTROCO: Well, I think it's proper rebuttal because you asked him on cross and brought it out, name me another 1,200 foot length --

MR. NELSON: I don't want to be technical, but proper rebuttal, it has to be a response to a new matter.

It wasn't a new matter. The only point is that under any analysis I'm entitled to respond to it.

MR. BARHIGHT: I don't desire to take away his opportunity to do that. We've indicated in the fax the source of Bruce Mundy (phonetic) from the MAA. It's his fax stamp on the second page. He can obviously communicate with the MAA, if he wishes, if he wants to bring another witness to rebut. But this is a list of private airport runway lengths maintained by the MAA.

MR. NELSON: I need to discuss it with my clients.

MR. KOTROCO: Think about it at lunchtime, and we'll discuss it after we break. It's 12:30 now. We'll resume at -- all you have is Mr. Lucas to finish up with?

MR. BARHIGHT: Yes, sir.

MR. KOTROCO: We'll resume at right around 2:00 and then finish up at that time.

(At 12:30 p.m. a luncheon recess was taken.)

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AFTERNOON SESSION

2:05 p.m.

MR. KOTROCO: If we can have everyone's attention, we'll go ahead and get back on the record after our lunch break. And we were coming back on the record to see if Mr. Nelson had any additional testimony or evidence, or whether you wish to rest your case at this point.

MR. NELSON: The protestants rest their case. We may have surrebuttal, depending on the nature of the rebuttal testimony.

MR. KOTROCO: Mr. Barhight, do you have anything in rebuttal?

MR. BARHIGHT: Yes. Just to follow up on an earlier request to introduce pages 62 and 63 of the transcript. I believe we used this during Ms. Immelt's testimony.

MR. NELSON: I have a legal point on that. Is this an appropriate time to be heard? Because everyone's experience is different, but in my experience, in a lot of different courts, if you cross-examine a witness with a transcript, you do it orally, you don't simply just move the transcript into evidence. So I raise that legal

objection to the admission of the transcript. The proper and time-tested way to do it is examine the witness with the transcript. Counsel chose not to do that; instead he chose, and I think it's contrary to rules of evidence, to simply move in the admission of the transcript.

MR. BARHIGHT: I find it very interesting, since this is exactly what we described happening when she was on the stand, and he did not object at that time. And I said this is what I'd like to do and he didn't object. Now he waits until she's off the stand to do that.

If we want to have the whole silly thing introduced we can do that. Obviously we did this, without his objection, during her testimony. I find it a little surprising that now he's trying to make this objection.

MR. KOTROCO: Overrule the objection. I'll accept it into evidence as Petitioner's Exhibit -- do you have a record of what we're up to on your exhibits? I think 4 was the last. Would it be 5?

MR. GILDEA: Yes, 5.

MR. KOTROCO: Petitioner's Exhibit 5. Okay.

(Petitioner's Exhibit No. 5 was marked by Mr.

Kotroco.)

MR. KOTROCO: Thank you very much. On rebuttal I'd like to call Mr. Lucas.

MR. KOTROCO: Mr. Lucas come up to the stand. Raise your right hand, please.

Do you swear or affirm, under the penalties of perjury, the testimony you're about to give will be the truth?

THE WITNESS: Yes, I do.

MR. KOTROCO: Have a seat. State your name and address for the record.

THE WITNESS: Dale Lucas. I live at Helmore Farm, 901 Greenspring Valley Road, P.O. Box 1248, Brooklandville, Maryland 21022.

MR. BARHIGHT: Mr. Lucas, I assume, is still under oath from yesterday?

MR. KOTROCO: Well, I swore him in again just now.

MR. BARHIGHT: I wasn't paying attention. I apologize.

D A L E L U C A S,

called as a witness in rebuttal, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

MR. BARHIGHT: Do you need a drink of water? Are you all right?

THE WITNESS: I would appreciate one, or if somebody could give me a cough drop.

MR. BARHIGHT: We can keep moving along while --

Q. There were a variety of issues raised by the protestants during their case in chief. Were you here during all the testimony during the protestants' case in chief?

A. Yes, I was.

Q. Are you currently in the market for a fixed-wing aircraft?

A. We have made inquiry as to the possibility of buying one.

Q. And which type aircraft are you looking at right now?

A. We're looking at an aircraft called a Maule, M-A-U-L-E. We're looking at both a new one, and we're currently looking at one that is a used one that's owned by Baltimore County Police Department.

Q. How would you describe that aircraft?

A. The aircraft -- I've got a picture and brochure here I can show you. The aircraft is a single engine, lightweight, short takeoff and landing aircraft which is used around the world as an aircraft in short takeoff situations. It's used by bush pilots all over the world because of its short field capability, which is even demonstrated by their letterhead in that it comes out and goes off at a 45-degree angle. I can show you that --

Q. Hold on, let me ask a question. Do you have materials that you got from the manufacturer after you inquired about the availability of a new Maule?

A. Yes, I do.

Q. Is this a photocopy of the materials that you have before you?

A. Yes, it is.

MR. KOTROCO: I'm going to provide a copy of this

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to counsel, and I'd like to introduce this as the next exhibit.
Q. Does the information contain specifications and information about the particular airplane that you're interested in?
A. Yes, it does.
MR. BARHIGHT: I'd like to introduce that as the next Petitioner's Exhibit, No. 6.
MR. KOTROCO: Any objection to the introduction of this document, these documents?
MR. NELSON: No. I'm resisting the urge to point out it's not proper rebuttal, but I recognize it's an administrative proceeding, so --
MR. KOTROCO: Mark it as Petitioner's Exhibit 6.
(Petitioner's Exhibit No. 6 was marked by Mr. Kotroco.)
Q. In that information are there any documents that indicate the length necessary to take off?
A. Yes, there are.
Q. What are the lengths necessary?
A. This aircraft is certified to operate in and out

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of a 600-foot field. It can take off at gross weight that is with five passengers, full load of fuel, over a 50-foot obstacle at 600 feet.
Q. Is there information in the exhibit that we provided that shows that?
A. Yes, there is.
Q. Okay.
A. The plane actually only needs a 250 foot to 300 foot roll for takeoff and landing, and the rest is to clear the obstacle.
Q. I'm showing you one of the pages that begins at the top with Maule Air, Inc.
A. Yup, that's it.
Q. Maule tail dragger specification?
A. Yes.
Q. That's the part of that that indicates takeoff occurs over 50-foot obstacle in 600 feet, the different places --
MR. KOTROCO: Mr. Nelson, were you able to see what page they are referring to?
MR. NELSON: No, I really didn't.

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Q. Are there different kinds of Maules?
A. Yes, there are.
Q. And how many people can fit in these different Maules?
A. The smallest configuration holds four people, and the general configuration holds five people.
Q. What would be the purpose of purchasing and using a Maule for Helmore Farm?
A. To have one at our disposal constantly, to allow us to fly to Kennedy Airport, as a primary example, to go to races at Belmont Park, Aqueduct racetrack in New York. Also the Saratoga meet in Saratoga, New York. It would allow us to fly to Kentucky to look at stallions and brood mares down there, to view our foals that we have based down there with the brood mare band. It would allow us to fly to Colonial Downs down in Virginia, in Richmond. The airport is right down, like two exits down from the airport, from the racetrack there. And generally allows us to -- if we have our own plane, we could fly to New York to pick up clients to come down to look at potential racehorses we're trying to syndicate, and give us a lot of

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mobility that we -- currently we've got to try to find a plane or use a helicopter to facilitate getting around in whenever we need to.
Q. Now, you're familiar with the special note No. 2 that indicates there will be no aircraft storage at the airport for more than 14 consecutive days?
A. Yes, we are.
Q. If you were to purchase this Maule, where would you intend to house it?
A. We anticipate housing it at Baltimore Airpark and having a professional pilot, who is an instructor over there and teaches acrobatic flying and all, and he would be our primary pilot for use of the aircraft.
Q. Would the use of this Maule mean that you would not need the ability fly helicopters to and from Helmore Farm?
A. No, we would still need the ability to fly helicopters simply because under certain wind conditions where your wind is greater than half your stall speed, you wouldn't want to fly this plane in those kind of wind conditions. You're better off going to a larger

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helicopter. Also there are some places, some racetracks we can't get into by a close airport, so we'd still need to use a helicopter.

Q. You've heard a variety of testimony about the use of Helmore Farm as an airport. I'd like you to go back to that issue. How long have aircraft been flying and taking off, landing from Helmore Farm?

A. Since 1956.

Q. Based upon your own personal knowledge, not just from looking at the books and records of the corporation, when have you seen -- what's the earliest that you've personally actually seen aircraft taking off and landing on Helmore Farm?

MR. NELSON: Objection. May I be heard? None of this is proper rebuttal because it wasn't responsive to our case. But now this is not only improper rebuttal, but it's purely redundant testimony. I can tell you what the man is going to say: The first plane I saw was in 1971. That's what he's going to say. We've been through it. This is not rebutting anything my client came forward with.

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MR. KOTROCO: All of your clients came up and said they don't recall ever seeing any airplanes coming and going.

MR. NELSON: That's right. But he's already said this in his case in chief. You don't get to repeat your case in a rebuttal. That's what he's trying to do now. He's going to get on the stand. I can tell you what he's going to say. He's going to repeat precisely what he said in his primary case. If he does that, I want to put my whole case on again.

MR. KOTROCO: Go back and forth, back and forth.

MR. NELSON: That's right. So you've got to draw the line. This is not proper rebuttal, and I object to it. It's redundant, repetitious, cumulative. We've heard it. And if he does it, my clients have the right to do it, and we'll be here for another two days.

MR. BARHIGHT: We have two days scheduled, so feel free, Mr. Nelson, if you think it's appropriate. He put on witnesses, I believe five or six, who claim they've never seen airplanes there, ever, ever, and my client has the right to be able to come in and dispute that on

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rebuttal.

MR. NELSON: Not to keep putting on the primary case, which he did.

MR. BARHIGHT: Excuse me, Mr. Nelson. I'm not done yet. I always properly wait for you to finish, so if you wouldn't mind affording me the same courtesy.

Second, I have but one more question beyond this. We've already taken up more time than he had to hear the objection.

MR. KOTROCO: Sometimes it's more entertaining with the arguing that goes on back and forth. You have one more question to ask him. Go ahead and ask your last question.

MR. BARHIGHT: Let him answer the first one.

MR. NELSON: I object.

MR. KOTROCO: I'll overrule the objection.

A. The first time was, I flew in a plane myself in 1971. I was not the pilot of the plane at that time, my instructor was. In '72 I started flying in myself, just as crosscountry flights for training.

Q. Last question on this topic. Have there been

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aircraft operations at Helmore Farm during the decades of the '70s, the '80s, and the '90s?

MR. NELSON: I object. I'd like to be heard.

MR. KOTROCO: You want to be heard?

MR. NELSON: Yes, sir. We went through this very carefully. He testified to this. I cross-examined the man. There is no new matter that we produced in our defense. He's seeking to repeat what he said, perhaps change what he said, because at the conclusion of the evidence I'm going to move for judgment today on the nonconforming use because they haven't made out a prima facie case. And you cannot just repeat your case and fill in the holes that you left in your primary case. There is nothing new about our defense that they didn't know about. It's not proper rebuttal.

MR. KOTROCO: Is he simply going to restate what he already testified to?

MR. BARHIGHT: Well, I guess there might be a disagreement about whether that's what's occurring or not. Mr. Nelson has asserted in his characterization of Mr. Lucas's testimony that he claimed that there was only

aircraft taking off and landing at Helmore Farm for a six-year period. There he is. I asked him the question, Did it occur during the '70s and '80s and '90s. All I want him to do is say yes or no and we'll be done with it.

MR. NELSON: I object.

MR. KOTROCO: I don't understand your objection, Mr. Nelson. I myself have had some confusion about his testimony from the direct on the petitioner's portion of the case, so I don't mind myself, for purposes of clarification, hearing it one last time, even if it is the same as he's already testified to. And I'd have to review my notes.

But I would like to hear it again, just so I know in my mind. It's obviously a dispute, and it might not be a dispute. There is always a possibility that a plane came in at one particular time when all of your witnesses, who have already said they've never seen a plane or have only seen a plane on a rare occasion, could have come in while they were all at work, or on vacation, or --

MR. NELSON: Correct. You're right. But the point is this witness has testified under oath on two

occasions now, twice under oath, that he can't say it was done every year.

MR. BARHIGHT: I didn't ask him that.

MR. NELSON: Well --

MR. BARHIGHT: I didn't ask him that. I told you I'd only ask one more question and it's on the floor.

MR. NELSON: I object.

MR. KOTROCO: The objection is noted for the record. I'll overrule it. Go ahead and give your answer.

THE WITNESS: Can you state the question again?

MR. BARHIGHT: Sure. And so that I don't misstate it, would you please read it back? I don't want to be accused of changing the question.

(The reporter read back the question at page 467, line 21.)

MR. NELSON: I object.

A. Yes, there have. There have been aircraft operations through all of those decades. I think even Doug Carroll testified he saw them in the '50s, his sister in the '70s, and they have been all the way up through there. He's testified he knew there was an airstrip there

and there were aircraft operating in and out of there. Doug even testified he saw a helicopter land at the farm.

Q. There have been a variety of protestants concerned about the level of usage of the aircraft as proposed on a going-forward basis. I'm leaving historical. There is no question about that. On a going-forward basis, you've created a self-imposed restriction of eight events a day each for fixed-wing and helicopters. Just to lay a foundation here for the next question, is that my understanding correctly?

A. Yes, it is.

Q. How often would you expect in a year to actually approach that level?

A. Only on one day a year, the day of the Preakness, when we might have several clients coming in from New York. Especially if we have one of our partnership horses running in the race, we could have several people coming down from New York to see the race.

Q. Turning our attention to another topic that's been brought up on the protestants' case with regard to the ability to construct a residence at the Immelt parcel,

Parcel 843, were you in the hearing room when Mr. Miller testified that the 65 LDN standard would be met as long as the house was built no closer than 200 feet from the helicopter pad?

A. Yes, I was.

Q. Were you also here during the testimony of Mr. Matis, who raised issues, as well as Ms. Immelt and Dr. Carroll who addressed issues about the availability of that property to perk and to be able to have a house built on it?

A. Yes, I was.

Q. In the event that a building permit is obtained for any portion of Parcel 843 -- let me make sure I'm saying that right -- for any portion of 843, would you be willing to alter your airport operations such that the helicopter operations would always be at least 200 feet away from the closest residence?

A. Absolutely. But I think they've said that the closest they think they could be built is about 600 feet from the center of the pad. My house currently is only 460 feet. They would be, at the closest, still further

than I am. But if it got to where they were 200 feet away, I think it could be very conceivable we could possibly work out a way to move it.

Q. Thank you. Turning your attention to some of the testimony of Mr. Burns, were you here during Howdy Burns's testimony?

A. Yes, I was.

Q. And he described a particular night flight that apparently awakened his family in the middle of the night?

A. Yes.

Q. Are you aware of night helicopter flights in the vicinity of Helmore Farm?

A. Absolutely. Baltimore police department regularly patrols up through the Jones Falls stream bed. Officer Taylor has said they frequently patrol at about 300 feet, looking for people growing marijuana, people poaching deer up in there, just looking for car thieves and stuff. They've had a lot of problem with people stealing cars up there. So they do patrol at low altitudes at night up through there. And also there are frequently direct flights from the upper counties down

through us, headed to Shock Trauma, by the Medevac helicopters, Maryland state police.

Q. Turning your attention to another topic, a number of witnesses have tried to assert that somehow the airport operation would be unsafe. I'm going to, after showing these to Mr. Nelson, ask some questions about some photographs that you may have taken actually showing an airplane taking off from the property.

MR. NELSON: If it please the commissioner, I object. This is improper rebuttal. They had an expert on airport design, airport safety, and now they seek to put on their case again through another witness, and it's not -- if the Court reads Riffey vs. Tonder, or any other classic case on rebuttal, there is one inescapable conclusion, and that is that this is improper rebuttal. And I know this is an administrative proceeding, but I feel constrained to make that point.

MR. KOTROCO: Where are you going with your line of questioning, Mr. Barhight?

MR. BARHIGHT: I will proffer that Mr. Lucas will identify three photographs and the airplane that was

identified in the photographs, testify that this does fairly and accurately depict this airplane taking off, and you can see clearly from the photographs it does so quite safely, long before you reach the trees at the end of the runway. The issues were all raised by many of the protestants, and we believe we have a right through this witness to rebut that. That's the last thing I'm going to ask him about that issue.

MR. KOTROCO: All right. Overrule the objection then, and go ahead and proceed with that.

MR. BARHIGHT: Let me first, then, mark for identification purposes these three photographs.

MR. KOTROCO: 6A, B, and C.

(Petitioner's Exhibits 6A, 6B, and 6C respectively were marked by Mr. Kotroco.)

Q. Mr. Lucas, I'm showing you three photographs. Could you please identify those three photographs?

A. These are three photographs of the Scout that landed at the farm just last week. Even with the trees at the current height they have grown to, you can see it easily clears the trees by a tremendous margin, way before

they even get to the end of the runway.

Q. Thank you.

A. That flight was about three weeks ago, I guess.

Q. Several of the protestants raised questions, actually made factual assertions about statements that you have made and your intentions as it relates to allowing Mr. Grass to start using Helmore Farm. Why did you allow Mr. Grass to use Helmore Farm for his helicopter operation?

A. Basically what happened, I was on my way back from the racetrack. I was driving up Greenspring Avenue, and I saw the helicopter on the ground over across the street on Mr. Grass's property. And having used to fly myself and started towards a helicopter license, I was just interested in it. So I stopped and watched it go out. And after it went out, the car that had dropped him off, I stopped and asked the driver what was going on. And he told me that Mr. Grass was flying out of there. And I had heard people saying that there was a helicopter in the area that was taking off from the valley, and so that's one reason I wanted to look at it and just see it.

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Then, after talking to him, he said that I don't know if we're going to be able to do it because there is some kind of protest against it from the neighbors. And I said, Well, if it's bothering some of the people down here, I've got a grass airstrip up on my place, and if you fly out of my place, you're not flying over anybody's house at all. So just come on down and fly out of there and it shouldn't be any problem.

And all the while at this point, you know, I'm thinking I've got this grass airstrip we've been operating for all these years, and it's grandfathered out, there is no problem with him operating in and out of there. We've been flying planes, as people testified to, plus helicopters, out of the farm for years.

So Mr. Grass came down and started flying. And as Susan said, she called me and I told her that I allowed him to because one of the main reasons was people like Mr. Grass, everybody in the community constantly goes to him for donations for this, for that. Every time you knock on his door, he contributes something. He's contributed large amounts of money, up to a million dollars, to

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different causes for the community. And I just felt that people like this, I mean, the community and the people in it keep asking him constantly for contributions, while sometimes maybe the community can give something back to this type of corporate executive that donates all the time to us.

And that's the reason that I let him fly in and out of there, was just my way of saying, Hey, thank you for helping us. You know, come over and land at my place. I think you've got the right to do it, and you can do it without flying over people's houses every day, and there should be no problem.

Q. Turning to another assertion by some of the protestants in the case in chief that relates to the timing of your business relationship with Mr. Grass, when did you begin your discussions with Mr. Grass regarding any interest in the business at Helmore Farm? Was that before or after he began flying the helicopter at the site?

A. That was after he began flying in and out with the helicopter. After being around the horses for a few

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weeks and just seeing the horses in the field, the young ones there one field up from it, and just, you know, being around us and our employees and all, he asked if there was any way he could maybe become involved in some of the horses that we've got there.

And I said, Well, I'd have to talk to my father, because basically the horses owned by the Rosenbergs, they don't want any partners in. They own them theirself. They're a private operation, Ned and his father.

And so I asked my father if he would be interested in possibly selling any part of the horses that he had currently to run. And he's been kind of, you know, trimming down what he's got, because he's 88. He wants to sell the front house, as I said, and move into Blakehurst. But he said, you know, maybe it would be interesting to have somebody to discuss it with, go to the races with again. And so I said --

Q. Mr. Lucas, I don't want to get into the actual negotiations and details. I just want to know when.

A. This was, when I talked to my father about it, was at the end of the month. He started flying in, I

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think, the 4th of October, and it was around the end of the month when he asked me about if he could become part of it.

Q. We've heard several of the protestants testify with regard to their perception of the sound of the helicopter landing and taking off at the proposed location from inside their house. Is your house on Helmore Farm?

A. Yes, it is.

Q. And is it where it's showing an existing dwelling --

A. Yes, that's my house.

Q. -- as I'm pointing to on Petitioner's Exhibit No. 2B?

A. Right, that's correct.

Q. Approximately how far is the existing dwelling from the helicopter touchdown pad?

A. 460 feet.

Q. Okay. Have you ever been in your house when the helicopter would land and take off from that location?

A. On a daily basis.

Q. And what does that sound like to you from the

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inside of your house?
A. From the inside of the house, it can be just a hum, and sometimes you won't even notice it's there. Our daughter, who really likes the helicopter, she'll holler at us if she doesn't hear it coming in -- she might hear it going out -- that we didn't, like, take her over to the window so she could see it. If we're eating dinner, watching television, most of the time you don't even hear it.
Q. Again, on the same line of questions in terms of perception of the protestants versus your perception now, have you ever had the occasion to stand just opposite the fence when the helicopter would land and take off?
A. Yes, quite a few occasions when I stand down there and let Mr. Grass know when the horses are going to run.
Q. Are you able to hold a conversation while the helicopter is landing and taking off, with a person who is on the helicopter?
A. Absolutely.
Q. You have to yell at that person, or can they hear

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you by just raising your voice?
A. No, you might raise your voice a little bit. You aren't talking in just a conversational tone as we are here, but you don't have to holler at anybody to be heard.
As a matter of fact, every day when Mr. Grass flies in and lands, the pilot gets out, or copilot gets out and opens the door for him. They walk right over to the end of the rotor blades and discuss what time they want to fly out the next day, or if there are any changes in time. And at that time he goes back to the helicopter and they take off. So they have a conversation every day right there outside the blades.
Q. There has been some testimony by the protestants as to the length of time of what they characterized as a disturbance. Have you ever timed how long it takes for the helicopter to land and take off again?
A. Yes, I have. I carry a stopwatch in my truck all the time because I time the racehorses at the racetrack. And one day I was coming out of Greenspring Station and sitting there. The helicopter came over, and I timed it. And from the intersection there where it clears the

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intersection of Falls Road, to the ground and back to the intersection, it's typically between three and four minutes. That day it was three minutes and 27 seconds, to be exact.
Q. There has been some testimony during the protestants case in chief, I believe from Dr. Carroll, about a listing of your property for sale?
A. Yes.
Q. You were here for that? What are the intentions of Helmore Farm with regard to the sale of the property?
A. Our intentions are to be able to sell my father's house with a lot around it. The acreage that can go with it is the only real determining factor at this point. If we sell the house off, that should be enough to pay off all the debt that we have currently, and at that point my father will move into Blakehurst. I will retain the rest of the farm operation, which is currently operating very profitably, and run that as my business. And that's my primary livelihood right there, that farm.
Q. I believe you heard testimony -- correct me if I'm wrong -- at least one of the witnesses characterized

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this general area as a community park.
A. Well --
Q. I mean just yes or no, did you hear that?
A. I heard it, yes, I have.
Q. What is your response to that assertion?
A. Well, this is primarily an agriculture area where we have our primary business raising horses. The other people next to us, they have their house sites and they, you know, farm out their farming operation, so they're not working at it. Their house site may be a park. But back in the woods also, Doug Carroll and myself together worked. We built a set of trails back in the woods that most of the time I do the mowing on, and it's an area to walk back in there. And we've opened that for our neighbors to be able to walk in. I put picnic tables back there for the people. We've got campsites back there for our kids to use. So there is some park characteristic to it, but it's a characteristic that we have added to it for the enjoyment of our neighbors.
Q. You've heard some of the protestant witnesses characterize their use of their property for agriculture

purposes and how they go about doing that. How would you distinguish your agricultural operation from the others in the immediate area?

A. Well, the other operations, they have, as Doug and Deidre testified, they have a farmer from Upperco come in and farm their operation, row crops. It's not something they do. They do have a garden and some things like that, and Doug has some animals on his place.

But our place, it is our primary business. We work it every day. We're there every day. I get up and go to the racetrack 3:30 in the morning, come back to the farm every day to maintain that operation. Often have to run back to the track to saddle horses, whether it be Pimlico, Laurel, or up into New York, New Jersey, Pennsylvania, wherever. And so it is our pursuit every day of what we do. They go off of the site to do their business every day. Doug's a doctor, Susan's husband is a lawyer. We are there farming that ground every day.

Q. The last series of questions. You've been here to hear some of the protestants trying to assert in some way, and I don't want to necessarily quote them, but

somehow in all of this, this petition for special exception is just somehow a sham, it's only about Martin Grass. What is your response to that?

A. Well, first of all, we were flying planes in and out of there a long time before I met Martin Grass. The business has evolved to the point now where, with our horses of ever greater value running out of state for the bigger purses in New York -- we've got problems with the racing program here without being able to get into the slot machines and stuff. So you run different places. You run farther away.

We also, as the price of horses has escalated, we found that we cannot raise the capital that we need here to compete in the syndication market. The horses have gone from $50,000 for an average top horse in a two-year-old training, in training sale, to hundreds of thousands. The typical sale that we look at could be anywhere from 250 maybe to $500,000 for a single horse. The top horses in California are going for over a million dollars.

The people that will invest in syndicates where

you put together three, four, five, maybe even six horses so your money is spread over a variety of horses, are out there, but they're not here locally, generally. Typically what you have here is people who put up $5,000, $7,500, maybe $10,000 in the syndicate. To get the type of people that we need now, as Cot Campbell said, who does Dogwood Stables, he'd rather have 12 square blocks of downtown New York than the whole Middle Atlantic region. That was his response when I tried to see if I could combine with him, combining my expertise of being able to pick out the two-year-olds, with his ability to syndicate the two-year-olds. But he wasn't willing to do that.

And so what we've got to do is go to the same market that he is going to, to be successful. And what we feel we've got to do is be able to bring those people down here so that they can see the product that we're syndicating. We can show it to them. They can come down here to race. Hopefully the purses will come back in the future. And when we run the horses here even, they can fly into our farm, being the closest place to Pimlico racetrack, or they could fly into Laurel racetrack. There

is an airport right across the street from Laurel, so they do have air access to that. But air access to our operation in the future, I think, is going to be absolutely critical to our being able to survive in the business.

MR. BARHIGHT: No other questions of this witness at this time. Thank you.

MR. KOTROCO: A couple of questions.

Q. (MR. KOTROCO) When did you obtain the information on the Maule?

A. I think that was back in February 6.

MR. BARHIGHT: There's a cover letter in there.

MR. KOTROCO: I don't know if I got that cover letter in mine.

MR. NELSON: I'm sorry. Does mine have the cover letter?

THE WITNESS: It should be in there.

MR. NELSON: How many pages down?

MR. BARHIGHT: Six or seven.

MR. KOTROCO: Six or seven pages into it.

MR. BARHIGHT: We attempted to photocopy the

entire booklet, which I'll offer into evidence now, and probably better to do that and take back the photocopy and give you the original.

MR. KOTROCO: Okay.

MR. BARHIGHT: Everything that we had photocopied was all the sides of the brochure.

Q. It looks like the price of the plane runs about $100,000, not including the options?

A. Well, the model that we're looking at runs about $150,000 with electronics and all installed. $153,000 I think it comes out to.

Q. I guess I could have asked you this earlier, but I know that the corral that you have chosen for the helicopter to land in was there, I guess, prior to Mr. Grass's coming into the picture. But why locate the helicopter part of it in that corner, why not the other corner or elsewhere on the property?

A. Well, first of all, it's the point in the bottom field where it is the furthest away from the largest number of houses. There is the Reynolds' house back on Hillside Road. They are not a protestant. They don't

care one way or the other. But it kind of divides the area. It's further away from their place at this point, and it's still ample distance away from the Carrolls and Immelts. So I have elected basically to pull any noise that there is towards me and away from other people.

Q. That parcel to the east of you towards Falls Road is unimproved, isn't it? It's just a farm?

A. No houses, no buildings of any kind whatsoever on it.

Q. Okay. Had you given any -- I mean, you feel that strategically is the best place to try not to offend as many neighbors as possible; is that right?

A. Exactly, right. And it's also closest to the road access, also.

Q. Okay.

MR. KOTROCO: All right. Mr. Nelson, do you have any questions you want to ask him.

MR. NELSON: Yes, I do. May I have one moment, please?

MR. KOTROCO: Sure.

CROSS EXAMINATION

BY MR. NELSON:

Q. Mr. Lucas, of course we're here on a -- one of the things we're here on is a special exception, and the zoning commissioner has the authority and discretion to impose certain conditions on the special exception, in the event that he grants it.

You've shared with us, sir, the fact that you are considering buying an airplane, a Maule, which is one of these light, slow, single engine airplanes that can take off, according to Mr. Lamb, on this purported airstrip. Now, if you buy this aircraft, and if you get the special exception, would you be willing to accept a condition from Commissioner Kotroco that you not fly helicopters there?

A. No, because, as I've told you, there are certain weather conditions that -- when the horse is going to run, the horse is going to run, and we've got to be able to get there. If we can't safely fly the Maule, then we need to take the helicopter to accomplish what we're trying to do. And also, there are clients of ours in New York who would be coming down to us. They have their own helicopters. They have helicopter service that operates from the center

of the city, right at the PanAm building, several other locations, where they can just go there from Wall Street, come down here, see what they've got to do, come down here, land at our place, and we'll take them down to Pimlico, and then they can go back on their own helicopter to New York.

Q. So as I understand your testimony, the reason you cannot agree to that condition is that there are certain weather conditions in which you need a helicopter to fly to a racetrack, or you need one of your important clients to fly to you?

A. That's correct.

MR. BARHIGHT: Object. That wasn't the proper characterization.

MR. NELSON: He just said yes. Pardon me, counsel.

Q. Now, would you agree to the following condition? And I'm not suggesting to Commissioner Kotroco that he do this, but this is just purely hypothetical. If Commissioner Kotroco were to grant you this extraordinary special exception, would you agree to these conditions:

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You can fly your Maule there in safe weather conditions, and if the weather conditions are dangerous, you can use a helicopter, but only you and only when you are flying to a racetrack, or if one of your customers is flying to you. And not to put too fine a point on it, a special condition that says no neighbor may use this helistop to commute to his or her place of business. Would you agree to that condition?

A. No, because I think it also knocks out one of my primary friends who has been flying a Maule in here, Dave Good, from Michigan; knocks out Bobby Kirchner, one of our partners who has been doing touch and goes here since back in the '70s. I mean, it's too much.

Q. (MR. KOTROCO) The $64,000 question, I think, is would you be willing to live with the condition that excludes Mr. Grass from flying his helicopter in there?

Q. (MR. NELSON) That's precisely the question.

A. Well, Mr. Grass has, since we started all this, become a client, and there's reason for him to fly in and out of here on business of the horse industry.

Q. May I rephrase the question?

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A. That's the problem.

Q. All right. Would you agree to a condition, Mr. Lucas, that prohibits Mr. Martin Grass from commuting to work in Harrisburg, Pennsylvania, or wherever else he moves his enterprise, from your property? Would you agree to that special condition?

MR. NELSON: And I'm not suggesting you grant the exception. It's purely hypothetical to explore this man's motives.

Q. Would you agree to that, sir?

A. The problem we find, I find with that is that at Mr. Grass's current level of involvement with our horse operation, it's just in on partnership on eight horses we currently have. I've already currently laid out to him a major program for becoming involved in the breeding operation of the farm. To implement that major program, I need almost daily access to him, because it's going to become a major Maryland horse operation. To do that, to exclude me from having access to him on a daily basis would really throw a major, major monkey wrench in that. I wouldn't have the access to him to go over, be able to

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review our plans and stuff. It basically bars him from being in there to do what we're trying to do. And what we're trying to do is -- I mean, like the Rosenbergs, they're there now. Ned has said he may buy a place of his own down the road. Maybe Mr. Grass becomes our major customer as far as the horse operation. Well, to be able to run that type of operation, the number of dollars we're talking about possibly having involved in the operation at that point, to say that I can't have access to him on a daily basis would just kill us.

Q. And Mr. -- I'm sorry, go ahead.

A. And basically it gets down to -- you know, it's almost like where the condition dictates whether or not we can be profitable, whether we can deal with the clients. I'd rather be limited to a number of flights a day, whether it's Mr. Grass, or the other clients, or something, come down to a level based on the noise or something that the people in the area would agree to, or you would agree to, so it's not a hindrance to anybody. But please give us the flexibility to deal with our clients and our business as we need to.

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Q. Mr. Lucas, let me ask you this question. Could you not simply pick up the phone and dial the seven digits you need to dial to speak to Mr. Grass in the evening?

A. No.

Q. That's an option, is it not?

A. No, it's not, especially with Mr. Grass's wife and the way she conducts her house and stuff. We aren't supposed to call there in the evening during private hours.

Q. Well, you can dial ten digits and get him in Pennsylvania, could you not, during the workday?

A. Have you ever tried to get a C.E.O. of a corporation? This way, with him there, I have him captive every day, twice a day.

Q. So your point is he will only speak to you and he will only consider investing in your enterprise if and only if you let him fly in and out of your property eight times a day. Is that what you're telling this Court?

A. Not eight times a day. I'm not asking for him to be able to fly in and out eight times a day.

Q. You're right. That was only Preakness day. How

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about twice a day?
A. Twice a day, that means I know where he is twice a day and I can get to him. Our operation can get to him twice a day.
Q. How much are you asking Mr. Grass to invest in your enterprise?
MR. BARHIGHT: Objection.
A. I am not asking Mr. Grass to invest any specified amount. I have laid out what I think is a prudent way to become involved in the horse operation, gradually phasing in buying a few brood mares, and every couple of years buy a few more, buy a couple fillies to run at the racetrack and see how they all pan out over time. And you're constantly culling. It's a whole process.
MR. BARHIGHT: I guess my objection was overruled by my client.
MR. KOTROCO: By your client. He just went ahead and answered.
Q. I mean, is there a written proposal that you've made to Mr. Grass?
A. Yes, there is.

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Q. Where is that document?
A. It's in our offices.
Q. And this is a master plan for Mr. Grass to get involved in your enterprise; is that right, sir?
A. It's a master plan if we can have access to him enough to implement the program.
Q. Has he said that I won't implement this plan if I can't fly from your property?
A. There are constraints beyond his control that would not allow him to take ordinary losses against ordinary income if he doesn't have access to the operation a certain number of hours.
Q. Oh. What you've just told us is that if he – if you get this special exception, and he flies out of there and invests in horses, he gets the tax shelter?
A. No, it's not –
Q. What did you just say?
A. It does not operate as a tax shelter.
Q. What did you say about his tax consequences?
A. What happens is if you devote a specified number of hours, which is a variable, to an operation, you are

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not a passive investor, you are an active investor. And if you are an active investor, then any losses, which in the first few years of getting involved, building up a horse operation, are almost inevitable, unless you hit a big horse right off, you can, if you're active, considered active, you can use those losses against your ordinary income. If you're only a hobby loss, you cannot use them against ordinary income, and it really deters people from being involved in the horse business.
Q. You've told us this helicopter is on the ground for maybe, what, 45 to 60 seconds. The total flight in, pick up, and flight out is, according to your stopwatch, three minutes and 23 seconds.
A. That's correct.
Q. If this helicopter is on the ground for 45 seconds in the morning and 45 seconds in the afternoon, are you saying, from the point of view of the IRS, that he's an active participant in your horse farm?
MR. BARHIGHT: Objection.
A. That's not the only time when he is on the farm.
Q. What are the other times he's on the farm?

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MR. KOTROCO: Do you want your objection ruled upon?
MR. BARHIGHT: Well, he keeps on overruling my objection. He said that's not the only time that he's on the farm.
Q. Well, we'll explore that. When else is he on the farm?
A. He's there before he takes off, so that when that helicopter gets there he's ready to go.
Q. I see.
A. So that we have time to discuss what we need to before he has to take off. And when he gets out of the helicopter, he'll hang around as long as I need him to, to go over what we need to. And he'll even come up to the office and sit down, and we conduct our business as we need to.
Q. How many minutes a day do you need to make him an active participant?
MR. BARHIGHT: Objection. That calls for a legal conclusion. It's up to the IRS to decide those details.
MR. KOTROCO: Whether Mr. Grass gets a tax

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deduction as a passive investor or an active investor really isn't too germane to whether or not I grant a special exception.

MR. NELSON: Very well, I'll move on.

MR. BARHIGHT: That's true.

MR. KOTROCO: I'll sustain the objection. It was interesting, though.

MR. NELSON: It was.

Q. So just so the record is clear --

MR. KOTROCO: I didn't mind hearing it.

Q. -- you would not agree to a condition that you can fly your Maule, or a plane like it, that your buddies from Michigan and wherever can come in for touch and go to visit, but you would not agree to a condition that prohibits people from commuting to their place of business, so long as that place of business is unrelated to the horse industry. You would not agree to that; is that right, sir?

A. You're right. I'd agree to a limitation that would allow owners of the farm, our clients, and my personal friends.

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Q. To use your place to commute to Harrisburg, Pennsylvania?

A. Right, right.

Q. All right. Now, forgive me if I'm going over old ground, but I'm constrained to do it now. We can agree, can we not, that prior to 1971 you, with your own eyes, never saw any aircraft or any helicopter land at Helmore Farm?

A. Prior to '71, no.

Q. We can agree, can we not, that since 1971, through 1997, you cannot state under oath that an airplane landed every year at Helmore Farm?

A. Well, an aircraft has. An airplane every year, I cannot state that. A helicopter every year, I cannot state that.

Q. All right. So just so I understand what you just said, you're unable to say since '71 an airplane, a fixed-wing aircraft has landed every year?

A. Yes. No, I'm not saying a fixed-wing every year. I'm saying either/or, one or the other has been in there every year.

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Q. We'll get to that.

A. Right.

Q. And you can't state under oath that a helicopter has landed there every year at Helmore since 1972?

A. No, not a helicopter every year, no.

Q. What was the first year a helicopter landed there?

A. First year was '72.

Q. Now, you can't state under oath -- let me back up. What document -- can you list for me the years that the fixed-wing aircraft have landed? Give me the years, please.

A. The fixed wing?

Q. Yes, sir. List the years.

A. Let's see, '72 to '78 I was flying -- '71 to '78 I was flying from College Park Airport into the farm myself, either with a pilot or without a pilot. Since '77, from '77 to '91, Bobby Kirchner has been operating his plane, doing touch and goes, takeoffs and landings. He's stopped and taken us to Ocean City, flown in there and picked us up. '91 he stopped because he got a

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twin-engine plane and the strip couldn't handle it anymore. Then Dave Good, who I used to ski race with, he has operated a Maule that he gets from a friend of his in Michigan. They've got a lot of Maules up there because of the lakes and all. But he's operated a Maule down here every year since about '83.

Q. Every year since '83?

A. Right.

Q. So you said that you've flown a plane every year --

A. Not me.

Q. Wait a minute -- between '71 and '78?

A. Right, that's correct.

Q. Mr. Good -- was it Mr. Good?

A. Dave Good, right.

Q. -- flew a plane every year from '71 to '91?

A. No.

Q. I misheard you then. '71 to what year?

A. No, you're getting the two guys mixed up. Bobby Kirchner, '77 to '91,

Q. And Dave Good?

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A. Dave Good, about '83 to the current. He still comes down.
Q. So would you list for me, under oath, the years, every year, year by year, that a plane landed there?
A. You want me to state the year, every year?
Q. Yes, sir. Tell me every year.
A. '71, '72, '73, '74, '75, '76, '77, '78, '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90, '91, '92, '93, '94, '95, '96, and the Scout last week, '98.
Q. (MR. KOTROCO) You skipped '97? Did you include that?
A. I said '97.
MR. KOTROCO: Did he say '97?
A. '97.
MR. BARHIGHT: I don't think he said '97.
A. Okay, '97.
Q. (MR. NELSON) Now, Mr. Lucas, I asked you precisely this question under oath on two occasions. The first time was before the circuit court, and I have the transcript, and let me read the question and the answer.
MR. BARHIGHT: What page?

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MR. NELSON: Page 108.
Q. Question: Can you tell this Court, please, each year that an airplane landed at Helmore Farm since 1972?
And your answer, under oath, in the Circuit Court for Baltimore County, not one floor down from here, under oath, was: I don't have a list of when planes landed or helicopters landed, no, just on an as-needed basis.
Question: So you will agree, sir, will you not, that you cannot testify under oath --
MR. BARHIGHT: What page are you on?
MR. NELSON: 108.
Q. So you will agree, sir, will you not, that you cannot testify under oath that a fixed-wing airplane landed each year between 1972 and the present?
Answer: Not with certainty, no.
Was that not my question and was that not your answer, under oath, six weeks ago downstairs with the circuit court?
A. I also told you --
MR. BARHIGHT: I'd like to have the witness to have the opportunity to read the transcript. I'm not

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finding it now.
MR. NELSON: Page 108.
MR. BARHIGHT: I'm sorry. It's not on ours. Do you mind letting the witness see your version of the transcript before he's forced to answer the question, had an opportunity to review the transcript, just as your witness was. I'm not doubting that Mr. Nelson --
MR. NELSON: We've got three more days, Mr. Barhight.
MR. BARHIGHT: I'm not doubting that Mr. Nelson has properly quoted from the transcript. I wanted to do two things: first catch up to him in ours, and also give the witness an opportunity to review the transcript.
MR. NELSON: We've got three days.
MR. BARHIGHT: I don't think I'll need three days, thank you very much.
MR. NELSON: I might need it.
MR. BARHIGHT: Well, I'm glad we have them so you can use them at your leisure. We're about three or four pages off, but we can call it up.
Q. The question is --

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MR. BARHIGHT: Please feel free now to let the witness review the transcript.
Q. My question is, for the witness, did I not ask you that question and did you not answer under oath as I just recited to you a few moments ago?
A. Yes, I did, and it also states in here my answer to the questions about that, that from '89 to the current, as I was going up to that point, the only year I don't know about is '93. And we checked, and I can say that now because Dave Good did come down in '93.
Q. Oh, I see. So your explanation now is that you told me two pages later that the only year you didn't know about was 1993, therefore you checked with Mr. Good so you can say that you've flown in aircraft every year since 1972, fixed-wing; is that right?
A. Yes.
Q. Now, it's true, is it not, that the reference to 1993, we're talking not about fixed-wing aircraft but about helicopters?
A. No, '93 we're talking about fixed-wing. Dave doesn't even have a helicopter.

Q. Would you please look at page 110 and read with me, Mr. Lucas.

Question: My question is very simple, sir. Would you please tell this Court, under oath, each year that a helicopter landed at Helmore Farm between 1972 and the present.

Answer: 1972, 1978.

A. No, that's incorrect in here. It was 72 to '78.

Q. All right. Give it a dash, I don't care.

1972, correction, dash, '78. From 1978 I don't know when until 1989. There were years in there, but there is some gaps in there. Now, I know in 1989 up to the current that it's been every year, except that I can't, I don't know about 1993, that we landed there in 1993.

Don't you agree that you're talking about helicopters there and not fixed-wing aircraft?

A. In this part here I'm talking about helicopters. In the other part, at that point I did not know if anything landed there in '93.

Q. So it's your testimony now that an aircraft has

landed every year, fixed-wing aircraft, since 1972?

A. Yes, sir.

Q. When did you do your research about the year 1993?

A. I called Dave as soon as I could get ahold of him. He was out of the country.

Q. After this hearing?

A. After that hearing, yes, after this.

Q. So you knew that information before we started this proceeding, didn't you?

A. Before we started here today?

Q. Yesterday.

A. Yes.

MR. NELSON: Okay. Now I'm going to ask the court reporter to read back my cross-examination of this witness where I asked precisely the same question under oath, and he gave precisely the same answer he did in the circuit court, which contradicts his testimony today. Because I asked her to read it to me in the hall this morning. I'm going to ask her to do that.

Do a word search, please, for "every year" in my

initial cross-examination. And we'll see this is now the second time he has changed his testimony.

(Discussion off the record.)

MR. NELSON: This is my cross-examination of this witness from this proceeding yesterday, right?

THE REPORTER: Right.

MR. KOTROCO: Before you start, I need to get another tape. You get ready to read whatever you need to read, and I'll be right back.

(A brief was taken.)

MR. KOTROCO: All right.

Q. Mr. Lucas, did I not ask you this question in your cross-examination yesterday. This is some six weeks after the hearing in the circuit court. This is after you immediately called your friend in the Midwest to confirm that he had been there in 1993. Did I not ask you this question:

And you will agree, sir, will you not, that, since 1979, you cannot testify that an aircraft has landed each year on the strip at the Helmore Farm?

Answer: No.

So you told me in this proceeding that an aircraft, you were unable to say that an aircraft landed every year since 1979. You told me that yesterday, didn't you?

A. Well, also at that point we're in 1998. Aircraft, fix-winged aircraft had not landed there at that point. We hadn't done the sound test for '98.

Q. I see. So what you're saying was it landed every year since '79, but not 1998; therefore it wasn't every year?

A. Right.

Q. I see. So do you disavow your testimony from the circuit court proceeding, sir?

A. No.

Q. You don't. Would you please list for me every year that an airplane landed at Helmore between 1943 and 1972?

MR. BARHIGHT: Objection, asked and answered. He also already said he can't testify to that.

MR. NELSON: All right. Do we have that stipulation?

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MR. BARHIGHT: It's not based on personal knowledge. All he has are the books and records of the corporation. It's been asked and answered twice.

MR. NELSON: I want the record to reflect that no one has presented any evidence that an aircraft, from a witness, has landed prior to '72.

MR. KOTROCO: Well, '71.

MR. NELSON: '71, I beg your pardon.

THE WITNESS: Yeah.

Q. Now, will you please summarize for this Court the documents that you have that allow you to say an aircraft, fixed-wing, has landed every year between 72, '71, and the present?

A. Documents?

MR. BARHIGHT: Objection, asked and answered. We've been through this.

MR. KOTROCO: I'm not sure he asked about documents.

Q. (MR. KOTROCO) Do you have any documents that show when -- do you keep a logbook or something like that?

A. No, don't keep an airstrip logbook.

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Q. You went back through some old documents to show capital improvements where you put the pipe in and --

A. Right, because that has to go in for accounting reasons, into the books, and we have to be able to depreciate. So I can find it from the depreciation schedule.

Q. Other than those documents, you don't have any other documents?

A. No. We don't depreciate an air flight or anything. The great majority of them are using friends' planes and stuff, or Dave flying in where I'm not even doing the flying.

Q. (MR. NELSON) And just so the record is clear, you don't have any documents for helicopter, do you?

A. Right, no.

Q. Help me here. You said that you were unable to say that an aircraft had landed at Helmore farm every year since '79 because you hadn't yet done the test in '98; is that right?

A. Yeah. We just did that test.

Q. When did you do the test?

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A. Just did the test a couple of weeks ago.

Q. Okay. What month, what year?

A. I think it was in March '98.

Q. Well, isn't it true that the testimony we read from the transcript was yesterday, not six weeks ago. But yesterday you told this Court under oath that fixed-wing aircraft had not landed there every year since '79, and that was after this so-called test you did in March of 1998? Do you want me to read the transcript again?

A. No, you don't have to read the transcript again.

Q. Do you want to disavow that testimony now, sir?

A. What are you asking me to disavow?

Q. My question, sir, is I read to you your transcript from yesterday where you said I'm unable to state under oath that a fixed-wing aircraft has landed here every year since 1979. Then, by way of explanation, you said, Well, wait a minute, we hadn't done the test for '98 yet, and that's why I didn't say it was every year. Then I came back and said, When was the test that you did?

A. I think I didn't understand the context of your question, the way you were saying it at the time.

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Q. I see, I see. But you understand it now?

A. Right.

Q. And now it's your testimony that you have flown aircraft, aircraft have landed every year since '72?

A. Yes, it is.

Q. List the years that helicopters have landed there.

A. Helicopters were used from '72 to '78. They were sporadically used during the '80s, and then from '89 to current they've been used just about every year.

MR. NELSON: Now, Mr. Kotroco, I'd like to put into evidence the entire transcript.

MR. BARHIGHT: No objection.

MR. NELSON: And the commissioner can form its own view.

MR. KOTROCO: Is that just of his testimony in the circuit court?

MR. NELSON: Yes, sir. Form your own view as to his excuse about -- his explanation as to 1993. But what I'd like to do is arrange to have a copy made. I can deliver it to your office, or however. I can leave my

original and get a copy from your file. How would you like to proceed?

MR. KOTROCO: Do you have any objection to either way? You hold onto it, make a copy, supply me with a copy, and we'll mark it as Protestants' Exhibit -- I think it's going to be 6. I don't see. I have 6 as my next in line. So simply make a copy of it.

MR. NELSON: I'll do that.

MR. KOTROCO: How many pages is it?

MR. NELSON: It's 15.

MR. KOTROCO: I'll take it back in the office and copy it myself, and then put it right in the file and give you back your original at the conclusion of the hearing. If I had a clerk or bailiff I'd have them do it right now, but I do all those jobs here.

MR. BARHIGHT: So Protestants' 6 will be the circuit court transcript of Dale Lucas?

MR. KOTROCO: That's right. I'll go ahead and mark it as Protestants' Exhibit 6.

(Protestants' Exhibit No. 6 was marked by Mr. Kotroco.)

MR. BARHIGHT: And then Protestants Exhibit 7 will be, in the future, the delivery of what? Did I hear that there was going to be something made of the testimony here yesterday? Did I misread that?

MR. KOTROCO: I'm not sure.

MR. NELSON: I'm sorry. I didn't hear, counsel.

MR. BARHIGHT: No. 6 is going to be the circuit court transcript of Dale Lucas. Was there going to be any other transcript provided? I didn't quite understand.

MR. NELSON: No, just the cross-examination. I think it's the direct and cross-examination of Mr. Lucas from the injunction proceeding.

MR. BARHIGHT: No objection.

MR. KOTROCO: Okay.

MR. NELSON: May I just have one moment.

MR. KOTROCO: We'll go off the record for a moment. I'm going to give this to Ms. Schumann and have her make a copy of it, and she'll bring it back momentarily.

(A brief recess was taken.)

MR. KOTROCO: Back on the record.

Q. With respect to Mr. -- is it Kirchner?

A. Kirchner.

Q. What's his full name and address, please?

A. Benny Robert Kirchner. I don't know his full address.

Q. State?

A. Maryland.

Q. Town?

A. Up by Westminster.

Q. Phone number?

A. Let's see, 410-795-4323 is his office number, I think.

Q. Home number?

A. I don't know his home number.

Q. How about Mr. Good, your buddy in Michigan?

A. I don't know his phone number. He lives up in Michigan.

Q. Town?

A. In Pontiac, above Detroit.

Q. Full name?

A. David Good.

Q. What's his place of business?

A. Good Ski Accessories Corporation.

Q. Now, you mentioned that you first spoke to Mr. Grass's driver when you saw the helicopter take off from somewhere in the valley; is that right?

A. Right over by his house.

Q. Right. So just so the record is clear, at the time of that conversation Mr. Grass was using the helicopter at his house?

A. That's correct, he was using it at his house.

Q. And during the course of your discussions with Mr. Grass, did you learn, sir, that he had applied for a special exception at that property to use a helicopter?

A. Yes. They said that, I think I stated, they were having problems with landing there.

Q. Right. And did you not tell him, sir, that he was free to use your property until he got permission from the county to fly out of his property?

A. No, I did not tell him that.

Q. You didn't tell him?

A. No.

Q. But you will agree that when you first spoke to him, you knew that he was applying for special exception?
A. I didn't know what he was applying for. He just said a zoning problem.
Q. And when did you apply for the special exception in this case?
MR. BARHIGHT: It's in the record.
A. It's in the record.
MR. KOTROCO: Let me say that the date of the petition is -- I was looking for a date on the petition itself, but I don't see one. It was dropped off with no review on February 11, 1998 at the --
MR. BARHIGHT: Which petition? One petition was filed the day after the other one.
MR. KOTROCO: The special exception has written on the bottom, by Carl Richards, Dropped off, no review, February 11, 1998.
MR. BARHIGHT: Thank you.
MR. GILDEA: He said he had a letter in the file.
MR. NELSON: That's close enough.
MR. KOTROCO: Paid receipt dated 2/12/98.

Q. The point, sir, is at the time you first invited Mr. Grass to your property, you knew that he had applied for special exception, and you knew that he was pursuing it?
A. I didn't know that he had applied for a special exception. I just thought -- he told me that he had some zoning problems with landing there.
Q. And you'll agree, sir, that the date of his investment in the eight horses was within a week or two of the time that he first started flying out of your place?
A. No. His inquiry as to investing in them was around the end of the month. He started flying in at the beginning of the month, so it was almost a month later that he inquired about investing in the horses. He did not actually invest in the horses until sometime in December, because I had to talk to my father about it, get everything worked out, had to come with values on the horses and everything else, and then go back to him and see if he really wanted to do it.
Q. So it's your testimony, under oath, that there was no relationship whatsoever between your discussion

with him about the ability to invest in the eight horses and the fact that he began to fly out of your place in October, no relationship whatsoever?
A. Absolutely no relationship. I didn't know that he would even have any interest in horses at the time that I invited him to use the airstrip over there, and couldn't conceive that he would.
Q. It was total coincidence?
A. Absolutely. It was no relation at all.
Q. What are the names of the eight horses in which he invested?
A. Speed Freak, Saratoga Sport, Camaland. There's two foals out of Dante's Dancer. Well, no, he's only in on one of them. He's not in on the yearling. He's in on the weanling. Tank Express is one, and I think the other one is Military Might.
Q. Now, if he's got 25 percent, your father has got a percentage, does anyone else have a percentage in those eight horses?
A. Of these horses, no, no one at all. These were not horses I was even thinking of syndicating. That's

why.
Q. So these are horses that your father owned outright?
A. He owned them 100 percent, that is correct.
Q. And Mr. Grass says, I'll buy 25 percent interest in those eight horses which you already owned; is that right?
A. Right.
Q. And then a payment was made?
A. Right.
Q. How much was that?
MR. BARHIGHT: Objection. Same question from yesterday.
MR. NELSON: That's right, it is, and I didn't state the reason why. May I do that?
MR. KOTROCO: You know, I rarely ever get into finances.
MR. NELSON: I know you don't, and that's why I'd like the opportunity to articulate it. And I'm mindful of that.
MR. KOTROCO: I know that somehow you can argue

that payments for the horses are really payments for using the heliport or maybe future payments for using the heliport: I'll support your farm if you let me land there. I mean, I understand where you're coming from. Whether it was $50,000 a horse or a nickel a horse, I don't see where that part is relevant. The man has invested in the eight horses.

MR. NELSON: Right. And I know what the predisposition of this office is, and I appreciate that. But this case is different, and I'd at least like to take a moment to explain why.

If we can prove that the value of the horses is X, and the payment was twice X, we can show that the helistop has a commercial aspect to it. That's all I'm trying to show. That's why -- and I know your predisposition on this issue, and I don't disagree with it in most cases. But in this case, I disagree with it.

MR. KOTROCO: I don't even know how you're going to be able to tell me how much those horses are worth. Nobody here can tell me, unless Mr. Lucas, he's probably the only one here that can tell me what they're worth.

I'm going to sustain the objection, and I don't want you to have to tell me how much Mr. Grass's 25 percent of those horses is.

MR. NELSON: All right.

MR. KOTROCO: You can always argue that that is remuneration for the landing of the helicopter and so forth. You're free to argue all that.

MR. NELSON: I will.

MR. KOTROCO: I don't like -- I wouldn't want people prying into my business that way, and I don't usually require that in these hearings.

MR. NELSON: All right.

MR. KOTROCO: I'll sustain the objection.

Q. Now, you shared with us, Mr. Lucas, that when you first had this inquiry, when you first agreed to let Mr. Grass land at your place, he had not expressed any interest whatsoever in the horses, because that was at the end of the month and he started landing at the beginning of the month, right?

A. He started landing at the beginning of the month, and at that point he had no interest in the horses at all

Q. And he expressed interest in the horses the first time at the end of the month?

A. That's correct.

Q. Had he ever, ever, informally or formally, ever expressed to you the possibility that he might be interested in buying the house?

A. He looked at the front house one time and just said it wouldn't do. He was thinking of buying it possibly to have a place for his parents come down from Harrisburg, and it's just not a house that would accommodate them. And he's expressed no other interest in buying into the farm at all.

Q. When did he have that conversation with you about the house?

A. Oh, that was about, I guess, the end of November, first part of December.

Q. Later?

A. Right.

Q. (MR. KOTROCO) While you're on that topic, let me ask you. I noticed a For Sale sign on the property today when I was out there, and it's just the house and some

land that has yet to be determined around the house that you're intending to sell?

A. That's basically what we're trying to just get sold.

Q. Not the entire farm?

A. The entire farm is listed for sale, and if we can't gain this access to another market, where we can't bring people in to be competitive still in the two-year-old training business, then we'll probably just go ahead and get out of it. At this point we're really trying to just sell the house, and Doug has even been working with us on that, trying to get that acreage off the front, because he knows if we can get that front house sold we're going to retain the rest of it and keep it as a horse operation.

Q. You've got several other houses on the farm I noticed today.

A. Right.

Q. I guess three total, plus the big house?

A. Right.

Q. You live in one, and there's two other houses?

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A. There's three other houses besides mine.
MR. BARHIGHT: Total of five.
A. A total of five houses.
Q. The entire is listed for what, 2.6?
A. $2,650,000.
Q. And is there a separate number in mind for just the house and the land around it?
A. A million 250 is the number.
Q. 1.25?
A. Right.
MR. BARHIGHT: Interested?
MR. KOTROCO: I was looking for something a little bigger, actually. Okay.
MR. NELSON: I have nothing further.
MR. KOTROCO: Mr. Barhight?
MR. BARHIGHT: No questions. Thank you very much.
MR. KOTROCO: Thank you, Mr. Lucas. You may step down. Mr. Barhight, anything further?
MR. BARHIGHT: No. On my checklist here, the only thing that was an open issue with regard to our case

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is the private airport runway lengths information, and I'm happy to provide the protestants with the time they would deem necessary to determine how they want to handle that. I believe there are some dates in the future, so we have some time to discuss that.
MR. KOTROCO: Mr. Nelson, what is your position? Let me first understand what this document is. Mr. Lamb, who testified previously, I take it after he left the proceeding contacted the Maryland Aviation Administration, asked them if they have a published list of runways, private runways in Maryland. Is that what that is?
MR. BARHIGHT: That's my understanding, yes. The fax that I got from Mr. Lamb also contained the fax stamp to Mr. Lamb from Bruce Mundy from the MAA with his phone number.
MR. KOTROCO: Does it have a cover page saying these are all the private airports in Maryland? Did it give any explanation as to what the list is?
MR. BARHIGHT: No. Each of the pages has at the top Private Airport Runway Lengths, and gives on the left column the name of the airport, on the right column the

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runway length. On the back sheet is a map that shows the location of some of the airports.
MR. KOTROCO: Okay. Mr. Nelson, what's your position on that particular document?
MR. NELSON: We're not concerned about the authenticity of the document but whether it's not proper rebuttal. Assuming the Court is inclined to accept it over our objection, we need time to respond to it. We don't require that Mr. Lamb come from Richmond to authenticate it, but I need time to evaluate what that document means. We have a day set for the 14th. I propose that I report to everybody by, say, Tuesday. No, correction, by Friday this week, three days before the scheduled date, to say whether or not we need to present any testimony. Answer might be no, it might be yes.
MR. KOTROCO: Okay. All right. We can do it one of two ways. You may find additional information that you want to submit, which may be in written form. You may want to present a witness; if you want to do that, you'll have the opportunity to do that. That day has been set aside for this hearing. And I guess the best thing to do

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is to wait to hear from you gentlemen to see how you want to proceed.
MR. BARHIGHT: That's fine.
MR. KOTROCO: Okay. You may not want to do anything about it. Do you want to mark it and offer it at this time, or do you want to wait until that day? I'm trying to save others from having to be here.
MR. BARHIGHT: Given what has been said, how about if I mark it for identification purposes only, and then if we reach an agreement it will at least be in the file. But at this point only mark it for identification purposes as the next petitioner's exhibit.
MR. KOTROCO: Okay. Petitioner's 7, I believe, is the next in line.
MR. BARHIGHT: Depending upon what occurs, we may be able resolve to with a phone call; if not, we may need to come back on the 14th.
MR. KOTROCO: Okay. I will mark it for that, and you all let me know if we need to get back together on that date.
(Petitioner's Exhibit No. 7 was marked by Mr.

Kotroco.)

MR. BARHIGHT: The last issue that I have is an inquiry that doesn't relate to the introduction of evidence or testimony, necessarily. But in going over my notes, and this is really just to clarify the record, I could not indicate whether the Valleys Planning Council had either, A, taken a position with regard to this petition, and, B, had the kind of document that we saw from the FRCA already in place to indicate that position. I just didn't know whether that was something I missed or what the position was of Mr. Nelson's client.

MR. NELSON: I thought I said in opening -- perhaps I didn't -- I'm representing in these proceedings the Valleys Planning Council. They're opposed to it.

MR. KOTROCO: No resolution or anything written?

MR. NELSON: No, but if you want, we'll get it to you. We have the executive director here.

MR. KOTROCO: It's pretty clear from his testimony what their position is.

MR. NELSON: Yes. Susan Immelt; her husband Steve Immelt; Deidre Smith; Douglas Carroll; William

Brewster; Laura Robertson, who didn't testify, and her husband David. Basically all the people involved in the petition for injunction are protestants in this case.

MR. KOTROCO: Okay. Any other matters that we need to discuss?

MR. BARHIGHT: No, thank you. That clarifies the record, and I appreciate it.

MR. NELSON: Can we just talk off the record about -- I'm thinking ahead to next week when the evidence is fully closed. What does the commissioner anticipate in terms of subsequent memos or briefs?

MR. KOTROCO: I would like them. There are a lot of legal issues.

MR. NELSON: May I suggest that, since the petitioner has the burden, that we pick a date where they submit their memo, then a period of time after that, whether it be a week or ten days -- I would hope ten days -- in which we file a response. And then, since they have the burden, they can file a reply, should they choose to do so.

MR. BARHIGHT: It's typical in these proceedings

that we pick a date and we both file our briefs, and that's it. I suggest that we use the typical process. Give us about three weeks outside from the date, whether it's today or the 14th, whatever the last date is, and we'll just do what we usually do, file our respective briefs on the same date, not have replies back and forth.

MR. NELSON: I know that's what's normally done. That's why I suggested what I suggested. I mean, I just think that makes more sense. Because now we're trying to guess what the other person is going to say. The point is, I believe the point is for each side to present its strongest argument. And the way it's normally done in the appellate setting, and this is analogous to an appellate briefing schedule, because it's a legal issue and the case is going to turn on it.

MR. BARHIGHT: We're not briefing in that characterization. It's more of a trial memo where the parties submit all on the same date. That has been the practice before the zoning commissioner. I don't want to unnecessarily elongate this process. I don't think it's in either of the parties' interest. We should pick a date

and file our briefs like we do in any other case.

MR. KOTROCO: All right, we'll do it that way. Mr. Schmidt really has started that procedure. I like the other way of doing it, but Mr. Schmidt always has started and followed that procedure with briefs, and we'll follow his lead, which has kind of become the practice of our office to do it that way. So we'll do it that way.

But today is the 7th of April. Perhaps by the end of the month, last day of April. How does that little rhyme go, Mr. Barhight, 30 days hath September?

MR. BARHIGHT: Fortunately I have a calendar here, because I forget the rhyme. Thursday, April 30, will be the last day of April.

MR. KOTROCO: Then we'll make it the close of business, Friday, the 1st of May.

MR. BARHIGHT: May 1.

MR. KOTROCO: May 1, which would be a Friday, and we have basically the end of the month.

MR. NELSON: Can I just -- very well. I have a Fourth Circuit brief due that day, but we'll get it done.

MR. BARHIGHT: Do you want to push it to the next

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week?

MR. NELSON: We'll get it done.

MR. KOTROCO: Do you want to move it?

MR. NELSON: No, we'll get it done.

MR. KOTROCO: All right.

MR. NELSON: There was one other final matter, and maybe I'll just make it here. I understand the evidence isn't completely done, and we have the right to, reserve the right to put in evidence on the airport issue. But I'd like to move -- and this is an idiosyncratic motion in the context of these proceedings, I know that. But this is in the nature of a motion for judgment on the special hearing on the alleged nonconforming use.

We all know what the law is with respect to a nonconforming use. And the petitioner has the burden of going back into time to the last date where they could legally fly a plane or helicopter at that site. And the evidence in this case is that year, the last year they could do it legally, meaning by right or without special exception, or when there was no zoning at all, was 1944. That's the only evidence in the record.

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Therefore, the burden on the petitioner is to show that he, or somebody, flew a plane into Helmore Farm every year from '45 through '98. Well, we're only part way through '98. Through '97. And the testimony, even viewed most favorably to the petitioner, is that the best he can say is since '72, '71. So they're missing 25, 26 years.

So I think that I'd like to make that motion now, because it will expedite the briefing schedule. And the test is really what evidence is there. The only evidence in this case --

MR. KOTROCO: Before you go to start any argument, what do you believe to be the controlling year on the nonconforming issue?

MR. BARHIGHT: There are different years, depending upon the nature of the use. And we don't believe we have to introduce testimony what the law is. We can just give you what that law is, and we want to do so by explaining it to you in the brief. I think that's the proper setting to do so. Obviously he has the right to make a motion for judgment, you know, in a kind of

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generalized fashion. There is no such motion provided in the rules of practice and procedure of this body. But, you know, I can certainly understand why he might want to make a motion for judgment at the end of the proceeding.

But I think it's best left to the brief. These are complicated issues. We do disagree with Mr. Dillon's characterization of the history of the zoning regulations. All of that is important and detailed. We need to go through that. We just don't think we need to provide you with that through evidence. You're allowed to take judicial notice of the law. We're going to argue the law to you, not just the statutes but also case law.

MR. KOTROCO: Okay. I'm going to reserve on it, then, and you all can spell it out in your briefs.

MR. BARHIGHT: It's clearly one of the primary issues that you need to have briefed, and we've anticipated doing that and intend to do so.

MR. KOTROCO: Okay.

MR. BARHIGHT: It just doesn't seem appropriate to argue it now.

MR. NELSON: The only reason I suggested it, I

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think it's clear cut, and it would cut my work by 80 percent. That's all.

MR. KOTROCO: Well, I mean, I never pretend to sit here and tell people what to put in their briefs. But I've seen briefs come in from protestants' attorneys that just say it's clear cut and there is no need to discuss it any further.

MR. NELSON: I'm not going to do that.

MR. KOTROCO: Mr. Dillon spent a considerable amount of time going through the records and offered an opinion as to what he believed. I didn't know if Mr. Barhight and his clients agreed with that position or not. Apparently they are going make their own assertion in their brief.

MR. BARHIGHT: Right.

MR. KOTROCO: And I'll have to ultimately make a decision on it. What about the issue of my going out there and listening to the helicopter? How do you all want to work that in?

MR. NELSON: Well, I have no objection to it, but I think, if you're going to do it, it's only fair to both

parties that you do it a number of times.

MR. KOTROCO: My only concern is that I'll probably have to contact somebody about going.

MR. NELSON: I know, but I don't think you ought to do it just once. I think your options -- I don't mean to tell you what to do. It's my observation that if you go once, it's going to be unfair to one of the two parties. You can go there a time when the atmosphere makes it very, very loud. That could happen. You could go there by chance on a day when, due to the cloud cover, it's not that bad.

The testimony has been that it can fluctuate. And my concern is that, if you're going to do it at all, you've got to do it five times, or four times. But if you go --

MR. KOTROCO: Well, I want to be in different areas to see what it sounds like from Dr. Carroll's property, Ms. Immelt's property, right next to the corral itself, in different areas. And then, unless they're going to do a demonstration where he comes and goes, comes and goes, comes and goes, and I can reposition myself, it

will take numerous days for me to be able to do that.

MR. BARHIGHT: Given the different locations that you've identified that you would like to hear it from, we can certainly make arrangement to have a, you know, an air show, if you will. That's what we did for Mr. Miller. We set up a circumstance where a variety of aircraft came in and out so that he could witness that and take their readings. If it would be helpful to you -- because I'm afraid that you'll pop out and it will be a day that nothing happens.

MR. KOTROCO: Nothing happened this morning.

MR. BARHIGHT: Nothing happened this morning. We didn't know you were coming and --

MR. KOTROCO: I usually don't like people to know. Like I said, I usually like to just kind of snoop around. But in this instance, I'm going to have to arrange something.

MR. BARHIGHT: My sense is that with machinery like fixed-wing aircraft and helicopters, that no one would be in much of a position to be able to try and disguise it one way or the other. I'm in agreement with

Mr. Nelson that certainly, depending upon the atmospheric conditions, and my own witness testified to, that there can be variations. Whether you would be able to discern whether what you were hearing was louder than normal or less loud than normal, because you wouldn't know what those variations were, that's just our risk, and I don't have a problem with that one way or the other.

MR. KOTROCO: If we don't pick a good day for the demonstration it could work against a party or for a party, depending on the atmospheric conditions of the day we set up for the --

MR. BARHIGHT: Right.

MR. KOTROCO: So I'm going to have to go back on multiple occasions. I don't mind doing that.

MR. BARHIGHT: Okay.

MR. KOTROCO: But as a matter of efficiency, it would be nice to be able to do as much of it in a day as I could. And also, I don't even know if he flew today or not. Does anybody know whether it did come and go this morning? I got there about three minutes after eight, so if he left before eight o'clock I didn't catch him. And

do you all want to be there? I mean, Dr. Carroll, are you offering up hot dogs and sodas over at your place?

DR. CARROLL: Yes, sir. You can come to our place any time. I'd love to have you do that.

MR. BARHIGHT: I'm sorry.

MR. KOTROCO: I mean, I was wanting to go on other people's properties, to make sure I could just stand on their properties and listen as it comes and goes.

MR. BARHIGHT: I guess one question I have --

MR. KOTROCO: Which is going to subject me to being with people who might say, This is really a rotten thing, this helicopter. There's a rascal up there flying around, and it might -- what I'm saying is, there might be some ex parte communication going on with some of the witnesses --

MR. BARHIGHT: Well, that I would object to.

MR. KOTROCO: -- which would be, I guess, incidental. I mean, it's not as if they're going to persuade me one way or the other by me being on their property and talking to them when I go out there.

MR. BARHIGHT: I don't think it makes sense for

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there to be any communication, other than to arrange the visit. And I would object if anyone tries to influence you in that ex parte way, and would strongly suggest to you that all the parties be admonished that that is not appropriate, it should not happen. And that you should feel free, if someone tries to make a comment to you, to indicate to them that's not appropriate, that the only purpose for you to be there is to witness the event, it's not to take additional testimony. We won't be there. I have no intention of running around after you, being the ex parte police, to make sure.

MR. KOTROCO: Okay.

MR. BARHIGHT: So I would hope that all the parties would agree that, in the spirit of what's intended, that there be no ex parte communications. I would hope that that would be the case.

MR. KOTROCO: Okay.

MR. NELSON: I have just a few observations to make. One is the main part of my gut says set it up, do it. I think we're creating problems for ourselves, because I think there are so many variables, that I could

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win that roll of the dice or Mr. Barhight could win that roll of the dice, and I don't think the case ought to turn on that.

And I think to get a fair observation, you're going to need a couple of things: One, you're going to need a clear day where the sound doesn't travel as well. You're going to need --

MR. BARHIGHT: Sound travels better.

MR. NELSON: You're going to need a cloudy day. You're going to need a day with leaves, a day without leaves on the trees. You know, you need all of those things. You're going to need an average helicopter.

So now we get into the whole -- it's not just the Martin Grass A109, you know. If this commissioner grants the special exception for helicopters, any helicopter can come in, you know. So now we have -- I'm going outside this record, but I remember a conversation with Mr. Newburger (phonetic), and I don't know if this is so or not: Well, this is the quietest helicopter in the world, it's an Italian $4 million something or other. I don't know if that's true or not. You never know with Mr.

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Newburger. But he said it. So then we're, all right, is this a quieter than normal helicopter? Is this a noisier than normal helicopter? If it's a quieter than normal, then observing this makes no difference.

And I just raise the question as to whether it makes sense for you to go out there. I mean, my client said sure, come on out and we'll take you around. I think it's unfair to both parties, and I don't think the case ought to turn on the quirkiness of the weather that day.

MR. BARHIGHT: It seems to me that you have both objective and subjective testimony in the record about the noise impacts. The noise impacts seem, to me, to be the most important question before you.

MR. KOTROCO: One man's hum is another man's chain saw.

MR. BARHIGHT: Exactly. And the person that gets to decide all that, fortunately or unfortunately, is you. And I think that you should feel free to gather the information that you think is appropriate. One of the questions I have, though, for the Court is, does it matter to you whether you see more than one craft? Do you want

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to see a fixed-wing? Do you want to see a helicopter? Do you want to see the helicopter that Mr. Grass uses? What is your pleasure? And we will do everything we can to expedite that.

MR. KOTROCO: Okay.

MR. BARHIGHT: And you might, because the record is still open, you can think about it and determine what your pleasure would be, once you've left the bench, and indicate that at a later date. And we do have time. We're not going to be filing the briefs until May 1.

MR. KOTROCO: I'm going to hear back from you for the next hearing date as to how we're going to handle that, so I'll give it some thought and see what I think is the best way. I really do -- and I have no idea whether I'm going to hear a loud day or a quiet day when I go out there.

MR. BARHIGHT: Well, there is not that much variation. And you can hear it on the loudest of days, and we don't think it's going to impact us negatively. So I don't think there is a roll of the dice, from our side. It doesn't much matter. It is what it is, and the

variation is not that significant.

MR. KOTROCO: Okay.

MR. BARHIGHT: I've heard it many times myself. So it's up to you to decide.

MR. KOTROCO: Does it fly over your house?

MR. BARHIGHT: Yes, it does, in fact. I live in Lutherville.

MR. KOTROCO: I know where you are.

MR. NELSON: Then I'd make this request: If you're going to do that, you also observe it when it's not there and not flying, and you walk through that bottom there by the stream.

MR. BARHIGHT: That's fine. Any observation --

DR. CARROLL: Did that this morning.

MR. KOTROCO: My car mat's all dirty from all that dirt down there.

MR. BARHIGHT: Any observations of the area that you deem appropriate, I think are appropriate as well.

MR. NELSON: Walk on the bottom of the Immelt-Carroll place.

MR. KOTROCO: I'll walk all through there. It's

a public park.

MR. NELSON: It is.

MR. KOTROCO: You all are very kind for letting people come back down there. I would be a little more suspicious about who comes down on my property. But I'm sure it's very lovely. And from what I could see -- I didn't walk all the way over to your place. I did walk onto Parcel 843 that we've been talking about, but only up to the corn field, a short distance, just to get a feel. And the loudest thing I heard were the birds making a lot of racket in there this morning.

But I really do want to, and I think it will help me in my decision to go out there and listen to the sounds. And whether we set up a demonstration or not, I'll let you all know.

MR. BARHIGHT: Okay.

MR. NELSON: Thank you, sir.

MR. KOTROCO: All right. We'll leave the record open until I hear back from you as to that latest exhibit, and we'll take it from there, okay?

MR. BARHIGHT: Thank you very much.

MR. KOTROCO: Thank you.

(The hearing was concluded at 3:50 p.m.)

* * * * *

STATE OF MARYLAND) ss
COUNTY OF BALTIMORE)

I, Susan E. Smith, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing is a true and accurate transcription of the proceedings indicated.

I certify that I am not of counsel, attorney, or relative of any party, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and affixed my notarial seal this day of April, 1998.

Susan E. Smith

Notary Public

My commission expires November 1, 1998.

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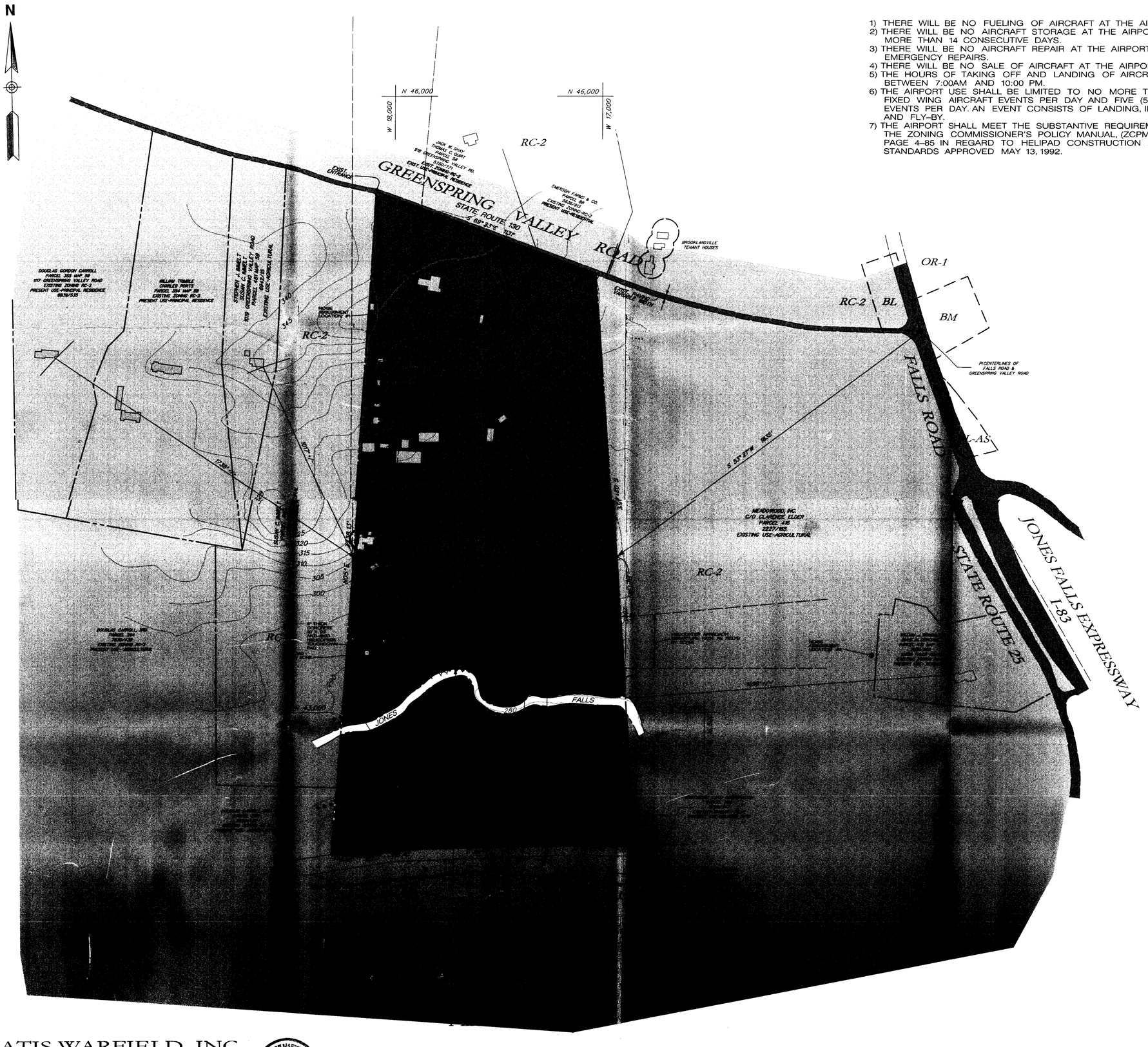
(1994).

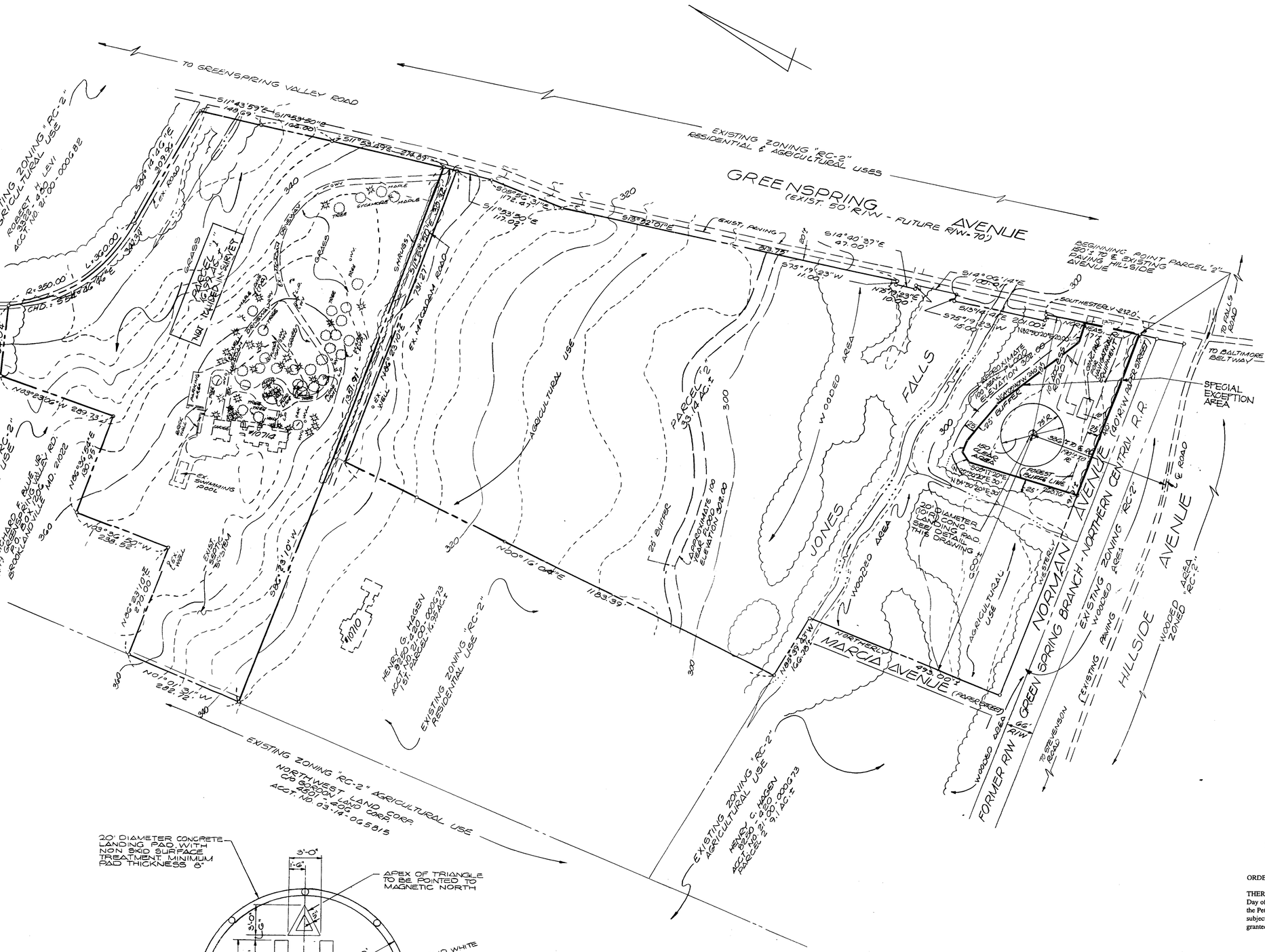
The Court has no power to reject a fact determination made by an administrative agency if there was evidence of the fact in the record before the agency, regardless of how conflicting or questionable the credibility of the source of the evidence. Rule 7-209; *Commissioner, Baltimore City Police Dep't. V. Cason,* 34 Md. App. 487, 368 A.2d 1067 (1977). The administrative agency's interpretations of law enjoy no presumption of correctness on review; a reviewing court is not constrained in reversing an administrative decision that is based entirely upon erroneous conclusion of law. Rule 7-209; *Montgomery County v. Buckman,* 333 Md. 516, 636 A.2d 448 (1994). Upon determination that the administrative agency applied the correct standards prescribed by a statute at issue, the agency's conclusion is tested by the substantial evidence test. Rule 7-209; *Montgomery County v. Buckman,* 333 Md. 516, 636 A.2d 448 (1994).

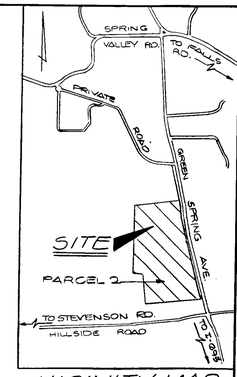
In the case *sub judice,* the Board, in rendering its decision wrote a 58 page opinion addressing each of the questions and ordered the request for special exception for an airport be denied.

Discussion

The Petitioner in the case *sub Judice* is Mr. Dale Lucas, as Personal Representative of the Estate of the original petitioner, Edgar Lucas, (the "decedent") who died in January, 1999.


N
GREENSPRING VALLEY ROAD
STATE ROUTE 130
N 46,000
W 18,000
N 46,000
W 17,000
RC-2
OR-1
BL
BM
RC-2
FALLS ROAD
STATE ROUTE 25
JONES FALLS EXPRESSWAY
I-83
JONES FALLS
DOUGLAS GORDON CARROLL
PARCEL 339 MAP 59
1117 GREENSPRING VALLEY ROAD
EXISTING ZONING RC-2
PRESENT USE-PRINCIPAL RESIDENCE
6838/533
WILLIAM TROBLE
CHARLES PORTS
PARCEL 334 MAP 59
EXISTING ZONING RC-2
PRESENT USE-PRINCIPAL RESIDENCE
STEPHEN J. MAELT
SUSAN C. MAELT
1019 GREENSPRING VALLEY RD.
PARCEL 167 MAP 59
6242/15
EXISTING USE-AGRICULTURAL
JACK W. SHAY
THOMAS C. GURT
PARCEL 14
3360/71
EXIST: DIST. AGRIC-RC-2
PRESENT USE-PRINCIPAL RESIDENCE
EMERSON TAPKE & CO.
PARCEL 69
PARCEL 340
EXISTING ZONING RC-2
PRESENT USE-RESIDENTIAL
BROOKLANDVILLE TENANT HOUSES
EXIST. ENTRANCE
PROP. ENTRANCE LOCATION
MEADOWOOD, INC.
C/O C. LAWRENCE ELDER
PARCEL 135
2227/163
EXISTING USE-AGRICULTURAL
PROPERTY LINE OF
PROPOSED SPECIAL EXCEPTION AREA

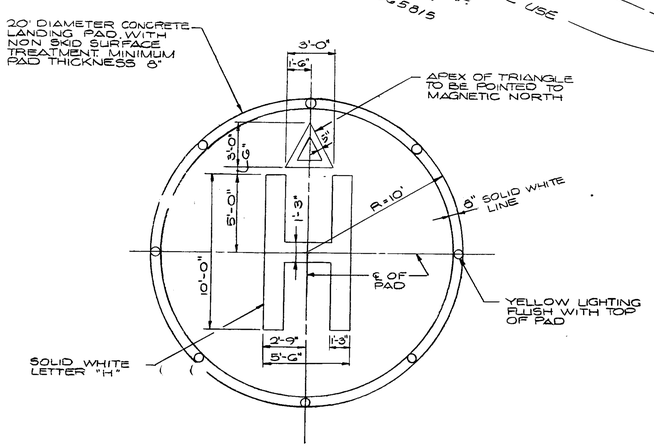




VICINITY MAP

GENERAL NOTES

1. AREA OF PROPERTY:
   PARCEL 2 = 33.14 AC. ±
2. EXISTING USE OF PROPERTY
   PARCEL 2 = AGRICULTURAL
3. EXISTING ZONING OF PROPERTY "RC-2"
4. 100 YEAR FLOOD PLAIN & 25' BUFFER AREA WILL REMAIN UNDISTURBED.
5. PARCEL 2 - AGRICULTURAL USE HAS A PRIVATE WELL.
6. PROPERTY IS WITHIN THE JONES FALLS DRAINAGE AREA.
7. PETITIONER IS REQUESTING A SPECIAL EXCEPTION FOR PARCEL 2 TO ALLOW THE USE OF A PORTION OF THE PROPERTY FOR A PRIVATE AIRPORT (HELICOPTER LANDING PAD).
8. ACCESS TO THE PAD SITE WILL BE FROM GREEN SPRING AVENUE.
9. EXISTING WOODED AREAS WILL REMAIN UNDISTURBED.
10. 100 YEAR FLOOD PLAIN & 25' BUFFER AREA WILL REMAIN UNDISTURBED.



LANDING PAD PLAN
SCALE: 1/4"=1'-0"

SITE INFORMATION

1. ELECTION DISTRICT NO. 3
2. COUNCILMANIC DISTRICT NO. 3
3. CENSUS TRACT 4038.01
4. DEED REF.
   PARCEL 2 - 11634-653
5. TAX ACCT. NO.
   PARCEL 2 - 21-00-000672

PREVIOUS ZONING CASE

PETITION NO. 87-201 SPH

SPECIAL HEARING TO REQUEST APPROVAL TO SUBDIVIDE EXISTING

PROPERTY ZONED RC-2, PURSUANT TO LOTS SEPARATELY DESCRIBED

IN INDIVIDUAL DEEDS OR WITHIN A PARTICULAR DEED.

ORDER:

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 26th. Day of May, 1987, that the transfer of density of property zoned R.C. 2 be approved and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restriction which is a condition precedent to the relief herein granted:

1. The revised site plan, as submitted on May 21, 1987 and as agreed upon by all parties hereto, shall be adopted as the final subdivision plan.

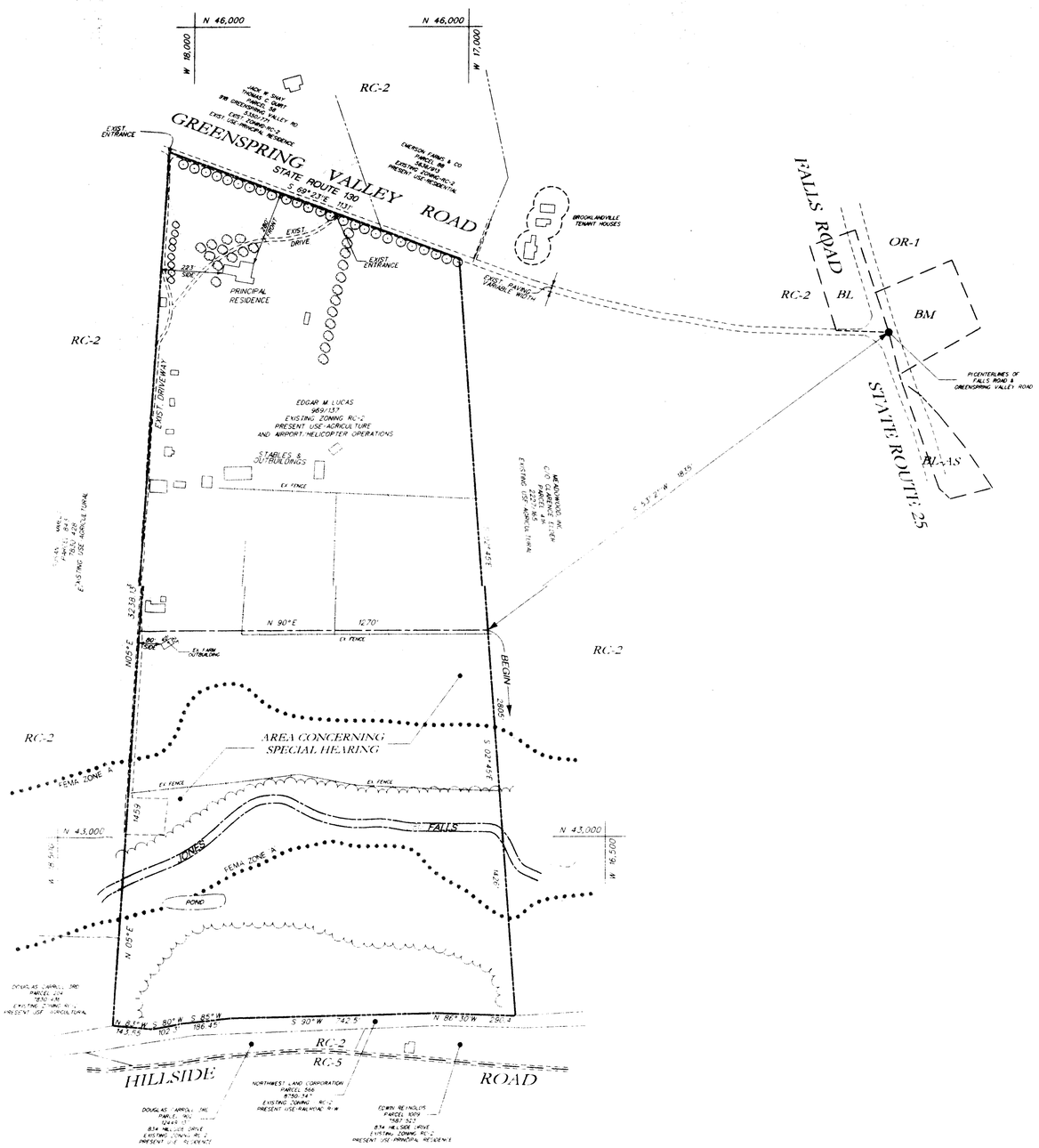
Signed: Arnold Jablon
Zoning Commissioner of
Baltimore County

DATE	REVISION	NO
11/11/97	REV. TITLE BLOCK	1

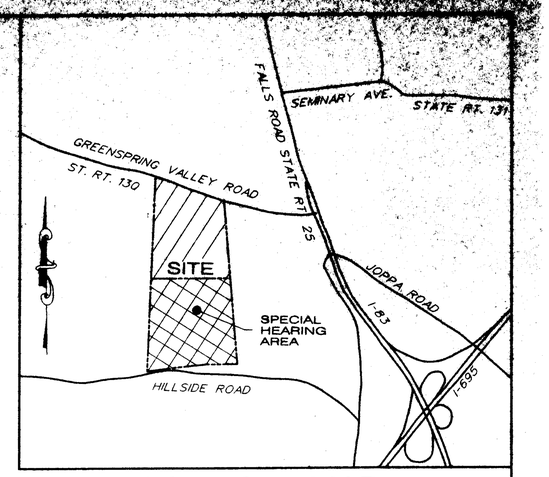
KCI TECHNOLOGIES INC.
ENGINEERS • PLANNERS • SURVEYORS
10 NORTH PARK DRIVE
HUNT VALLEY, MARYLAND 21030 (410) 316-7800

PLAT TO ACCOPANY PETITION
FOR
SPECIAL EXCEPTION
VICINITY
HILLSIDE AVE. & GREENSPRING AVE.
BALTIMORE CO. MARYLAND

DESIGN BY: RLS	SCALE	DATE	SHEET NUMBER	JOB NUMBER
DRAWN BY: JJK	AS SHOWN	7-25-1997	1 OF 1	0197000P
CHECKED BY: RLS				



PLAN
SCALE: 1" = 200'



LOCATION MAP
SCALE 1" = 1,000'

SITE DATA

GROSS-NET AREA OF PROPERTY: 87 ACRES +/- 3,789,720 SF (INCLUDES PORTION OF THE RIGHT-OF-WAY FOR GREENSPRING VALLEY ROAD)
AREA CONCERNING SPECIAL HEARING: 45 ACRES +/-
EXISTING ZONING: RC-2
EXISTING USE: AGRICULTURAL(THOROUGHBRED HORSE FARM) AND AIRPORT & HELICOPTER OPERATIONS
PROPOSED USE: SAME
TAX ACCOUNT # 0312074275
DEED REFERENCE 969/137
STORM WATER MANAGEMENT
N/A NO DEVELOPMENT OR GRADING PROPOSED
FOREST CONSERVATION:
N/A NO DEVELOPMENT OR GRADING PROPOSED
TAX MAP 60 PARCEL 793
PRIOR PERMITS: UNKNOWN
PRIOR ZONING CASES: NONE
DRC ACTIONS: UNKNOWN
SITE IS LOCATED IN THE GREENSPRING VALLEY NATIONAL REGISTER HISTORIC DISTRICT
PORTIONS OF THIS PROPERTY LIE WITHIN ZONE 'A' (100 YEAR FLOODPLAIN) AS DEPICTED ON THE FLOOD INSURANCE RATE MAP 240010 0245E EFFECTIVE DATE NOV. 17, 1993
THIS PROPERTY IS SERVED BY PRIVATE WATER AND SEWAGE DISPOSAL SYSTEMS.
NO PUBLIC FIRE HYDRANTS ADJACENT TO SITE.
PORTIONS OF THIS PROPERTY ARE SUBJECT TO AN AGRICULTURAL PRESERVATION EASEMENT DESCRIBED IN LIBER 8891 FOLIO 798
SIGNAGE: NO SIGNAGE IS PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNAGE SHALL CONFORM TO SECTION 450 BCZR AND ALL ZONING SIGN POLICIES.

PARKING TABULATION

NOT SPECIFICALLY ADDRESSED IN BCZR PARKING FOR PASSENGER VEHICLES IS AVAILABLE ON THE OVERALL PROPERTY AND WITHIN THE AREA DESIGNATED FOR AIRPORT/HELICOPTER OPERATIONS.

SPECIAL NOTES

1) THIS PLAT WAS PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED FOR USE IN CONVEYANCE OF LAND.
2) THE PROPERTY OUTLINE SHOWN HEREON WAS COMPILED FROM DEEDS, TAX RECORDS, AND AVAILABLE PUBLIC INFORMATION AND THEREFORE DOES NOT REPRESENT A BOUNDARY SURVEY
3) THE TOPOGRAPHIC INFORMATION SHOWN WAS COMPILED FROM AVAILABLE PUBLIC INFORMATION. THE ACCURACY OR COMPLETENESS OF THIS INFORMATION IS NOT GUARANTEED.

ALL KNOWN STRUCTURES AND USES ARE SHOWN WITHIN 200 FEET OF THE SITE

294

PLAT TO ACCOMPANY ZONING PETITION FOR SPECIAL HEARING

HELMORE FARM

901 GREENSPRING VALLEY ROAD

98-294-SPHX

NEWTON W. REED, II, INC.

A SPECIAL HEARING IS REQUESTED TO CONFIRM THE LEGAL NON-CONFORMING USE FOR AN AIRPORT AND/OR HELICOPTER

LEGAL OWNER / PETITIONER
EDGAR M. LUCAS