

IN THE MATTER OF
THE APPLICATION OF
DOGWOOD RESOURCES, LLC. -LEGAL
OWNER; ACTION PAINTBALL, INC. - C.P.
FOR SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE N/S DOGWOOD ROAD,
610' W OF CENTERLINE RIDGE ROAD
(7720 DOGWOOD ROAD)
2ND ELECTION DISTRICT
PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
[Zoning Case No. 00-562-X]

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
* No. 03-C-04-1173
*

* * * * *

**ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand by Order of Judge Ruth A. Jakubowski, Circuit Court for Baltimore County, filed August 30, 2004, in which Judge Jakubowski found as follows:

.....this Court finds that the DZC and Baltimore County Board of Appeals erroneously held that a paintball facility fell within the purview of a shooting range as a special exception under the R.C. 6 Zone, as a matter of law. This Court additionally finds that a paintball facility more accurately falls within the BCZR category of a commercial recreation facility. Accordingly, the Court shall **REVERSE AND REMAND** the decision of the County Board of Appeals for entry of an order in accordance with this Court's ruling. [Memorandum Opinion, pp 16 and 17]

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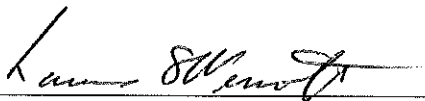
....it is thereupon this 27th day of August, 2004, by the Circuit Court for Baltimore County, Maryland,

ORDERED, that the decision of the County Board of Appeals of Baltimore County is hereby **REVERSED AND REMANDED** for entry of an order in accordance with this ruling.

IT IS THEREFORE this 20th day of October, 2004, by the County Board of Appeals of Baltimore County

ORDERED that, in accordance with the Ruling and Remand Order of the Honorable Ruth A. Jakubowski, Judge, Circuit Court for Baltimore County, filed August 30, 2004, the Petition for Special Hearing to designate the paintball facility located on the north side of Dogwood Road, just west of its intersection with Ridge Road, as a "shooting range" as that term is contained within § 1A02B.26 of the *Baltimore County Zoning Regulations* (BCZR) be and is hereby **DENIED**; and that a paintball facility more accurately falls within the BCZR category of a commercial recreation facility.

¹ **COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott

¹¹ Charles L. Marks and Melissa Moyer Adams, the 2nd and 3rd Board of Appeals members comprising the panel when this matter was heard by the Board, are no longer members of the Board of Appeals. This decision is entered by Order of the Circuit Court for Baltimore County by the remaining panel member and Chairman of the Board of Appeals, Lawrence S. Wescott.

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

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
Old Courthouse, Room 47
400 Washington Avenue,
Towson, MD 21204

IN THE MATTER OF THE APPLICATION
OF Dogwood Resources, LLC FOR
A SPECIAL EXCEPTION for property
located on the N/S of Dogwood Rd,
610' W of the c/line of Ridge Rd
(7720 Dogwood Road)
2nd Election District,
2nd Councilmanic District

Case No. 00-562-X before the
County Board of Appeals of
Baltimore County

CIRCUIT COURT

OF MARYLAND FOR

BALTIMORE COUNTY

Case No: 03-C-04-1173

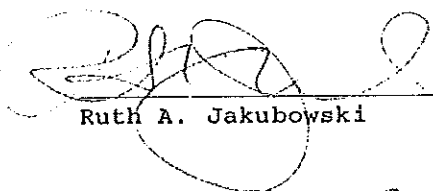
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BALTIMORE COUNTY
BOARD OF APPEALS

ORDER

This matter came before the Court, for the judicial review of the
decision of the County Board of Appeals of Baltimore County. Based
upon the Court's review of the record in this case, a review of the
applicable law, a consideration of the arguments of counsel at the
hearing, and for the reasons set forth in the Memorandum Opinion filed
concurrently herewith, it is thereupon this 27th day of August, 2004, by
the Circuit Court for Baltimore County, Maryland,

ORDERED, that the decision of the County Board of Appeals of
Baltimore County is hereby REVERSED and REMANDED for entry of an order
in accordance with this ruling.

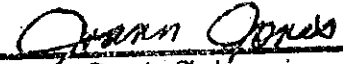

Ruth A. Jakubowski

Judge

FILED AUG 30 2004

True Copy Test
SUZANNE MENSCH, Clerk

Per


Deputy Clerk

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

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
Old Courthouse, Room 47
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IN THE MATTER OF THE APPLICATION
OF Dogwood Resources, LLC FOR
A SPECIAL EXCEPTION for property
located on the N/S of Dogwood Rd,
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2nd Election District,
2nd Councilmanic District

Case No. 00-562-X before the
County Board of Appeals of
Baltimore County

* * * * *

CIRCUIT COURT
OF MARYLAND FOR
BALTIMORE COUNTY

Case No:03-C-04-1173

RECEIVED
AUG 31 2004

BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OPINION

This matter came before the Court on an appeal from a decision of the County Board of Appeals of Baltimore County in Case No. 00-562-X. On January 9, 2004, the County Board of Appeals entered judgment in favor of Petitioner Dogwood Resources, LLC (Dogwood) and Action Paintball, Inc. (Action Paintball). The Board ruled that a paintball facility fell within the Rural Conservation and Residential Zone (R.C. 6 Zone) category "shooting range" and was therefore eligible for use in the zone. For the reasons set forth herein, the

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judgment of the County Board of Appeals shall be **REVERSED AND REMANDED.** ,

Background

Dogwood Resources, legal owner, and Action Paintball, contract purchaser, originally filed a Petition for Special Exception to operate a paintball shooting range on property comprising 108.94 acres of land located on the north side of Dogwood Road, just west of the Ridge Road intersection in the rural Patapsco-Granite area of Baltimore County. This is the first Baltimore County zoning case involving paintball facilities. This controversy involves a question of legal interpretation and arises because the Baltimore County Zoning Regulations (BCZR) do not include a provision in the BCZR covering the definition of "paintball facility." The Deputy Zoning Commissioner (DZC) and Board ruling ultimately hinged on whether, as described in the record, a paintball facility fits within an existing zone use category. Each identified BCZR includes enumerated or itemized lists of uses permitted by right or by special exception and unless a use is affirmatively listed, its use is prohibited. BCZR 102.1; *Kowalski v. Lamar*, 25 Mde. App. 493 (1975). The hearing before the Baltimore County Board of Appeals and this court involves a question of legal interpretation.

While Dogwood Resources was in the process of applying for a zoning permit in R.C. 6 (Rural Conservation and Residential) Zone, which would, if approved, permit the paintball facility within the "shooting range" special exception, Respondent People's Counsel for Baltimore County (People's Counsel) petitioned the DZC in opposition.

People's Counsel, whose office's responsibility is to defend county comprehensive zoning maps in the public interest, believed that paintball facilities fit not within the "shooting range" definition but within "commercial recreation facilities" or "commercial recreation enterprises" therefore prohibiting a paintball facility within the R.C. 6 zone. Baltimore County Charter Sec. 524.1; *People's Counsel v. Maryland Marine Mfg. Co.*, 316 Md. 683 (1989).

On April 30, 2003 the DZC held that a paintball facility fell within the R.C. 6 "shooting range" category and therefore permitted Dogwood Resources to apply for a special exception permit. BCZR 1A07.3.B.8. This DZC ruling was timely appealed to the Baltimore County Board of Appeals. Finally, on January 9, 2004, after hearing testimony from each party and considering the legal definitions and applicable zoning law, the County Board of Appeals approved the DZC designation of a paintball

facility within the "shooting range" category special exception in the R.C. 6 Zone.

People's Counsel noted a timely appeal. The following question was presented for this Court's review:

- I. Whether a paintball facility is a shooting range or, rather, a commercial recreation enterprise, commercial recreation facility (or none of the above)?
- II. Whether the County Board of Appeals used defective and incomplete reasoning to support its legal conclusion that a paintball facility is a shooting range?

Based upon this Court's consideration of the entire record of the proceedings below, and its review of applicable law, this Court answers the above questions as follows: A paintball facility is a commercial recreation facility and errors of law and reasoning were used to support the County Board of Appeals' conclusion. Accordingly, the Court shall **REVERSE AND REMAND** the decision of the Baltimore County Board of Appeals for entry of an order in accordance with this Court's ruling.

Scope of Review

A final decision of a county zoning board must be upheld on review if it is not premised upon an error of law

and if the agency's conclusions reasonably may be based on the facts proven. The reviewing court cannot substitute its own judgment for that of the zoning board and must accept the zoning board's factual conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994).

For purposes of judicial review, substantial evidence means more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion in such a situation, the issue to be considered is "fairly debatable: and the reviewing court may not substitute its judgment for that of the agency. *Realty Improvement Ass'n v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714, 661 A.2d 182 (1995).

Discussion

- I. Whether a paintball facility is a shooting range or, rather, a commercial recreation enterprise, commercial recreation facility (or none of the above)?

This is a case of first impression. It will therefore, if approved, set the standard for later cases and apply to various Resource Conservation Zones which allow "shooting ranges." These Resource Conservation Zones

cover a broad swath of the county's land area and have attracted the attention of the Valley's Planning Council and the Northern County Coalition. James F. Jett, 8729 Dogwood Road, No. 04-244-SPA.

The BCZR's do not define nor identify "paintball facilities" as a recognized use within any zone. As mentioned, this absence is crucial because each zone enumerates specific permitted uses by right or by special exception. BCZR 102.1; *Kowalski v. Lamar*, 25 Md. App. 493 (1975).

Dogwood Resources assert that the R.C. 6 "shooting range" use category permits the use of the proposed paintball facility on the subject property. Since "shooting range" is not defined within the zoning regulations, the Dogwood Resource argument is premised solely on a provision within the BCZR that requires the use of Webster's Third New International Dictionary definitions in instances where definitions are not contained within the regulations.

Significantly, the BCZR "shooting range" category includes an enumerated scope of a "shooting range" special exception use that states:

Shooting ranges, including archery, pistol, skeet, trap, and target (small-bore rifle only) except that any such use existing at the time of

the effective date of Bill 73-00 may continue at the same level, provided that within one year of the effective date, the owner shall file for a use permit under Section 500.4, and turkey shoots.

With no zone definition listed, the Dogwood Resource argument is based on the presumption that the dictionary definition of "shooting range" falls more within the above scope than within the commercial facility use categories referenced in the BCZR.

In opposition, People's Counsel contends that a paintball facility falls more within the zoning use category of a "commercial recreation enterprise" or "commercial recreation facility."

Unlike "shooting range," the BCZR was amended in 1994 to provide a specific definition for commercial recreational facilities. People's Counsel contends that plain view statutory interpretation combined with this 1994 amended BCZR definition of a commercial recreational facility plainly prohibits a paintball facility from the BCZR "shooting range" category and more appropriately places the facility within a commercial recreation enterprise or commercial recreation facility category.

As mentioned, this reviewing court cannot substitute its own judgment for that of the zoning board and must accept factual conclusions if they are based on substantial

evidence and if reasoning minds could reach the same conclusions on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698, 635 A.2d 30 (1994). Even close, ambiguous, or issues involving an agency's particular expertise, requires a reviewing court to respect an agency's holding. However, no such deference is given to an agency decision on pure questions of law beyond the weight merited by the presumptive force of the reasoning employed. *Friends of the Ridge v. Baltimore Gas & Electric Co.*, 120 Md. App. At 466.

Therefore, as part of its review, a reviewing court must determine whether an administrative agency made an error of law. *Baltimore Lutheran High School v. Employment Security Administration*, 302 Md. 649, 662, 449 A.2d 701 (1985). An agency decision is owed no deference when an error of law justifies a decision. *Belvoir Farms v. North* 355 Md. 259, 267 (1999). In particular, when a statute is unambiguous, administrative actions are not to be given weight if in error of law. This is because construction of law by an agency cannot override the plain meaning of a statute nor extend its provisions beyond the clear import of language employed. *Macke Co. v. Comptroller* 302 Md. 18 (1984) (citing *St. Dept. of A.&T. v. Greyhound Corp.*, 271 Md. 575, 589 (1974)). Statutory words cannot be isolated

from its environment because plain language is governed by the context in which it appears thus necessitating that statutory interpretation advances applicable legislative policy. *Baltimore County Coalition Against Unfair Taxes v. Baltimore County*, 321 Md. 184, 203-04 (1990) (courts may consider both the literal or usual meaning of statutory language, but also the meaning, effect, and context in light of the setting, objectives, and purpose of an enactment).

The BZC and Baltimore County Board of Appeals decisions in this case are not based on substantial evidence and constitute clear errors of law. The detailed testimony concerning the paintball facility combined with the statutory BCZR clearly show that the "shooting range" category does not apply to paintball facilities literally nor in context. In fact, the presence of "commercial recreational facility" and "commercial recreation enterprise" categories reinforces this conclusion.

The proposed paintball facility is an outdoor operation, with a 300 ft. marked buffer around the perimeter, an office trailer, vending operation, portable bathroom facilities, a practice area, and accessory parking lot. Paintball games involve strategy, tactics, and multiple players simultaneously in motion on a marked

playing field. In addition to shooting at other players on the move, this activity combines running, coordination, agility, and the sort of skills involved in many competitive sports and games. The proposed business operation itself is a commercial operation in which Action Paintball would charge a fee for the use of the area, services, and equipment. The equipment involves protective gear, paintballs, and paintball guns which propel these paintballs consisting of dyed vitamin E gelatin. With these instruments, teams align on opposing sides of a field, bounded by flexible nylon ropes five feet of the ground and hung with orange ribbons, and engage in various gaming activities such as "capture the flag" and "elimination games." A referee eliminates players who are marked with pellets and enforces guidelines, such as staying within the boundaries and maintaining at least ten feet in shooting distance between players. The approximate dimensions of the field is 100 yards by 200 yards and half of the players are teenagers and the other half are corporations engaged in a team building activity.

The BCZR definition for "commercial recreational facilities" is as follows:

Facilities whose principal purpose is to provide space and equipment for non-professional athletic activities. A commercial recreational facility

includes, but is not limited to a health or athletic club; baseball-batting range or cage; golf-driving range; putting green; miniature golf; athletic field; swimming pool; skating rink or course; basketball, racquetball, tennis or squash court; bowling alley; archery range or similar facility or any combination of the above. For the purpose of these regulations, a commercial recreational facility shall not include a rifle, pistol, skeet or trap range, go-cart course, amusement park or similar use. Bill 176-94.

In 1995, this definition was amended when "health or athletic clubs" and "bowling alleys" were deleted because of their capital intensive nature.

This Court finds that the Baltimore County Board of Appeals decision was unsupported by the evidence presented in any substantial way and was an error of law. The Board felt a paintball facility was "much more akin" to the pistol, skeet and trap range excluded from a commercial recreation facility as noted in the definition and more similar to a shooting range permitted in Z.C. 6 zone. Relevant Maryland zoning cases support the need to refrain from these types of statutory misconstructions and failures to follow legislative intent. See *Smith v. Miller*, 249 Md. 390 (1968); *St. Clair v. Colonial Pipeline*, 235 Md. 578 (1964); *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209 (2002).

First, a paintball facility is not a permitted use within the R.C. 6 Zone. Despite the lack of any listed definition of "shooting range," the word "including" in the "shooting range" elaboration, taken in context of the entire statute clearly shows that paintball does not fall within the purview of a shooting range. The word "including" may be used as an illustration, enlargement, or a limitation of a word or phrase depending on contextual issues involved. *Housing Authority v. Bennett*, 359 Md. 356, 371 (2000). Within the enumerated permitted uses of a shooting range the word "including" is used to illustrate types of ranges. The specific listing of shooting ranges - archery, pistol, skeet, trap, target (small-bore rifle), and turkey shoot - strengthens this argument. This comprehensive list includes all common types of ranges. The existence of the list implies the intent to confine and not enlarge the meaning of shooting ranges beyond the scope of these listed activities. It would defeat the purpose of drawing zoning boundaries to leave the meaning of shooting range open-ended.

It follows that any use proposed as a shooting range must fit within the pattern of the listed examples. A paintball field does not fit within the scope of these examples. In contrast to the individualized skill

activities associated with a shooting range and target exercises, paintball is an interactive team game played on an athletic field. While it may involve shooting at other players, and every player is arguably a target, the context, purpose, and character of the activity is fundamentally different from the listed BCZR shooting range examples. Additionally, the uses within R.C. 6 Zones connote rural and relatively low intensity activities. Unlike the high intensity of paintball, archery, pistol, skeet, trap, and rifle ranges, and turkey shoots, tend to be low intensity activities.

A paintball facility does, on the other hand, fit well within the BCZR 101 definition of a "commercial recreation facility." The first sentence of its listed definition states that this category has a principal purpose of providing space and equipment for non-professional athletic activities. First, it is clear that a paintball operation is a business and therefore commercial. Second, this prospective paintball enterprise is a facility which provides space and equipment for the non-professional athletic or recreational activity of paintballing.

All of the evidence and testimony presented to the DZC fit within the above BCZR 101 definition of a commercial recreational facility. The statute and provided definitions

and scopes in light of the undisputed facts clearly show that a paintball facility is a recreational facility. Paintball involves teams of athletes, primarily amateurs, playing games on several playing fields.

For similar reasons, a paintball facility may also be characterized as a "commercial recreation enterprise" as listed in the BCZR. Paintball is commercial, involves recreation, and is an enterprising activity. Significantly, courts in other jurisdictions support this assertion. A paintball facility has been described as a "game" in which participants engage in "mock combat, firing non-toxic paint pellets at each other with air-powered rifles." *Matter of Paintball Sports v. Pierpont*, 727 N.Y.S. 2d 466 (N.Y. App. 2001) (a reconverted tennis and racquetball facility including a reception area for registering participants and the sale of equipment and supplies).

For the aforementioned reasons, it was an error in law for DZC and Baltimore County Board of Appeals do conclude that a paintball facility clearly falls within the BCZR "shooting range" category considering the required plain meaning contextual interpretation and prescribed activities listed in a shooting range in the BCZR.

II. Whether the County Board of Appeals used defective and incomplete reasoning to support its legal conclusion that a paintball facility is a shooting range?

The DZC and Baltimore County Board of Appeals conclude that a paintball facility is more akin to a pistol, skeet or trap range than a miniature golf range, putting green, baseball batting cage and other listed recreational facility activities. As referenced above, the DZC and Baltimore County Board of Appeals do not support their decisions with substantial evidence and ignore the primary elements of the BCZR statutory definition of a commercial recreation facility.

The opinions omit any recognition and discussion of this critical definition which states that commercial recreational facilities provide space and equipment for non-professional athletic activity. The evidence and context clearly shows that a paintball facility falls within this definition and is more like a recreational facility than a shooting range. Paintball uses boundaries like an athletic field and court and involves team games played with gear comparable to other games, such as lacrosse. The only novel aspect of the game relative to a shooting range is that shots are taken with air compressed paintball guns rather than lacrosse sticks, baseball bats,

hockey sticks, and the like. However, the fact that shooting is involved does not make it any less a recreational activity. Many sports and games involve some form of shooting, whether with hands, feet, or equipment, such as basketball, soccer, baseball, hockey, lacrosse, tennis, cricket, rugby, and polo.

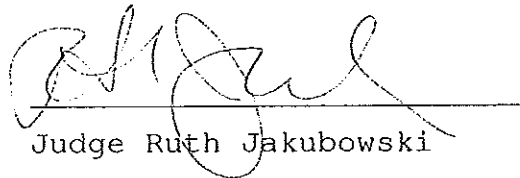
Ultimately, the County Board of Appeals failed to engage in the proper analysis required. They failed to apply the plain meaning rule. They failed to assure that substantial evidence supported their decision. Additionally, the Baltimore County Board of Appeals felt a special exception would guarantee the community a public hearing and a right to be heard, thus alleviating negative impact in the zone. This Court does not accept this reasoning and finds that the County Board of Appeals made an error of law in its interpretation of which category a paintball facility falls into.

For the reasons stated in the discussion of questions one and two, this Court finds that the DZC and Baltimore County Board of Appeals erroneously held that a paintball facility fell within the purview of a shooting range as a special exception under the R.C. 6 Zone, as a matter of law. This Court additionally finds that a paintball facility more accurately falls within the BCZR category of

a commercial recreation facility. Accordingly, the Court shall **REVERSE AND REMAND** the decision of the County Board of Appeals for entry of an order in accordance with this Court's ruling.

Conclusion

For the reasons set forth herein, the decision of the Baltimore County Board of Appeals shall be **Reversed AND REMANDED** for entry of an order in accordance with this Court's ruling.


Judge Ruth Jakubowski

Date: 8/27/04

Copies to be
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True Copy Test
SUZANNE MENGSH, Clerk
Per 
Deputy Clerk

IN THE MATTER OF
 THE APPLICATION OF
DOGWOOD RESOURCES, LLC -LEGAL
 OWNER; ACTION PAINTBALL, INC. – C.P.
 FOR SPECIAL EXCEPTION ON PROPERTY
 LOCATED ON THE N/S DOGWOOD ROAD,
 610' W OF CENTERLINE RIDGE ROAD
 (7720 DOGWOOD ROAD)
 2ND ELECTION DISTRICT
 2ND COUNCILMANIC DISTRICT

* BEFORE THE
 * COUNTY BOARD OF APPEALS
 * OF
 * BALTIMORE COUNTY
 * Case No. 00-562-X
 * **(D.Z.C.'s Order on Remand)**
 * * * *

* * * *

OPINION

Background

Petitioners, Dogwood Resources, LLC, legal owner, and Action Paintball, Inc., contract purchaser, originally filed a Petition for Special Exception to operate a paintball shooting range on property comprising 108.94 acres of land located on the north side of Dogwood Road, just west of its intersection with Ridge Road. This Petition was filed on June 30, 2000 and a hearing was held before the Deputy Zoning Commissioner regarding the requested approval. There were no protestants or others in attendance at the original hearing, and the Deputy Zoning Commissioner granted the Petitioners' request, subject to certain conditions and restrictions. His Order was dated August 30, 2000.

After the issuance of the Deputy Zoning Commissioner's Order, an appeal was taken to the Baltimore County Board of Appeals by the People's Counsel for Baltimore County. Counsel for the Petitioners and the People's Counsel agreed that the matter should be remanded back to the Deputy Zoning Commissioner for further consideration of this issue based upon the fact that the property had been rezoned from R.C. 3 to R.C. 6. A hearing was held on the matter before the Deputy Zoning Commissioner on February 28, 2003. C. William Clark, attorney for the Petitioners, and Peter Max Zimmerman, People's Counsel for Baltimore County, presented oral argument. Both sides submitted Briefs to the Deputy Zoning Commissioner, and a decision was

rendered by Deputy Zoning Commissioner Kotroco on April 30, 2003 that characterized the operation as a “shooting range” and not a “commercial recreational facility.”

An appeal was taken to this Board by the People’s Counsel and a hearing was held on November 18, 2003. Petitioner was represented once again by C. William Clark, Esquire, and People’s Counsel, Peter Max Zimmerman, appeared in support of his appeal.

Public deliberation took place on December 16, 2003.

The hearing before the Board involved a question of legal interpretation and did not involve the issues with respect to a special exception. Mr. Greg Maliszewski, the operator of the paintball facility, was the sole witness at the hearing. He testified that the property in question consists of approximately 108.94 acres of land which currently is zoned R.C. 6. The property is located on the north side of Dogwood Road just west of its intersection with Ridge Road. It is a large, unimproved parcel of land. The owner leases the land and is currently in the third year of a 5-year lease. The site plan shows a 300-foot buffer around the perimeter of the property, which is established to prevent noise as well as paintballs from traveling into adjacent properties. The Petitioner currently has a practice field or range of 20 feet by 35 feet where individuals can test their equipment. The area at Dogwood Road has three fields of about 100 yards by 200 yards on which participants can play the game. Individuals are required to wear protective headgear with face guard; other clothing is optional. Each player possesses a gun which shoots a ball made of gelatinous paint. Teams are set up on opposite sides of the field, and the object is to “kill” all of the individuals on the other team. This is done by shooting them with the paintball guns. In some games, there is a flag at each team’s base, which can be captured, such as the game of “capture the flag.” The guns are like BB guns using CO₂.

The operator of the Dogwood Road facility has a small office where individuals can purchase paintballs and sodas, and lease safety equipment if necessary. Approximately 50

percent of the clientele are teenagers; however, some corporate groups participate in the games in order to build cooperation and teamwork.

A paintball fired from a gun may travel approximately 290 feet. The fields are in the center of the property so that the likelihood of paintballs leaving the property appears to be negligible.

The Board received two letters from interested parties. The first from the Maryland Line Area Association signed by Dr. Richard W. McQuaid, President, indicated that the association felt that the proposed use was not a shooting range but rather a commercial recreational facility, which is not permitted on R.C. 2, R.C. 3, R.C. 4 and R.C. 6 zoned land except by special exception. The second letter was from The Valleys Planning Council which also took the position that the proposed operation was a commercial recreational facility which was not allowed in R.C. zones.

Legal Analysis

This is the first Baltimore County zoning case involving paintball facilities. There is no provision in the Baltimore County Zoning Regulation (BCZR) covering the definition of “paintball facility.” The question before the Board is whether or not the paintball facility is a “shooting range” or a “commercial recreational facility.”

BCZR § 101 does not include a definition for “shooting range.” Bill No. 73-00, which created the R.C. 6 zone, included in BCZR § 1A07.3B.8 set forth the special exception use:

Shooting ranges, including archery, pistol, skeet, trap, and target (small bore rifle only) except that any such use existing at the time of the effective date of Bill 73-00 may continue at the same level, provided that within one year of the effective date, the owner shall file for a use permit under section 500.4, and turkey shoots.

BCZR § 101 also has no statutory definition for “commercial recreation enterprise.” The 1955 B.M. zone listing in BCZR 233.2 contains this definition:

Commercial recreation enterprises, including dance halls, skating rinks, and others which, in the judgement of the zoning commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries, and penny arcades.

In 1994, in the Honeygo area legislation, the County Council added to BCZR 101 a definition for “commercial recreational facilities”:

Commercial recreational facilities: Facilities whose principal purpose is to provide space and equipment for nonprofessional athletic activities. A commercial recreational facility includes, but is not limited to, a health or athletic club; baseball batting range or cage; golf driving range; putting green; miniature golf; athletic fields; swimming pool; skating rink or course; basketball, racquetball, tennis or squash courts; bowling alley; archery range or similar facility or any combination of the above. For the purpose of these regulations, a commercial recreational facility shall not include a rifle, pistol, skeet or trap range, go-cart course, amusement park, or similar use. Bill 176-94

Testimony before the Board indicated that paintball facilities may be indoors or outdoors.

The proposed facility in question is an outdoor facility with a 300-foot marked buffer around the perimeter, an office trailer and an accessory parking lot.

As stated above, the participants fire guns similar to air rifles which hold various numbers of the paintball missiles. The balls are made of gelatin and when they strike an individual, they dissolve, marking the individual with the paint from the paintball missile.

The *Baltimore County Zoning Regulations* do not cover paintball facilities. It may be that the County Council will wish to review this matter and establish regulations for such facilities in the future. However, today it is the duty of the Board to make a determination as to whether or not the paintball facility is a commercial recreational facility or a shooting range. The definition of commercial recreational facility in BCZR 101 excludes “a rifle, pistol, skeet or trap range, go-cart course, amusement park, or similar use.” [Emphasis added.] It appears to this Board that this paintball facility is a similar use to a pistol, skeet or trap range. The outdoor game is played on large wooded fields. The participants each have a gun which is powered by CO₂ and fires from a magazine of paintballs. The Board feels that the paintball facility is much

more akin to a pistol, skeet or trap range than a miniature golf range, putting green, baseball batting cage or golf driving range, etc.

The Board also feels, as did the Deputy Zoning Commissioner, that characterizing the paintball facility in a way that requires special exception guarantees the community in which it is proposed to be located the added protections of a public hearing and the right to be heard.

For the above reasons, the Board will find that the proposed paintball facility shall be designated as a “shooting range.”

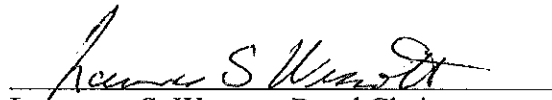
ORDER

THEREFORE, IT IS this 9th day of January, 2004 by the County Board of Appeals of Baltimore County

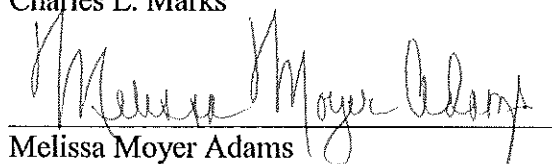
ORDERED that the Petition for Special Hearing to designate the paintball facility located on the north side of Dogwood Road, just west of its intersection with Ridge Road, as a “shooting range” as that term is contained within § 1A02B.26 of the *Baltimore County Zoning Regulations* be and is hereby **GRANTED**.

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**


Lawrence S. Wescott, Panel Chair


Charles L. Marks


Melissa Moyer Adams

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
N/S Dogwood Road, 610' W		
centerline of Ridge Road	*	DEPUTY ZONING COMMISSIONER
2nd Election District		
2nd Councilmanic District	*	OF BALTIMORE COUNTY
(7720 Dogwood Road)		
	*	CASE NO. 00-562-X
Dogwood Resources, LLC, <i>Legal Owner</i>		
and	*	
Action Paintball, Inc., <i>Contract Purchaser</i>		
<i>Petitioners</i>	*	

* * * * *

ORDER ON REMAND

This matter comes before this Deputy Zoning Commissioner as a Remand from the Baltimore County Board of Appeals regarding the application of the Petitioner, Action Paintball, Inc., to operate a paintball shooting range on property comprising 108.94 acres of land, located on the north side of Dogwood Road, just west of its intersection with Ridge Road. The applicant appeared at a public hearing before this Deputy Zoning Commissioner regarding the requested approval of this use. Also in attendance were representatives of the Greater Patapsco Community Association, namely Bob Hocutt and Rosalyn Roddy. There were no protestants or others in attendance at the original hearing. After considering the testimony and evidence offered at the original hearing, the Petitioner's request was granted to allow him to operate a paintball shooting range on the property subject to certain conditions and restrictions as were enunciated in my Order dated the 30th day of August, 2000.

After the issuance of my Order, an appeal was taken to the Baltimore County Board of Appeals by the People's Counsel for Baltimore County. Counsel for the applicant and the People's Counsel agreed that the matter should be remanded back to this Deputy Zoning Commissioner for further consideration of this issue. Once again, a hearing was held on this

matter on February 28, 2003. Limited testimony and evidence was taken at that hearing. The purpose of the hearing was to afford an opportunity for both Mr. C. William Clark, attorney for the Petitioner and Mr. Peter Max Zimmerman, People's Counsel for Baltimore County, to be heard orally on this issue. At the conclusion of the public hearing, both attorneys submitted memoranda of law regarding their respective positions. It was agreed by both counsel that the hearing before me would be considered a special hearing (from which an immediate appeal may be taken) for a determination as to how the Petitioner's intended use of the property should be characterized.

Mr. Zimmerman argued at the hearing, as well as in his memorandum that the manner in which the Petitioner wishes to utilize the property should be considered to be a "Commercial Recreational Facility" as that term is contained within the Baltimore County Zoning Regulations. Mr. Clark asserts that the Petitioner's use of the property should be categorized as a "Shooting Range" as that term is contained within the Baltimore County Zoning Regulations. All parties agreed at the hearing that the matter before me shall be treated as a special hearing in order to make this determination. The hearing before me shall not be considered as a true special exception request for the applicant's intended use. Both Mr. Zimmerman and Mr. Clark wanted the opportunity to file an immediate appeal of my decision. Therefore, the purpose of this Order is to rule upon this preliminary motion which shall be treated as a special hearing request.

Unfortunately, the Baltimore County Zoning Regulations do not specifically address a use such as the use proposed by this Petitioner, i.e. a paintball facility. Therefore, it becomes necessary to find a use permitted within this zoning classification, either by right or special exception, which would encompass the proposed use. This is not always an easy endeavor. Such was the case when a person seeking to establish a tattoo parlor was required to classify that

in that fashion would allow these uses to locate as of right in the BM, BR, MR, MH, and in the residential zones in the Honeygo District. In those zones, an applicant proposing to open a paintball facility could avoid the surrounding neighborhood's ability to be heard at a public hearing on the matter.

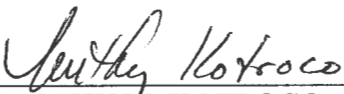
On the other hand, by determining the Petitioner's use to be a "Shooting Range", this applicant and all others, will have to request approval by way of a public hearing. This would afford the surrounding neighborhood, and anyone opposed to such use, an opportunity to be heard on the matter. This provides an appropriate safeguard and further assurances that a paintball facility could only be located in areas that would not have a detrimental impact on the surrounding neighborhood, similar to the Petitioner's request in the case before me at this time. It should be noted that the surrounding neighbors and the Greater Patapsco Community Association, whose representatives were in attendance at the hearing, were not opposed to this special exception request for a paintball "Shooting Range". Therefore, I believe it more prudent to characterize and to designate this paintball facility in a way that requires a special exception, thereby guaranteeing the community within which it is proposed to be located the added protections of a public hearing and a right to be heard.

Lastly and equally important in making this determination, is the fact that paintball games are designed to be played in two different manners. There are urban paintball games, played indoors or on a small outdoor range where players hide behind barriers or obstructions. On the other hand, paintball games are played in open fields, in wooded areas, where natural terrain and natural features such as trees, bushes, stumps and ditches are used to protect the participants. It is difficult, if not impossible, to find such terrain in the BM, BR, MR and MH zones where "Commercial Recreation Enterprises" are permitted. This would, in essence, prohibit the

participants from engaging in this activity in the manner in which it was designed. Furthermore, I do not believe such use to be the highest and best use of those particular zoning classifications. Accordingly, in an effort to promote community participation, provide for a public hearing process and to secure the manner in which the activity is designed to occur, I hereby find that the applicant's use of their property shall be designated as a "Shooting Range."

THEREFORE, IT IS ORDERED this 30th day of April, 2003, by this Deputy Zoning Commissioner, that the Petitioner's request to utilize the subject property, located on the north side of Dogwood Road, just west of its intersection with Ridge Road, be and is hereby designated to be that of a "Shooting Range" as that term is contained within Section 1A02B.26 of the Baltimore County Zoning Regulations.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days from the date of this Order.



TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

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